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HOMECARE & HOSPICE
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December 15, 2020

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services,
Department of Health and Human Services,
Attention: CMS–6082–NC, P.O. Box 8016,
Baltimore, MD 21244–8016

Dear Administrator Verma,

The National Association for Home Care & Hospice is grateful for the herculean efforts the Centers for Medicare & Medicaid Services has put forward during this unprecedented pandemic. Our agencies, their staff, and patients and families are deeply appreciative of your swift and broad sweeping actions to ease regulatory burdens so that care can be delivered more effectively and, most importantly, safely.

As the pandemic continues to worsen and as hospitals reach maximum capacity, community health care providers are experiencing increased demand for service. As such, we are requesting that CMS reconsider several modifications made to regulatory and policy flexibilities when it seemed that COVID-19 cases may be leveling. Additionally, we are requesting that CMS reconsider several other flexibilities.

The following recommended flexibilities would be extremely beneficial in assisting community providers in responding to the health care needs of vulnerable Medicare beneficiaries during this surge in COVID-19 cases.

Medical Review for Medicare Providers

Issue: On August3, 2020, in response to states reopening, CMS discontinued exercising enforcement discretion related to medical review of Medicare providers. Since then, home health and hospice providers have increasingly received additional development requests (ADRs) from

the Medicare Administrative Contractors (MACs). Providers universally are reporting difficulty in responding to the requests with the increased admissions to assist with hospital surge.

Recommendation: CMS should reinstitute the suspension of medical review by the MACs, Supplemental Medical Review Contractors (SMRCs) and Recovery Audit Contractors (RACs) for Medicare providers until the health care system stabilizes.

Home Health Review Choice Demonstration (RCD)

Issue: In August 2020, CMS resumed the Home Health RCD after five months pause. The RCD is burdensome to providers since it requires a substantial portion of the medical record be submitted to the MAC for review to receive payment for services without a penalty. CMS did modify its plan in that HHAs in Florida and North Carolina have the option to participate in pre-claim review on a claim by claim basis. CMS plans to initiate full scale RCD in those states "no earlier than" January 1; 2021. The RCD process can become overwhelming for a home health agency when the patient census significantly increases/staff resources decrease, as has occurred over the past couple of months During the pandemic.

Recommendation: NAHC requests that CMS extend the RCD modification in Florida and North Carolina as was implemented in August 2020 that permitted the affected HHAs the option for voluntary participation in the RCD and extend the same option to all affected RCD states through the PHE. . .

No-Pay Request for Anticipated Payment (RAP) Timely Submission Penalty

Issue: Effective January 1, 2021 HHAs will be required to submit a no-pay RAP within 5 days of the "from" date on the claim or be subject to a penalty that is 1/30 of the total payment for each day beyond the "from" date that the RAP is late. For example, if the HHA submits the RAP only one day late they are penalized for the days between the claim start date until the date the RAP was submitted and accepted into the system.

The RAP updates the Medicare Common Working File to enforce consolidated billing rules under the home health prospective payment system for HHAs. However, even if a claim for another outpatient provider is erroneously paid while a beneficiary is under a home health plan of care (HHPOC), the Medicare system is set up to eventually recoup those funds. Therefore, the Medicare program has built-in controls to prevent risks related to improper payments under home health consolidated billing.

This is a new process for agencies requiring operational and system changes effective January 1, 2021. There is great concern among HHAs as to whether they will be able to effectively implement the required changes with the additional burden of caring for an increased number of patients/reduced number of staff. Failure to submit the RAP timely could result in significant financial losses for HHAs that are simultaneously trying to manage an influx of new patients while implementing a new billing requirement.

Recommendations: NAHC urges CMS to delay the late RAP submission penalty for six months from the scheduled implementation date or the latter of six months or three months after the public health emergency ends.

Home Health and Hospice Face to Face (F2F) Encounter via Audio Technology

Issue: CMS has issued waivers that permit practitioners to conduct and bill Medicare for virtual visits via audio only technology. This flexibility permits practitioners to conduct audio only visits when two-way audio/visual technology is not available or not practicable for patients. However, CMS will not permit audio only visits to be conducted for the F2F encounter for Medicare home health or Medicare hospice certification; only in-person visits or two-way audio/visual technology are permitted for these visits. Because audio visits are recognized as routine physician E/M visits, practitioners are using this method for patient encounters on a regular basis and believe they are acceptable for the home health and hospice F2F encounter. When this occurs, HHAs and hospices must request that the practitioner conduct another visit using audio/visual technology or an in-person visit. As a result, scheduling an acceptable F2F encounter is frequently challenging, if even possible for some patients, creating additional burdens for providers, delays in care for patients, and limiting access for patients, particularly patients that reside in rural areas.

Recommendation: Permit practitioners to conduct the F2F encounter for Medicare home health and Medicare hospice certification via audio only technology in addition to two-way audio/ visual technology and in-person visits.

Thank you for consideration of these recommendations.

Very truly yours,