Small Entity Compliance Guide

CY 2015 Home Health Prospective Payment System Rate Update; Home Health Quality Reporting Requirements; and Survey and Enforcement Requirements for Home Health Agencies

CMS-1611-F, RIN 0938-AS14

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The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, Pub. L. 104-121, March 29, 1996, as amended by Pub. L. 110-28, May 25, 2007) contains requirements for issuance of "small entity compliance guides." Guides are to explain what actions affected entities must take to comply with agency rules. Such guides must be prepared when agencies issue final rules for which agencies were required to prepare a Final Regulatory Flexibility Analysis under the Regulatory Flexibility Act (RFA). The overall impact of the CY 2015 Home Health Prospective Payment System (HH PPS) final regulation, as is detailed in the RFA of the regulation and discussed below, reflects an estimated decrease in payments to home health agencies. This final rule is estimated to have a significant economic impact on a substantial number of small entities. The complete text of this final rule can be found on the CMS website by clicking on the link to "CMS-1611-F" at http://www.cms.hhs.gov/center/hha.asp.

As required under section 1895(b)(3)(B) of the Social Security Act (the Act), this final rule updates the HH PPS rates under the Medicare prospective payment system for home health agencies (HHAs) effective January 1, 2015. Section 3131(a) of the Affordable Care Act mandates that starting in CY 2014, the Secretary must apply an adjustment to the national, standardized 60-day episode payment rate and other amounts applicable under section 1895(b)(3)(A)(i)(III) of the Act to reflect factors such as changes in the number of visits in an episode, the mix of services in an episode, the level of intensity of services in an episode, the average cost of providing care per episode, and other relevant factors. In addition, section 3131(a) of the Affordable Care Act mandates that rebasing must be phased-in over a 4-year period in equal increments, not to exceed 3.5 percent of the amount (or amounts) as of the date of enactment (2010) under section 1895(b)(3)(A)(i)(III) of the Act, and be fully implemented in CY 2017. CY 2015 will be the second year of the four year phase-in for rebasing adjustments to the HH PPS payment rates. In accordance with sections 1895(b)(4)(B) and 1895(b)(4)(C) of the Act, this rule also updates the case-mix weights and wage index used under the HH PPS.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million in any one year. For the purposes of the RFA, we consider all HHAs small entities as that term is used in the RFA. Individuals and states are not included in the definition of a small entity. The economic impact assessment is based on estimated Medicare payments (revenues) and HHS's practice in

interpreting the RFA is to consider effects economically ''significant'' only if greater than 5 percent of providers reach a threshold of 3 to 5 percent or more of total revenue or total costs. The majority of HHAs' visits are Medicare-paid visits and therefore the majority of HHAs' revenue consists of Medicare payments. The Secretary has determined that this final rule will have a significant economic impact on a substantial number of small entities.

The overall impact, for all HHAs, in estimated total payments from CY 2014 to CY 2015, is a decrease of approximately 0.30 percent. A substantial amount of the variation in the estimated impacts of the policies finalized in this rule in different areas of the country can be attributed to variations in the CY 2015 wage index used to adjust payments under the HH PPS and to the effects of the recalibration of the HH PPS case-mix weights.

Non-profit agencies fare better than proprietary agencies as a result of the provisions of this final rule. Non-profit HHAs are estimated to see a 1.3 percent increase in payments, while proprietary HHAs are estimated to see a 0.9 percent decrease in payments in CY 2015. Freestanding HHAs are estimated to see a 0.5 percent decrease in payments while facility-based HHAs are estimated to see a 1.5 percent increase in payments for CY 2015. Facility-based non-profit HHAs in rural areas are estimated to see a 1.8 percent increase in payments, while freestanding government HHAs in rural areas are estimated to see a 0.7 percent decrease in payments for CY 2015. Facility-based non-profit HHAs in urban areas are estimated to see a 1.6 percent increase in payments, while freestanding proprietary HHAs in urban areas are estimated to see a 0.9 percent decrease in payments for CY 2015. Overall, rural and urban agencies are estimated to see a 0.5 percent increase and a 0.3 percent decrease in payments for CY 2015, respectively. Based on the number of first episodes, smaller HHAs (with less than 100 home health episodes of care) are estimated to experience a 0.9 percent decrease in payments for CY 2015. In contrast, larger HHAs (with 1,000 or more home health episodes of care) are estimated to experience a 0.1 percent increase in payments for CY 2015.

HHAs in the Northeast and West are estimated to see a 1.2 and 1.1 percent increase in payments, respectively; while HHAs in the South are estimated to receive a 1.5 percent decrease in payments. HHAs in the West South Central area of the country are estimated to receive decreases in payments for CY 2015 averaging -3.0 percent. In contrast, HHAs in New England and Mountain areas of the country are estimated to receive increases in payments for CY 2015 of 1.6 percent. The West North Central, Mid Atlantic, Pacific, East North Central, South Atlantic and East South Central, areas are estimated to experience changes in payments for CY 2015 ranging from an increase of 1.4 percent down to a decrease of 1.0 percent.

The recalibration of the HH PPS case-mix weights had the largest negative impact for the West South Central census region resulting in an estimated 2.2 percent decrease in payments for CY 2015. The case-mix weights for the third or later episodes of care with no or low therapy generally decreased as a result of the recalibration of the HH PPS case-mix weights. In the West South Central region approximately one-third of episodes are either the first or second episode of care and nearly two-thirds of episodes are the third or later episode of care (analysis of episodes with 0-19 therapy visits). This differs from the rest of the nation where over two-thirds of episodes are either the first or second episode of care and less than one-third of episodes are the third or later episode of care (analysis of episodes with 0-19 therapy visits). Thus, the West South Central census region experiences a larger estimated reduction in payments due to the

recalibration of the case-mix weights because it has a much larger share of episodes that are the third or later episode compared to the rest of the nation.

CY 2015 will be the second year of the four year phase-in of rebasing adjustments to the HH PPS payment rates finalized in the CY 2014 HH PPS final rule and required by section 3131(a) of the Affordable Care Act. Therefore, this final rule also implements increases to the national per-visit payment rates, a 2.82 percent reduction to the NRS conversion factor, and a reduction to the national, standardized 60-day episode rate of $80.95 for CY 2015.

CMS provides the following on-line manuals that present compliance information regarding our home health regulations. The manuals are frequently updated to reflect the latest changes in Medicare home health policy. These manuals serve, in part, as a system of small entity compliance guides that meet the letter and spirit of the Small Business Regulatory Enforcement fairness Act (SBREFA).

Medicare Benefit Policy Manual; Chapter 7- Home Health Services: http://www.cms.hhs.gov/manuals/downloads/clm104c10.pdf.

Medicare Claims Processing Manual; Chapter 10- Home Health Agency Billing: http://www.cms.hhs.gov/manuals/Downloads/bp102c07.pdf.

CMS also conducts Open Door Forums (ODFs) to improve transparency in CMS's policies. These forums provide small entities with an opportunity to obtain information, as questions, and express their views to senior CMS officials on nearly all major regulatory issues, especially those that might affect providers in a new or burdensome way. As such, information on Home Health, Hospice, and Durable Medical Equipment ODFs can be found at http://www.cms.hhs.gov/OpenDoorForums/17_ODF_HHHDME.asp#TopOfPage.

CMS also communicates information to providers through the use of mailing lists, or listservs. HHAs can join the "HH-PPS-L" list by filling out and submitting the form at https://list.nih.gov/cgi-bin/wa?SUBED1=hh-pps-l&A=1.

CMS also informs the public about the changes CMS is proposing or making in the programs that it administers. CMS posts the Quarterly Provider Update at the beginning of each quarter at http://www.cms.hhs.gov/quarterlyproviderupdates/.