MEDPAC Medicare Payment Advisory Commission

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June 10, 2010

Marilyn Tavenner
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building, Room310-G
200 Independence Avenue, SW
Washington, DC 20201

Dear Ms. Tavenner,

In June 2009, the Medicare Payment Advisory Commission commented on the proposed changes to the prospective payment system (PPS) for skilled nursing facilities (SNF) in 2010 and 2011. Since our comment letter, Commission staff has continued its discussions with industry representatives and CMS staff to further its understanding of the changes regarding rehabilitation therapy services that CMS intends to implement this fall. We would like to clarify our position on CMS's planned changes to the consideration of rehabilitation services in establishing payments to SNFs.

Medicare's payments to providers should accurately reflect the resources required to efficiently furnish appropriate care to beneficiaries. In skilled nursing facilities, the costs of rehabilitation services are different when a patient receives individual, concurrent, or group therapy. [a] For example, although a patient spends an hour in rehabilitation, the cost to produce the hour depends on how many patients are treated at the same time. A patient receiving individual therapy is the most costly on a per patient basis because the therapist treats just one patient during the hour. For group or concurrent therapy, the per capita cost is less because the therapist treats more than one patient at the same time. In the case of concurrent therapy, CMS plans to limit Medicare coverage to two patients being treated by a therapist at the same time, thus halving the per capita cost of this modality because the therapist's time is allocated over the two patients. In the case of group therapy, the cost varies by the number of patients treated simultaneously. For Medicare coverage, CMS requires that no more than four patients can be treated at the same time by a therapist and this modality may not comprise more than one quarter of the patient's total therapy time.

Accurate payment for therapy services also requires that patients are correctly assigned to case-mix groups. For skilled nursing facility care, the case-mix groups for rehabilitation are based, in

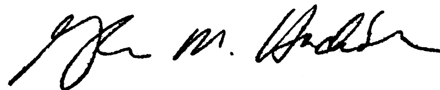
[a] Concurrent therapy is the practice of treating multiple patients, who are engaged in *different* therapy activities, at the same time. Group therapy is the practice of treating multiple patients, who are engaged in the *same* therapy activities, at the same time.

part, on the amount of therapy care a patient receives during a week. To classify a patient into a casemix-group, CMS is planning to count all of the time a patient spends in individual and group therapy and to count the allocated time when a patient receives concurrent therapy. For example, if a patient received 720 minutes of individual therapy during a week, the patient would be assigned to an “ultra” rehabilitation case-mix group based on the 720 minutes. However, if the patient received 720 minutes of *concurrent* therapy, the patient assignment to a case-mix group will be based on 360 minutes (the 720 minutes allocated to two patients), resulting in assignment to a “high” rehabilitation case-mix group. When a patient receives group therapy, CMS plans to not allocate the time across the patients in the group. Rather, all of the time counts towards assigning the patient to a case-mix group (as long as this modality’s minutes do not exceed 25 percent of the patient’s total therapy time).

The Commission agrees with CMS’s approach for assigning patients to case-mix groups using unallocated time for patients receiving individual and allocated time for patients receiving concurrent therapy. We do not agree with the planned approach for group therapy. Under CMS’s approach, payments for patients who receive group therapy will not reflect the costs incurred by providers to furnish it because the time will not be allocated across the patients treated at the same time. As a result, the planned approach will result in a financial advantage to furnish group therapy over individual or concurrent therapy. When CMS reviewed the staff time data it gathered to update the case-mix groups, group therapy made up a very small share of all therapy times. However, the provision of group therapy may grow because the financial incentive to furnish group therapy will remain in place. CMS plans to monitor the provision of group therapy and could respond to increased utilization through rule making or expanded medical reviews. The Commission believes that CMS should allocate group therapy minutes, similar to the way the agency plans to consider concurrent therapy minutes, to bring payments in line with a provider’s costs and to eliminate the incentive to furnish therapy using this modality.

The Commission values the ongoing cooperation and collaboration between CMS and MedPAC staff on technical policy issues. We look forward to continuing this productive relationship. If you have any questions or require clarification, please feel free to contact Mark Miller, MedPAC’s Executive Director.

Sincerely,



Glenn M. Hackbarth, J.D.
Chairman

GMH/cc/wc