



May 26, 2023

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington DC, 20201

RE: CMS-1787-P

Dear Ms. Brooks-LaSure:

The Medicare Payment Advisory Commission (MedPAC) welcomes the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS's) proposed rule entitled "Medicare Program; FY 2024 Hospice Wage Index and Payment Rate Update, Hospice Conditions of Participation Updates, Hospice Quality Reporting Program Requirements, and Hospice Certifying Physician Provider Enrollment Requirements" in the *Federal Register*, vol. 88 no. 64, p. 20022 (April 4, 2023). We appreciate CMS's ongoing efforts to administer and improve the payment system for hospice services, particularly given the many competing demands on the agency's staff.

Our comments focus on two issues: the fiscal year (FY) 2024 update to the hospice payment rates and hospice aggregate cap and the proposed FY 2024 hospice wage index.

Proposed update to the FY 2024 hospice payment rates and hospice aggregate cap

CMS has proposed an update of 2.8 percent to the FY 2024 hospice payment rates and hospice aggregate cap amount.

Comment

We recognize that CMS is required by statute to propose a 2.8 percent increase to both the FY 2024 hospice payment rates and hospice aggregate cap. This payment rate update is consistent with the Commission's March 2023 recommendation to update the FY 2024 payment rates by the current law amount. However, the Commission also recommended that the hospice aggregate cap be wage adjusted and reduced by 20 percent.¹

In our March 2023 report to the Congress, the Commission found that indicators of payment adequacy for hospices—beneficiary access to care, quality of care, provider access to capital, and Medicare payments relative to providers' costs—are generally positive. In 2021, the number of providers increased by 6 percent. The number of beneficiaries receiving hospice care and total

¹ Medicare Payment Advisory Commission. 2023. *Report to the Congress: Medicare payment policy*. Washington, DC: MedPAC.

days of hospice care were stable. Nationally, the share of Medicare decedents using hospice declined slightly, while use rates increased among some decedent populations. Average length of stay, which increased in 2020, declined in 2021 to its 2019 level. Aggregate Medicare marginal profit was 18 percent in 2020. Given that the number of for-profit providers increased by 8 percent, access to capital appeared strong. The 2020 Medicare aggregate margin was 14.2 percent (16 percent if relief funds related to the coronavirus pandemic are included). The projected 2023 Medicare aggregate margin is about 8 percent.

Based on these generally positive indicators of payment adequacy and strong margins, the Commission concluded that a reduction to aggregate payments is warranted. However, given the range of financial performance across providers and the existence of the hospice aggregate cap, there is the potential to focus payment reductions on providers with disproportionately long stays and high margins. Therefore, the Commission recommended that the Congress wage adjust and reduce the hospice aggregate cap by 20 percent while maintaining the current-law update for FY 2024. Under this recommendation, payments would be reduced for providers with very long lengths of stay and low costs relative to payments, while wage adjusting the cap would make it more equitable across providers.

Proposed FY 2024 hospice wage index

Since 1998, CMS has used general acute care hospital wage data to develop the hospice wage index. For FY 2024, CMS proposes to continue to use the unadjusted inpatient prospective payment system (IPPS) wage index (referred to as the “pre-floor, pre-reclassification hospital inpatient wage index”), with a hospice-specific national floor.

Comment

The Commission has long been concerned with flaws in the wage indexes Medicare uses to adjust provider payments to reflect geographic differences in labor costs.² To improve the accuracy and equity of Medicare’s wage index systems for IPPS hospitals and other providers (such as, but not limited to hospices), Medicare needs wage indexes that are less manipulable, more accurately and precisely reflect geographic differences in market-wide labor costs, and limit how much wage index values can differ among providers that are competing for the same pool of labor. In the Commission’s forthcoming June 2023 report to the Congress, we recommend that the Congress repeal the existing Medicare wage index statutes, including current exceptions, and require the Secretary to phase in new Medicare wage index systems for hospitals and other types of providers that:

- use all-employer, occupation-level wage data with different occupation weights for the wage index of each provider type;
- reflect local area level differences in wages between and within metropolitan statistical areas and statewide rural areas; and
- smooth wage index differences across adjacent local areas.

²Medicare Payment Advisory Commission. 2007. *Report to the Congress: Promoting greater efficiency in Medicare*. Washington, DC: MedPAC

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It appears that the Secretary has the authority to determine what wage index measure is most appropriate to apply to hospice payments, and we urge the Secretary to adopt the Commission's recommended approach for hospices.

The Commission values the ongoing cooperation and collaboration between CMS and our staff on technical policy issues. We look forward to continuing this productive relationship. If you have any questions, or require clarification of our comments, please feel free to contact James E. Mathews, the Commission's Executive Director, at 202-220-3700.

Sincerely,

A handwritten signature in black ink, appearing to read "m. chernew", with a horizontal line extending to the right from the end of the signature.

Michael E. Chernew, Ph.D.

Chair

MC/kn