Home Health 2023 Rates Proposed -4.2%

Industry Readies Lobby Blitz & Legislative "Fix," Final Rates Likely Improve

CMS released proposed 2023 home health agency (HHA) rates with a 179-page rule here. CMS believes that HHAs were overpaid by $2B in 2020 and 2021 due to provider behavior change in coding. We do not see these rates as staying as is, particularly given impact on smaller agencies, as the world adapts to a more home-based system (fewer infections, patient comfort in known surroundings, distrust of nursing homes and other facility-based care that may have 'failed' during COVID.

- **Behavioral offset lowers update to -4.2% (proprietary HHAs), confirming industry fears (AMED LHCG others) around delayed HH pay cuts finally coming to fruition.** CMS estimates that Medicare payments to HHAs in 2023 would decrease in the aggregate by -4.2%, or -$810 M compared to 2022, based on the proposed policies. This decrease reflects the effects of the proposed +2.9% MB update ($560 M increase based on 3.3% MB less 0.4% productivity adjustment), an estimated -6.9% decrease that reflects the effects of the proposed prospective, permanent behavioral assumption adjustment of -7.69% ($1.33 B decrease), and an estimated 0.2% decrease that reflects the effects of a proposed update to the fixed-dollar loss ratio used in determining outlier payments ($40 M decrease).

- **CMS reduces pay rates to ensure new PDGM model transition is budget neutral to 'expected' 2019 spend.** On January 1, 2020, CMS implemented the home health PDGM and a 30-day unit of payment, as required by the *Bipartisan Budget Act of 2018*. The PDGM aligns payments with patient care needs, especially for complex beneficiaries that require more skilled nursing care rather than therapy. The law required CMS to make assumptions about behavior changes that could occur because of the implementation of the 30-day unit of payment and the PDGM. In the 2019 HH final rule, CMS finalized 3 behavioral assumptions (clinical group coding, comorbidity coding, and LUPA threshold). The law also requires CMS to determine the impact of differences between *assumed* behavior changes and *actual* changes on estimated expenditures, beginning with 2020 and ending with 2026, and to make temporary & permanent increases or decreases, as needed.

- **CMS proposes a -7.69% permanent adjustment to the 30-day payment rate in 2023 to ensure that aggregate expenditures under the new payment system (PDGM) would be equal to what they would have been under the old payment system.** While the law requires CMS to implement one or more temporary adjustments to offset for such increases/decreases in estimated aggregate expenditures, CMS also has the discretion to implement these adjustments in a time and manner deemed appropriate, therefore, CMS is not proposing a temporary payment adjustment in CY 2023. However, CMS is soliciting comments on how best to implement a temporary payment adjustment, estimated to be $2.0 B for excess estimates in CYs 2020 and 2021.

- **"Repricing" method chosen.** Additionally, in the 2019 HH final rule CMS stated that it interprets actual behavior change to encompass both behavior changes that were previously outlined, as assumed by CMS when determining the budget-neutral 30-day payment amount for CY 2020, and other behavior changes not identified at the time the 30-day payment amount for 2020 is determined. In the 2022 proposal, CMS solicited comments on a repricing methodology to determine the impact of changes on estimated aggregate expenditures. This rule proposes the repricing method, which calculates what the Medicare program would have spent had the PDGM not been implemented in CYs 2020 and 2021, assuming that HHAs would have provided home

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health services in the same way they do under the PDGM, compared to what actual home health expenditures were under the PDGM in 2020 and 2021.

- **There will now be a home infusion therapy service payment system under Medicare.** This requires a single payer payment made to home infusion therapy suppliers. The impact of this is unclear because the CY 2023 final values were not made available at time of rule-making.

- **Also, CMS collects comments on telecommunications data collection & proposes G-codes**. Data is not collected during 30-day period of care on the HHA claim. However services furnished via telecommunications must be included in the patient's care plan. CMs proposed three G-codes for identifying when HH services are furnished using (1) synchronous telemed (2) synchronous telemed rendered via telephone or audio-only telecom and (3) collection of physiologic data digitally stored / transmitted by the patient t0 the HHA i.e., remote patient monitoring.

WHAT NOW? PLUS OTHER HH NEWS…

- **Industry has commissioned reports on PDGM, and will likely argue for moderation based on CMS faulty behavioral assumptions, agency math.** We expect that they will present data and analytics to prove that the magnitude of the cuts is too high, criticizing "behavioral" assumptions.

- **Industry readies legislation in the event that CMS finalizes pay cuts.** Home health agencies enjoy bipartisan support on Capitol Hill given their presence in all US states. The National Association of Homecare and Hospice (NAHC) is readying language to address reductions in the CMS proposal, should they be finalized.

- **Other Home Health legislation.** (1) On the Medicare side, the bipartisan *Choose Home Care Act* of 2021 still has a decent chance of gaining traction at year end. This bill expects HHAs to receive a combination of the home health benefit payment and a 4-level, 30-day fixed episodic payment where providers share financial risk with Medicare. This bill has not seen much movement, however, due to the list of other things Congress is dealing with at the moment. However the bipartisan support leaves us thinking there may be hope. **(2)** The *Better care, Better Jobs Act*, has not seen much movement and is a long shot because of its non-partisan nature. This bill seeks $100M for states to expand access to Medicaid home care services and strengthens the home care workforce. It also implements a 10% increase in the federal Medicaid Match for delivering home care based services.

- **States have an additional year to use ARP funds for home and community based services.** The HHS, through the CMS, announced that states would have an additional year to use funding from the American Rescue Plan to both enhance and expand home and community based services. This ARP offered a 10% point increase to HCBS funding. Using the funds from the ARP have proven to be difficult for the states, so allowing extended time will positively affect them. These funds could be used to strengthen the states HCBS programs

- **NEXT STEPS:** We are expecting pushback to the rule for likely mitigation in final rates (due on or around Nov 1), as well as legislation introduced to mitigate the effects. We also expect that a Republican Congress would have more sympathy for HHAs, resulting in possibly a better final rule and/or enacting a legislative fix in a holiday Medicare payment package. We expect hefty Congressional activity during the lame duck session of Congress In any year, the proposal typically improves between proposed and final. New rates start Jan 1, 2023. There has been no movement on either the *Choose Home Care Act* or the *Better Care, Better Jobs Act*, which both have potential to impact home health care. The *IMPACT Act* requires the CMS to release a new post-acute payment system in 2022 which also will affect Home Health, but we don't expect that until 2H year.

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Background

- **MedPAC released numbers in Dec. 2021 about Home Health and its future**. Most of the attitudes expressed did not favor Home Health in terms of payments. They urged congress to reduce Medicare's base payment rate for Home Health Agencies by -5% for 2023, and non-partisan commissioners largely agreed with this. This is following the 2022 rules for Home Health which showed an increase of 3.2% (compared to 1.7% proposed) see final report here
    - **MedPAC predicted 2022 margins to be +17%, which is a decrease from +20.2% in 2022.** This could have been due to COVID-19 or other factors such as the patient driven grouping model (PDGM). MedPAC believes these double digit margins are still a bit too high which is why they are urging a 5% decrease for 2023.
    - It is difficult to assess the effects of the PDGM because of the lack of detailed information on delivery of telehealth services during home health care. This could lead to the proposed payment numbers being inaccurate because of the need for this information to be documented.

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