

Providers Decry MedPAC Proposal

Market Basket Recommendation 'Irresponsible,' Leader Says

A preliminary recommendation by the Medicare Payment Advisory Commission (MedPAC) for skilled nursing facilities (SNFs) to receive no Medicare payment increase for fiscal year (FY) 2011 has raised sharp objections from the American Health Care Association (AHCA) and the Alliance for Quality Nursing Home Care.

During its regular meeting on Dec. 10-11, 2009, MedPAC revealed the preliminary recommendation to Congress. Official recommendations are not expected until early 2010.

Related MedPAC drafts include a 1 percent payment update for physicians and a 1.2 percent update for hospice care. Hospitals would receive a full market basket update.

AHCA and the alliance reacted with

“disappointment and dismay” to the SNF proposal, painting a bleak picture if the plan were to gain congressional approval. “The recent recommendations by MedPAC once again threaten to jeopardize the high-quality care and services our nation’s vulnerable citizens depend upon,” said AHCA’s David Hebert, senior vice president of policy and government relations.

He said the long term and post-acute care sector is currently experiencing up to \$16 billion in Medicare cuts, which went into effect on Oct. 1, 2009. “As we do not yet know the ultimately significant impact these very deep cuts will have on our profession, MedPAC’s proposal of eliminating a market basket update for [SNFs] is irrational and irresponsible,” Hebert said.

Alan Rosenbloom, president of the Alliance, said MedPAC must look at the entire long term care financing system when making recommendations to Congress. He emphasized that the stability of the system is crucial to the provision of high-quality care, especially given current state budget conditions and the importance of adequate Medicare funding in a final health care reform bill.

“The current level of cuts to Medicare-funded nursing home care in the House bill—\$23.9 billion over 10 years—is unsustainable in light of both the growing dependence upon Medicare to prop up Medicaid and the profession’s ability to withstand such deep cuts,” he said.

Rosenbloom added that MedPAC’s singular focus on Medicare margins in the long term care sector not only does a disservice to vulnerable individuals who receive care, but also threatens job losses for their caregivers.

“As the largest payer for long term care in the nation, Medicaid pays for more than two-thirds of skilled nursing facility patient-days annually,” Rosenbloom said.

A recent Eljay analysis of the nation’s Medicaid financing system projects states will cumulatively underfund the actual cost of providing quality long term care by nearly \$4.7 billion for 2009.

At present, the Senate health reform bill includes a provider-backed provision by Sen. Ron Wyden (D-Ore.) that would require MedPAC to review and report on Medicaid funding when making recommendations about Medicare payments. AHCA and the Alliance said this would help get to the root of the decade-long Medicaid underfunding crisis.

State Court Nixes Proxies For Arbitration

The Colorado Court of Appeals has ruled that proxies cannot take the place of an actual nursing facility resident in signing an arbitration agreement, taking a strict view of a health care proxy’s role in making medical decisions under state law.

The court said in the case of *Lujan v. Life Centers of America, Colorado*, that the decision to agree to arbitrate made by a health care proxy of a nursing facility patient who had dementia at the time of admission was not a medical treatment decision that the proxy was authorized to make.

“There was a clear legislative intent to distinguish between an agreement to provide medical services and an agree-

ment to arbitrate a health care dispute. The execution of an arbitration agreement was not integral to the patient’s health and well-being and could not be required by a health care provider as a condition to the provision of medical services,” the ruling said.



At issue in the case was the fact Alvin Lujan signed an arbitration agreement, waiving jury trials, when he admitted his mother, Estella Lujan, to a nursing facility. After she died three days later, a wrongful death lawsuit was filed.

The owner disputed the suit and cited the proxy agreement, but the court decision now gives the family the right to sue.

—Patrick Connoles

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