Published on *The National Law Review* https://natlawreview.com

Centers for Medicare and Medicaid Services (CMS) Proposes Calculate Your Own Cap (CYOC)

Article By:

Healthcare Team of Sheppard Mullin

In its May 2014 publication of the **2015 Hospice Wage Index** update, CMS proposes that hospices be required to calculate, report and pay their own cap liability, with reports to be due five months past fiscal year end (i.e., by March 30 of each year after fiscal year end October 31).

This suggestion stems from ongoing frustration at CMS over the pace of cap collection by CMS contractors. Contractors, despite possessing automated tools and the benefit of substantial experience with the cap database still proceed deliberately (perhaps understandably).

CMS suggests that online tools exist to allow hospices to perform this calculation. But, instead of fully automating this process and establishing a reliable online provider communication tool, CMS proposes to shift the burden of these calculations to the hospices themselves. For many reasons, CMS' proposed abdication of its responsibility is unwise and unnecessary.

Before CMS corrected the cap regulation (42 CFR 418.309) in 2011 by allowing for proportional allocation of cap allowances for each patient across years of service (as Congress originally required), there were no online provider tools to help providers assess their own cap position. Painstaking calculations were made by contractor finance teams, often in inconsistent fashion and on an inconsistent calendar from region to region. Hospices that wished to track cap had to do so with their own spreadsheets manually.
The invalidation of CMS' longstanding rule beginning six years ago forced CMS to develop a nationwide hospice cap database. The PS&R database is useful, in that it allows the contractors (or providers) through the PS&R system to request current cap allowances for any fiscal year from 2008 forward.

The system though is incomplete.

To assess cap liability, a provider must: (a) correctly use the PS&R system to get the current cap allowances for the fiscal year in question (requiring various data inputs to be set correctly); (b) separately request a net reimbursement report (modifying settings to cover the fiscal year instead of default calendar year); (c) create a spreadsheet to multiply the given allowances by the current per beneficiary allowance (located in a separate annual CMS Change Request); and (d) setup the spreadsheet to calculate the difference between revenue and allowances.

These are not impossible tasks; but, they are complicated steps that if done 3,000 separate times by 3,000 separate hospices will result in a certain error rate (perhaps twenty percent (20%)). Hospices will not all get this right. Presently, even the contractors cannot execute these steps quickly. If hospices are forced to report their own cap position, errors will follow and the burden on both providers and contractors will be multiplied.

It also should be noted that the PS&R system itself is far from perfect. For instance, if any provider fails to login for six months, then the system will cancel login credentials. So, if a hospice needs to login, it will then need to re-register, which can take months.

The question must be asked:

> Why can't CMS complete the work it started with the cap allowance database by fully automating this process on its side?

It should be easier for CMS to automate this system such that it will automatically generate a complete cap report for each provider, showing fractional allowances, total dollar allowances, net reimbursement for the fiscal year, and cap position for any given fiscal year. It would be far more efficient for CMS to revise its system than to force 3,000 hospices to perform their own calculations.

One critical missing component of an automated process is a reliable electronic provider notice delivery system. At present, CMS relies upon physical mail (without redundant email or electronic inbox) to deliver critical important provider communications, including cap reports, ADR notices, and other overpayment determinations.

As many providers know through painful experience, different parts of the government use different provider addresses. Sending an updated address to a contractor is no guarantee that mail will be delivered correctly. When mail fails to reach providers, contractors blame providers. And, regardless of timing of actual receipt, CMS unfairly presumes that mail is received on the date it is *postmarked*, often reducing by one-third (five days for mail delivery) the unconscionably short fifteen day response period to provider overpayment notices.

What is plainly needed is a redundant online provider inbox, issued to every provider, where important notices can be delivered immediately in electronic form (and forwarded automatically by settings to any number of provider personnel).

With an automated cap calculation and reliable online provider notice system, CMS could automatically deliver cap reports at the time of its choosing.

CMS should not shift the burden of its own work to providers.

National Law Review, Volume IV, Number 154

calculate-your-own-cap-cyoc