

## Eli's Hospice Insider

### Reimbursement: New CMS Guidance May Raise Your Drug Costs

#### Prior authorization coming for all hospice patient drugs.

CMS has been putting pressure on hospices to shoulder the financial responsibility for virtually all of a hospice patient's care at end of life, and now it's taking new steps to make sure you do so.

"Hospices are required to provide virtually all the care that is needed by terminally ill individuals" who elect the hospice benefit — including drugs, the Centers for Medicare & Medicaid Services emphasizes in Dec. 6 memo to Part D plans — called sponsors — and hospices.

**New requirement:** "We expect drugs covered under Part D for hospice beneficiaries will be extremely rare," CMS says in the memo. "Therefore, the sponsors should place beneficiary-level [prior authorization] requirements on all drugs for hospice beneficiaries to determine whether the drugs are coverable under Part D." The memo takes effect March 1, 2014. However, it's not final — CMS will take comments on it until Jan. 6.

Previously, CMS "strongly encouraged" plans to use prior authorization (PA) for four categories of prescription drugs: analgesics, anti-nauseants (antiemetics), laxatives, and anti-anxiety drugs. But now it's making the PA mandatory.

**Why the change?** "We have become aware that the duplicative payment issue for Part D sponsors was broader than the four classes of drugs specified" in the original instructions, CMS says. And "a number of hospices are not viewing the benefit as holistically as CMS has defined it since implementation of the Medicare Hospice Benefit."

CMS does not prescribe a specific PA process, notes the National Association for Home Care & Hospice in analysis of the memo. That means each Part D plan can require its own process with which you will need to become familiar. "The hospice provider will be responsible for coordinating with Part D plan sponsors for those drugs they believe are completely unrelated to the terminal illness and/or related conditions to determine payment responsibility," CMS directs in the missive.

If the hospice and Part D plan don't agree on who is responsible for drug's cost, CMS tells the Part D plan to shoulder the cost — for now. But you still may pay later. The plan can "flag the claim and request a retrospective determination of drug payment responsibility by the independent reviewer once the process is implemented."

**Forthcoming process:** CMS is "exploring" using an independent reviewer to resolve such disputes, it says. The reviewer also would determine whether a hospice should pay for a drug not on its formulary and make other similar determinations.

#### Your Formulary Isn't The Final Word On Coverage

While CMS says it expects hospices to have a formulary of drugs they furnish, that won't keep you from paying for off-formulary drugs.

"If the drugs on the formulary are not providing the relief needed, then the hospice must provide an alternative(s) in order to relieve pain and symptoms, even if it means providing a drug(s) that is not on their formulary," CMS spells out in the memo. "We expect hospices to provide non-formulary drugs when they are necessary to meet the patient's needs and desired outcomes."

**However:** A patient can't have a non-formulary drug just because they ask for one. "The hospice does not have to provide [a patient-requested] specific drug if the hospice interdisciplinary group determines that a medication on its formulary would work as well," CMS pronounces. "If a patient insists on medication A that the hospice does not believe is

reasonable and necessary, and the hospice has an alternative medication B that could meet the patient's needs, the patient could still receive medication A, but the hospice would not be liable for its cost." In other words, the hospice patient must pay out of pocket for it.

The **U.S. Court of Appeals for the Ninth Circuit** addressed this issue in a case last year (see Eli's HOP, Vol. 5, No. 9).

Hospices Shirking Drug Cost Responsibilities, CMS Says

CMS issued this memo implementing the prior authorization measures and clarifying policy because "CMS continues to be concerned that drugs covered under the Part A Hospice Benefit are being billed to Part D inappropriately," the memo says. In 2010, 15 percent of hospice beneficiaries enrolled in Part D received analgesics totaling nearly \$13 million in Part D payments.

**SNF focus:** Ten percent of hospices accounted for more than half of analgesic claims, and the providers were typically for-profit, new, and/or rural, CMS says. And more than half of the analgesic claims were for hospice benes residing in nursing facilities, CMS adds.

Drugs are "covered under the Medicare hospice benefit, if those drugs are necessary for the palliation and management of the terminal illness and related conditions," CMS stresses in the memo. That may include some drugs taken prior to hospice election and some not.

"A key component of hospice care is symptom control," CMS explains. "These symptoms can be physical, emotional, psychosocial, and/or spiritual. Thus, when we refer to 'pain and symptom relief,' or 'palliation and management of the terminal illness and related conditions,' this encompasses all medical supplies and drugs needed to manage all the patient's health conditions related to the terminal prognosis, to minimize symptoms and maximize comfort and quality of life."

**Summary:** "The focus is not limited to pain medications or a narrow definition of palliative care, but is broad and holistic," CMS elaborates.

"Beneficiaries should only very rarely be taking drugs that are not covered under the hospice per diem," CMS pronounces. "The number of drugs to be paid under Part D for hospice beneficiaries should be very minimal."

**Note:** The 12-page memo is at

[www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/Hospice-PartD-Payment.pdf](http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/Hospice-PartD-Payment.pdf).