

## Eli's Hospice Insider

### Reimbursement: Beware Cap Calculations Set To Include Sequestration Dollars Medicare Never Paid You

**Overpayments will be based on reimbursement you never received, CMS confirms.**

Hospices skirting their per patient cap amount got bad news at the most recent Medicare Open Door Forum for hospices.

In the Nov. 13 forum, a rep from the **Centers for Medicare & Medicaid Services** explained that the Medicare system is including sequestration dollars never paid to hospices in their per patient cap calculation for 2013 and 2014. The method will assure that providers that are under and over the cap are treated equally, maintained CMS's **Owen Osaghae** in the call.

The methodology overstates hospice cap liability, and "thereby grab[s] more overpayments, by adding sequestered revenue to hospice revenue," blasts attorney **Brian Daucher** with law firm **Sheppard Mullin** in Costa Mesa, Calif. "For hospices, if not challenged, this will mean that revenue will be artificially inflated by approximately 1 percent for 2013 (and 2 percent for 2014 and future years) by money never paid to the hospice (i.e., money withheld through sequestration)," Daucher says in an article published on the National Law Review website.

"In the sad history of CMS accounting games, this marks a new low," Daucher says.

**Millions at stake:** "We estimate that this CMS sequestration scheme will allow Medicare to increase hospice cap overpayment demands by 10-15 percent overall (far more than the apparent 1-2 percent of revenue at issue)," Daucher continues. "So if total hospice cap overpayments system-wide are \$200 million, then CMS may grab an additional \$20-30 million in dribs and drabs."

In the forum, whether CMS was really planning to use the sequestered funds seemed unclear. Osaghae noted that for hospices that are designated over the cap using the sequestered funds, the Medicare Administrative Contractor will need to determine whether a reopening is necessary. If so, the MAC will reopen and recalculate the 2013 cap.

Osaghae did not specify whether the recalculation would include or exclude the sequestered funds. In response to a question from **Judi Lund-Person** of the **National Hospice and Palliative Care Organization**, Osaghae seemed to make contradictory statements on whether that would occur.

But CMS tells **Eli** the MACs will use this methodology: "The MACs will compute the aggregate cap overpayment by comparing the hospice aggregate cap to the net reimbursement plus the sequestration amount reported on the Provider Statistical and Reimbursement (PS&R) report. Providers will be expected to refund any payment over the cap amount," according to a CMS spokes person.

**In other words:** Don't think you're in the clear if you've received cap statements that don't include sequestration funds. "At the moment, CMS is saying that sequestration is not taken into account when the cap calculation is done and that the MACs will be instructed to redo their calculations for letters already sent," Lund-Person tells Eli.

Note: To see Daucher's article on the issue, go to

[www.natlawreview.com/article/cms-plans-to-add-sequestration-dollars-to-hospice-cap](http://www.natlawreview.com/article/cms-plans-to-add-sequestration-dollars-to-hospice-cap).