

OASIS Alert

Lawsuits: Case Mix Creep Adjustment Rule Lands In Court

NAHC wants to send the rule back to the drawing board

If you're worried about losing money thanks to the case mix creep adjustment, take note -- there may be some good news coming your way.

The **National Association for Home Care & Hospice** (NAHC) has challenged the **Centers for Medicare & Medicaid Services'** (CMS) new rule that reduced payment rates by 2.75 percent in 2008, 2009, and 2010, and by 2.71 percent in 2011, the group announced on Oct. 16.

Why: From 2000 through 2005, the average case mix weight increased by 8.7 percent; however, CMS determined that changes in patients' characteristics didn't rise as much. To balance possible over payment in years past, CMS decided to cut payments over the next four years (see **Eli's** OASIS Alert Vol. 8, No. 9).

Problem: These payment reductions are "the outcome of a covert preplanned, prejudged scheme to reduce overall Medicare spending outside the purview of Congress," NAHC contends in its lawsuit. The rate cuts were hiding in the current administration's budget prior to public disclosure and CMS engaged in a "bait and switch" when it swapped a different rationale for the cuts in the final rule after home health advocates discredited the original rationale, NAHC alleges.

Solution: NAHC hopes the **U.S. District Court for the District of Columbia** will declare CMS in violation of the Regulatory Flexibility Act, and the Administrative Procedures Act. The group believes that CMS should've published the final rule as a proposed rule because it contained new information that needed public review and comment -- which was the process by which home health advocates discredited the original rationale.

Furthermore, NAHC contends that CMS violated Medicare law because the "substantive standards for a case mix creep adjustment" weren't met. Medicare law allows adjustment when coding changes causes a change in aggregate payments. However, for 2000 through 2005, Medicare spending for home health services was lower than estimated.

Initially authorized in June 2008, NAHC filed the lawsuit after Congress didn't respond to the groups attempts to reverse the final rule. The group hopes its challenge will force CMS to repeal the case mix creep adjustment rule.

Resource: NAHC members can read the full complaint at

<http://www.nahc.org/NAHC/CaringComm/eNAHCReport-mbrs/attachments/NAHCvsHHS.pdf>.