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Manual Updates Related to Payment Policy Changes Affecting the Hospice Aggregate Cap Calculation and the Designation of Hospice Attending Physicians

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Related Change Request (CR) Number: 10517
Related CR Release Date: September 14, 2018
Effective Date: December 17, 2018
Related CR Transmittal Number: R246BP
Implementation Date: December 17, 2018

PROVIDER TYPE AFFECTED

This MLN Matters® Article is intended for hospices submitting claims to Medicare Administrative Contractors (MACs), including Home Health & Hospice (HH&H) MACs, for services provided to Medicare beneficiaries.

PROVIDER ACTION NEEDED

Change Request (CR) 10517 manualizes policies finalized in the Fiscal Year (FY) 2016 Hospice Final Rule published on August 6, 2015. These polices relate to the methodology used to calculate hospice cap amounts, as well as hospice cap timeframe and accounting procedures for hospices. In addition, the CR implements policy that recognizes Physician Assistants (PAs) as designated hospice attending physicians, in addition to physicians and nurse practitioners. Make sure that your billing staffs are aware of these changes.

BACKGROUND

Section 51006 of the Bipartisan Budget Act of 2018 (Pub. L. 115-123) requires that, effective January 1, 2019, PAs be recognized as designated hospice attending physicians, in addition to physicians and nurse practitioners. CR10517 revises the Medicare Benefit Policy Manual, Chapter 9 to reflect the inclusion of PAs as hospice attending physicians. Also, Chapter 9 is updated to reiterate that designated hospice attending physicians who are nurse practitioners or PAs may not certify a hospice patient as terminally ill in accordance with Section 1814(a)(7) of the Social Security Act, which requires that no one other than a medical doctor or doctor of osteopathy can certify or re-certify terminal illness for the Medicare hospice benefit.

Section 3(b) of the Improving Medicare Post-Acute Care Transformation Act (IMPACT Act) of 2014 (Pub. L. 113–185) required that the hospice aggregate cap for accounting years ending

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after September 30, 2016 and before October 1, 2025, be updated by the hospice payment update percentage rather than using the Consumer Price Index for Urban Consumers (CPI–U). This provision will sunset for cap years ending after September 30, 2025, at which time the annual update to the cap amount will revert back to the original methodology. The Centers for Medicare & Medicaid Services (CMS) finalized these policies in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47141). The Medicare Benefit Policy Manual, Chapter 9 is updated to reflect the revised hospice aggregate cap calculation methodology.

In the FY 2016 Hospice Wage Index and Payment Rate Update final rule published on August 6, 2015 (80 FR 47141), CMS finalized the alignment of the cap accounting year for both the inpatient cap and the hospice aggregate cap with the Fiscal Year for FY 2017 and later. The Medicare Benefit Policy Manual, Chapter 9 is revised to reflect the changes made to the hospice cap accounting year and to provide descriptive examples for cap calculations.

The timeframes in which beneficiaries and payments are counted for the purposes of determining each individual hospice's aggregate cap amount as well as the timeframes for determining whether a given hospice exceeded the cap for the transition year (2017 cap year) are outlined in the following table:

Hospice Aggregate Cap Timeframes for Counting Beneficiaries and Payments for the Alignment of the Cap Accounting Year with the Federal Fiscal Year

Cap Year	Beneficiary Streamlined method	Beneficiary Patient-by-patient proportional method	Payments Streamlined method	Payments Patient-by-patient proportional method
2016	9/28/15-9/27/16	11/1/15-10/31/16	11/1/15-10/31/16	11/1/15-10/31/16
2017 (Transition Year)	9/28/16-9/30/17	11/1/16-9/30/17	11/1/16-9/30/17	11/1/16-9/30/17
2018 and later	10/1-9/30	10/1-9/30	10/1-9/30	10/1-9/30

In addition, the timeframes for the 2018 cap year, which will remain consistent for all future cap years, are also included in the table.

Also included in this update to Chapter 9 are clarifications regarding retroactive Medicare entitlement and Notice of Election (NOE) exceptions. Section 418.24(a)(4) of the Code of Federal Regulations describes exceptions to the consequences of failure to submit a timely NOE. CR10517 provides clarification that retroactive Medicare entitlement qualifies as one of the exceptions to a timely-filed NOE as this would be a circumstance that is beyond the hospice's control.

Physician Assistants

Effective January 1, 2019, Medicare will pay for medically reasonable and necessary services provided by PAs to Medicare beneficiaries who have elected the hospice benefit and who have

selected a PA as their attending physician. PAs are paid 85 percent of the fee schedule amount for their services as designated attending physicians.

Attending physician services provided by PAs may be separately billed to Medicare only if:

- The PA is the beneficiary's designated attending physician; and
- Services are medically reasonable and necessary; and
- Services would normally be performed by a physician in the absence of the PA, whether or not the PA is directly employed by the hospice; and
- Services are not related to the certification of terminal illness.

If the PA is employed by the hospice, the hospice can bill Part A for physician services meeting the above criteria on a hospice claim. If the PA is not employed by the hospice, the PA can bill Part B for physician services meeting the above criteria. PAs are authorized to furnish physician services under their State scope of practice, under the general supervision of a physician; therefore the regulations at 42 CFR 410.150(a)(15) require that payment for PA services may be made to the employer or contractor of a PA. Services that are duplicative of what the hospice nurse would provide are not separately billable.

Since PAs are not physicians, as defined in 1861(r)(1) of the Social Security Act, they may not act as medical directors or physicians of the hospice or certify the beneficiary's terminal illness and hospices may not contract with a PA for their attending physician services as described in section 1861(dd)(2)(B)(i)(III) of the Act, which outlines the requirements of the interdisciplinary group as including at least one physician, employed by or under contract with the agency or organization. All of these provisions apply to PAs without regard to whether they are hospice employees.

Physician assistants cannot certify or re-certify an individual as terminally ill, meaning that the individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course. In the event that a beneficiary's attending physician is a nurse practitioner or a physician assistant, the hospice medical director or the physician member of the hospice Interdisciplinary Group certifies the individual as terminally ill.

The hospice face-to-face encounter must be performed by a hospice physician or hospice nurse practitioner. PAs may not perform the face-to-face encounter.

ADDITIONAL INFORMATION

The official instruction, CR10517, issued to your MAC regarding this change is available at https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/2018Downloads/R246BP.pdf. The revised Medicare Benefit Policy Manual, Chapter 9, is attached to the CR.

If you have questions, your MACs may have more information. Find their website at http://go.cms.gov/MAC-website-list.

DOCUMENT HISTORY

Date of Change	Description
September 14, 2018	Initial article released