Update on Part A and Part B Therapy

To: The AHCA Board of Governors, State Execs, CPAC, Finance Committee, Independent Owners Council, Regional Multifacility Council, Legal Committee,
From: Elise Smith
Date: October 27, 2012

As you know, rehabilitation therapy, both Part A and Part B, is under government siege. So much is happening that it is difficult for members - - and staff -- to keep track of it all. Thus, I thought I would provide a brief summary of various government actions and AHCA activities. I think it will assure you that we are extremely active on all fronts - -and in many cases proactive and not just reactive. But please do keep the questions coming!!

Part A Therapy

Regulatory Review and Litigation

On the Part A side we have ZPICs behaving in highly questionable ways with aggression that is unwarranted. Their ostensible focus is the percentage of patients in the highest RUG categories, but some of the latest ZPIC actions seem scattershot fishing expeditions that are destructive and intensely burdensome. Dianne De La Mare, VP for Legal Affairs at AHCA, along with key members of the Legal Committee, has worked tirelessly to get CMS to push back on the ZPIC behavior. Her fight continues. In addition, the Legal Committee recommended, and Neil Pruitt and Mark Parkinson approved, AHCA submitting another amicus in support of Palomar. The key issue to be presented in this new brief is whether a federal agency has the power to limit rights of judicial review by way of regulation and, if so, whether it can do so with respect to private contractors (i.e., Medicare Recovery Audit Contractors). The brief is due by November 5th, 10 days after the appeal petition is filed.

CMS SNF PPS Payment Revision

CMS, simultaneously, is taking a more rational approach to RUG issues by contracting for work on a new therapy component to the PPS which we presume will be based on patient characteristics and criteria. The agency is trying through such payment reform to control what it considers to be overutilization. CMS has yet to announce the contractor, but we expect that to happen any day now. And again, AHCA too is now preparing to address the “therapy component.” AHCA is studying a proposed task order to do this with the assistance of a premier research consultancy.

AHCA and NASL Work on Quality Outcomes

Part of the problem with Part A Therapy (and with Part B) is the absence of uniform, universal outcomes criteria. The bottom line is that CMS lacks data on functional outcomes. We are pleased that together with NASL, AHCA has undertaken an initiative, headed up by David Gifford, Mary Ousley and Cynthia Morton, to develop outcome measures for therapy. We share the concern on the need for outcome measures and are working quickly to develop measures that build on the Continuity Assessment Record and Evaluation (CARE) tool. AHCA and NASL anticipate being ready to recommend some measures in early 2013.
Part B Therapy

Manual Review

On the Part B side, Congress had provided for the additional $3,700 threshold and manual review at this threshold. Manual review has been a nightmare for many providers. NASL and AHCA staff, and members, will meet with CMS staff in Baltimore on Monday morning. There has been informal communication with CMS on manual review issues all along, but now we have catalogued them. Please see the attached letter to CMS which will also be shared with the leadership of CMS.

MedPAC

In addition, MedPAC apparently was pressured by Congress to come up with a “quick” fix regarding Medicare Part B rehab expense. In responding to such pressure, MedPAC may have abandoned, or set aside for the moment, the original Congressional mandate and goal of a report to be issued in June of 2013 on Part B payment reform. The abrupt change in course, unveiled at the October 5th meeting, called for a reduction in the $1880 therapy cap, manual review at that level, and a 50% reduction in the MPPR. AHCA is of course adamantly opposed to such expediency driven ill-considered recommendations. We have adopted multiple steps in responding to MedPAC’s. These include direct communication with Commissioners, a meeting that we have already had with staff and more. Please see the attached letter sent by Mark Parkinson to every MedPAC Commissioner. We are also reaching out to individual MedPAC commissioners. And we have met with MedPAC staff on

In a subsequent meeting with MedPAC, AHCA and NASL unveiled the framework for a possible current alternative to the current Part B payment system which would prepare the profession for an episodic system. Some of the details of the possible alternative are in Governor Parkinson’s letter to the each of the Commissioners. Continued work on this alternative system is being considered by AHCA members.

Jimmo v Sebelius Civil Action No: 5:11-CV-17-CR, US District court, District of Vermont

As we already notified you, this landmark proposed settlement would provide in part that:

SNF, HH and OPT coverage of therapy to perform a maintenance program does not turn on the presence or absence of a beneficiary’s potential for improvement from the therapy, but rather on the beneficiary’s need for skilled care.

SNF and HH coverage of nursing care to perform a maintenance program does not turn on the presence or absence of a beneficiary’s potential for improvement from the nursing care, but rather on the beneficiary’s need for skilled care.

CMS has yet to comment substantively on this settlement and may not do so for some time. Newspaper articles report that an attorney for the Center for Medicare Advocacy estimated that U.S. District Chief Judge Christina Reiss isn't likely to grant final approval of the settlement until January 2014. However, there is increasing interest in how this proposed settlement might be used now to help beneficiaries.
According to Ron Lieber, NY Times, October 26, 2012, *What Medicare Will Cover Even if You’re Not Likely to Get Better*, Erin Shields Britt, a spokeswoman for the Department of Health and Human Services, did not want to comment, given that the settlement was not yet final, on how patients could best use the settlement to their advantage when trying to get Medicare to pay their claims. However, Lieber indicates that Ms. Shields Britt said via e-mail that “Under this proposed settlement, Medicare policy would be clarified so that claims from providers will be reimbursed consistently and appropriately, which is always their aim “Because this proposed settlement would clarify existing policy, we do not expect changes in cost relative to what has been projected.”

Despite the fact that CMS agreed to the settlement, it does seem to have a certain discomfort with the potential for broad impact on Medicare cost. AHCA will be fully involved in analyzing the proposed settlement, and working with advocates and other groups to achieve the best possible CMS interpretation for the health of beneficiaries.