

Eli's Hospice Insider

Reimbursement: As Medicare Spending On Non-Hospice Items And Services Continues To Go Up, CMS Mulls Bundling Action

Proposed rule highlights coverage of maintenance drugs, more.

Just because there are no official proposals regarding bundling of items and services in Medicare's latest hospice proposed rule, don't assume they aren't coming.

The Centers for Medicare & Medicaid Services examines many statistics in the rule published in the April 14 Federal Register. That includes a healthy section regarding what's related and not for hospice patients - and thus what hospices should be covering and paying for.

CMS sings a familiar song in the rule about hospices covering most all of patients' care needs during their election. "The comprehensive nature of the services covered under the Medicare hospice benefit is structured such that hospice beneficiaries should not have to routinely seek items, services, and or medications beyond those provided by hospice," the rule maintains. "We believe that it would be unusual and exceptional to see services provided outside of hospice for those individuals who are approaching the end of life and we have reiterated since 1983 that 'virtually all' care needed by the terminally ill individual would be provided by the hospice."

Despite that claim, Medicare spending on non-hospice items and services continues to go up. Medicare spent \$692 million on Part A and B items and services in fiscal year 2019, up from \$631 million in 2018, \$588 million in 2017, and \$582 million in 2016, CMS says in the rule.

Medicare spending on Part D drugs is similarly rising. Medicare spent \$499 million on Part D drugs during hospice elections in FY 2019. That's up from \$439 million in 2018, \$381 million in 2017, and \$353 million in 2016, according to the rule.

Reminder: In 2014, CMS directed Part D drug plans to put in place prior authorization forms for hospice patients' medications. After an outcry about medication access problems and other issues, CMS narrowed the PA process to cover four drugs - analgesics, anti-nauseants, anti-anxiety, and laxatives (see HOP, Vol. 7, No. 9).

"The current use of prior authorization (PA) by Part D sponsors has reduced Part D program payments for drugs in four targeted categories," CMS acknowledges in the rule.

"However, under Medicare Part D there has been an increase in hospice beneficiaries filling prescriptions for a separate category of drugs we refer to as maintenance drugs," the rule continues. CMS considers maintenance drugs to include "those used to treat high blood pressure, heart disease, asthma and diabetes" such as "beta blockers, calcium channel blockers, corticosteroids, and insulin," the agency says.

In August 2019, the HHS Office of Inspector General issued a report asserting hospices should have paid for at least \$160.8 million in Part D drug payments in 2016, based on an audit of 200 Part D claims for hospice patients (see HOP, Vol. 12, No. 10).

And the updated version of the free PEPPER benchmarking report for hospices issued this spring also contains a new item on drugs. PEPPER contractor RELI Group revealed last fall that "Average Number of Part D Claims per Hospice Episode" was a new target area (see HOP, Vol. 14, No. 1).



Incorrectly Unbundled Drugs Cost Patients Millions Too, CMS Contends

It's not just Medicare that is losing money by hospices shirking drug coverage, CMS suggests in the rule. For the \$499 million figure in 2019, "the beneficiary cost sharing amount was approximately \$59 million," CMS points out.

CMS' solicitation of comments suggests it has related changes in mind to bring down those drug costs. "Given the comprehensive and holistic nature of the services covered under the Medicare hospice benefit, we continue to expect that hospices are providing virtually all of the care needed by terminally ill individuals. However, the analysis of non-hospice spending during a hospice election indicates a continuing trend where there is a potential 'unbundling' of items, services, and drugs from the Medicare hospice benefit," CMS notes. "That is, there may be items, services, and drugs that should be covered under the Medicare hospice benefit but are being paid under other Medicare benefits."

CMS continues, "We are soliciting comments as to how hospices make determinations as to what items, services and drugs are related versus unrelated to the terminal illness and related conditions. That is, how do hospices define what is unrelated to the terminal illness and related conditions when establishing a hospice plan of care. Likewise, we are soliciting comments on what other factors may influence whether or how certain services are furnished to hospice beneficiaries."

Hospices can expect the new election statement addendum to factor into CMS' deliberations and possible future proposals, industry experts say.

"Clearly there are some areas that continue to concern CMS, including spending on items and services outside of the hospice benefit," the National Association for Home Care & Hospice's **Theresa Forster** tells AAPC. "This, taken with CMS' recent inclusion of Part D drug coverage as a target area on the hospice PEPPER report, sends a clear message that this issue is one that is not going away," Forster cautions.

"Hopefully greater transparency related to this type of information (Part D drug coverage while a patient is on hospice care) will increase awareness and sensitivity around some of these areas," Forster says.

The problem with CMS' "overly broad" definition of unbundling is that it ignores the requirement that hospices must cover items and services related to the terminal illness, protests attorney **Robert Markette Jr.** with Hall Render in Indianapolis. Statute and regulation specify the term "related."

"Words mean something," Markette tells AAPC. "Courts presume you don't use words you don't mean," he says.

And the courts could end up being the place the matter of unbundling and related vs. unrelated items and services gets decided, if CMS, the Medicare Payment Advisory Commission, the OIG, and others keep pushing hospices to cover more and more.

"We don't get paid that much," Markette says of hospices. "We have to be able to pay the bills."

An alternative: If Medicare wants hospices to cover "every medical need" at end of life, including drugs for longstanding conditions whether related to the terminal illness or not, then it needs to "reimagine" the hospice benefit and do a true accounting of all the costs involved, Markette maintains. Then hospices could offer a "broader spectrum of care," he says.

Note: The rule is at www.govinfo.gov/content/pkg/FR-2021-04-14/pdf/2021-07344.pdf - the portion devoted to "Non-Hospice Spending During a Hospice Election" is on pp. 14-18.