

2009 Interim Hospice Reform

Draft Legislative Language

Summary

- Replace Cap with 12.5% Reduction After 180 Days of Care
- For FYs 06-09 Provide Certain Cap Relief:
 - Demands not to exceed 10% of Medicare revenue for same year
 - (Subject to cumulative \$400 million cap)
 - 5 year repayment plans
 - Lower interest rate (standard Treasury debt recovery rate, not enhanced)
- Increase Payment by 20% for First and Last Five Days of Care
- Require Development of National Coverage Determinations
- Apply savings from NCDs to restore BNAF on pay-as-you-go basis

Draft Legislative Language

Section 1814(i)(2) of the Social Security Act (42 U.S.C. § 1395f(i)(2)) is amended –

(1) By adding at the end the following new subparagraphs (E), (F) and (G):

"(E) Subsections (A)-(D) shall not apply to payments made to hospice programs after the accounting year ending October 31, 2009. With respect to repayment demands based upon this section (2) covering CMS accounting years 2006-2009 (ending October 31, 2009), recovery of such demands from hospice programs shall be subject to the following relief provisions:

(i) no such demand to any hospice program shall exceed ten percent (10%) of actual Medicare payments to the hospice program for the same time period covered by the demand (inclusive of principal amounts already recovered). The cap relief under this subsection (E)(i) shall be subject to a cumulative limit of \$400 million;

(ii) on request, the Secretary shall allow hospice programs subject to the maximum demand (under subsection (E)(i) above) a period of 60 months from the date of demand to repay such demand; and

(iii) with respect to any cap repayment plan covering CMS accounting years 2006-2009, the Secretary may not charge interest on such debt exceeding the effective rate established by the Secretary of the Treasury pursuant to 31 U.S.C. 3717(a) as of the date of demand.

Nothing in this amendment shall require the Secretary to return funds already collected for any portion of this period."

"(F) With respect to any beneficiary in a hospice election period other than one of the first two 90 day periods for such beneficiary under section 1395d(d)(1) of this title, payment to a hospice program for hospice care shall be reduced by twelve and one-half percent (12.5%) from the payment amounts otherwise established for such care by CMS except that payment for short-term inpatient care shall not be reduced. This subsection (F) shall be effective as of November 1, 2009.

"(G) Routine home care payments to a hospice program for a beneficiary shall be increased by twenty percent (20%) from the payment amounts otherwise established by CMS for such care during the following days of hospice care: (i) the first five (5) days of a beneficiary's hospice care in the initial 90 day hospice election period under section 1395d(d)(1) of this title; and (b) the last five (5) days of hospice care preceding and including the date of death of such beneficiary."

Section 1861(dd)(3)(A) of the Social Security Act (42 U.S.C. § 1395x(dd)(3)(A)) is amended –

(1) By amending and restating paragraph (dd)(3)(A) as follows:

"(3)(A) An individual is considered to be "terminally ill" if the individual has a medical prognosis that the individual's life expectancy is 6 months or less. By no later than, January 31, 2010, the Secretary shall issue objective national coverage determinations for such life expectancies covering at least the following medical diagnoses: **LIST ALL APPLICABLE DIAGNOSES.**

Other amendments -

DELAY IN PHASE OUT OF MEDICARE HOSPICE BUDGET NEUTRALITY ADJUSTMENT FACTOR DURING FISCAL YEARS 2009-2013.— The Secretary of HHS shall determine annually in a report to Congress the savings realized from the issuance of evidence-based national coverage determinations for hospice. Notwithstanding any other provision of law, including the final rule published on August 10, 2008, 73 Federal Register 46464 et seq., relating to Medicare Program; Hospice Wage Index for Fiscal Year 2009, the Secretary shall apply all such savings to restoring and not phasing out the budget neutrality adjustment factor in the Medicare hospice wage index, on a pay as you go basis, for the fiscal years 2009 through 2013.