

Eli's Hospice Insider

Appeals: CMS Backtracks On Hospice Cap Appeals

Don't miss your opportunity to appeal an unfavorable cap calculation.

The cap choices that hospices soon will have aren't the only change to Medicare's hospice cap policy.

A **Centers for Medicare & Medicaid Services Ruling** issued April 14 gave a heads up about the cap changes in the subsequent proposed rule. "CMS Rulings are decisions of the Administrator that serve as precedential final opinions and orders and statements of policy and interpretation," the agency notes.

Background: CMS has been calculating hospice caps -- and cap overpayment determinations -- by allocating patients entirely to one year (1.0 in a year), CMS Administrator **Donald Berwick** says in the ruling. But multiple hospices have won court cases challenging that methodology and asking for beneficiaries to be counted proportionately in the years they receive services (for example, 0.5 and 0.5 split between two years).

In its proposed rule, CMS proposes to calculate the cap proportionally, but allow hospices to elect the old all-in-one-year method, the ruling indicates. The new proportional calculation style would start in 2012.

Plus: CMS will also "grant relief to any hospice provider that has a properly pending appeal ... in any administrative appeals tribunal ... that seeks review of an overpayment determination for any hospice cap ... ending on or before October 31, 2011 by challenging the validity of the beneficiary counting methodology," the agency says in the ruling. That includes the cases that have worked their way up to federal court, points out the **National Association for Home Care & Hospice**.

"This is a very good result for hospices," says **Bill Dombi**, director of NAHC's **Center for Health Care Law**. "The ruling will accelerate relief for hospices that were pursuing most cap-related overpayment appeals, and the new regulation to come will give hospices the cap application method that is most favorable to them."

Bottom line: "CMS is doing the right thing with these actions," Dombi adds.

Tip: "Hospices that are still within the allowable time period to pursue appeals -- 180 days from cap-related overpayment determinations -- should seriously consider an administrative appeal to capture the value that may exist with proportionate application of the cap," NAHC urges.

Note: The ruling is at www.cms.gov/Rulings/downloads/CMS1355R.pdf.