

Eli's Hospice Insider

Reimbursement: Watch Out For Pre-2013 Cap Overpayment Demands

Long-stay patients may be keeping your cap liability an open question.

You may think your cost reporting years from 2012 and earlier are over and done with, but that won't keep you from getting slapped with potentially hefty cap repayments even now.

Industry experts report that Medicare contractors are reaching back — way back — to adjust cap year calculations and their resulting overpayment assessments. "In recent weeks, hospice providers have been receiving revised cap demands for fiscal years 2012 and earlier," says attorney **Ashton Bracken** with **Sheppard Mullin** in Orange County, Calif., in analysis on the firm's website. "Although the initial demands in these cases were issued more than three years earlier, [the **Centers for Medicare & Medicaid Services**] now claims that it can reopen and revise cap demands for up to three years from the most recent demand."

Result: "Based upon this construction, CMS could actually reopen every year, forever and ever," Bracken warns.

This "clearly is unfair," criticizes **Rick Ingber** with **VantaHealth Consulting** in Plymouth Meeting, Mass. Hospices feared this might happen when the cap calculation methodology switched over.

Under the proportional method of cap calculation, later adjustments are necessary, notes financial expert **Mark Sharp** with **BKD** in Springfield, Mo. "The prorata cap methodology is a living, breathing computation as long as you have patients still on service with your agency or another agency from the cap year in question," Sharp explains.

Reminder: Back in 2012, sparked by numerous lawsuits, CMS switched hospices from the old streamlined method to the proportional method. Under the proportional method, a beneficiary counts in the calculation year based on time. For example, a beneficiary on service for nine months in 2015 and three months in 2016 would count as a 0.75 patient in the former and 0.25 patient in the latter year's calculation.

Hospices could elect to stick with the streamlined methodology if they wished (see Eli's Hospice Insider, Vol. 4, No. 12). But they are not allowed to switch back and forth, Sharp notes. Once they choose to use the proportional method, they must stay with it.

\$75K Overpayment Demand

The reopenings for 2012 and earlier are unexpected, Bracken contends. "In 2011, when CMS adopted the revised cap rule, commenters asked CMS to specify the reopening time period, noting the need for hospices to manage their finances with certainty," she says. "CMS stated plainly that it was revising its proposal to 'make it clear that there is a 3-year time frame for reopening,'" according to the August 2011 final rule.

Impact: "The more patients you have on service ... for these lengths of stays, the more impact it will have on your prior cap years," Sharp tells **Eli**. The amount of time the patients are on service in later years affects the proportion used in the calculation for the prior years. "We have seen a number of agencies in these situations," he says.

Bracken tells **Eli** her clients are seeing overpayment demands ranging from \$5,000 to \$75,000 for the largest providers.

With CMS reopening years beyond the three-year limit, "providers could be on the hook for shifting allowances much longer than previously anticipated," Bracken emphasizes. Particularly "for large programs, the effect could be material."

You can expect to see this problem grow, predicts **Tom Boyd** with **Simione Healthcare Consultants** in Rohnert Park, Calif. "Currently about one in eight hospices have cap liability," Boyd says. "That number will be increasing as the cap computation has changed, [there] will be fewer increases going forth, and even hospice patients live longer thanks to

medical improvements."

The good news is that many larger hospice programs already are employing strategies to reduce their cap exposure, Boyd tells **Eli**.

And the adjustments will be tempered by a few factors. "Few patients live more than three years past their initial year of hospice service," Bracken acknowledges. "And, those patients who do live so long will likely have allowances spread over many years, resulting in smaller changes to allowances in any given year."

"Logistically, this should really not actually go much further than about six years, just given that the only extremely rare case occurs where a patient on hospice would be alive six years later □ though across a huge population, this can certainly happen, with interrupted service years," Bracken says.

Also: MACs have said that they will not reopen unless they can recover at least an additional \$5,000, Bracken relates.

"While I agree that the prorata method is much more appropriate, it does create the need for these reopenings for agencies with such high lengths of stay," Sharp notes. "I guess you have to be careful what you ask for."

Scenario: Some new hospices that have grown quickly have found themselves subject to major cap-related overpayments down the line, Boyd notes. "They can, and some do, close the hospice and the Medicare program is out the overpayment," he observes. But others make the repayment, sometimes via an extended repayment plan.