Eli's Hospice Insider

Regulations: Wage Index Relief Doesn't Go Far Enough, Hospices Tell Medicare

Lower the wage index swing cap to 2 or 3%, they urge.

Medicare has taken a good first step when it comes to help with drastically changing wage index figures, but it should really take a few more.

Recap: "We are proposing a permanent approach to smooth year-to-year changes in providers' wage indexes," the Centers for Medicare & Medicaid Services announced in the hospice payment proposed rule for 2023. "We are proposing a policy that increases the predictability of hospice payments for providers, and mitigates instability and significant negative impacts to providers resulting from changes to the wage index," CMS said in the rule published in the April 4 Federal Register. More specifically, that policy is to cap any wage index decreases from one year to another at 5 percent, "regardless of the underlying reason for the decrease," CMS noted in its fact sheet about the rule. (See more rule details in Hospice Insider, Vol. 15, No. 5.)

Relief from drastic wage index swings is much needed, agree commenters on the proposed rule.

"A greater than 5 percent reduction in the wage index would financially devastate hospice organizations," stresses **Michael Ellis** with Henry Ford at Home, Henry Ford Health's home health and hospice agency, in its comment letter on the rule.

Wage index volatility has been a "longstanding concern" for the National Association for Home Care & Hospice, NAHC President **William Dombi** says in the trade group's comment letter. "There have been numerous instances over the years where hospice and home health providers have sustained significant reductions in payments," Dombi observes.

"Some years' changes in wage decreases have resulted in significant financial hardship," points out **Nick Westfall**, CEO of VITAS Healthcare, in the chain's comment letter. "We are therefore pleased that CMS ... is taking action to mitigate the negative impact of these changes on a permanent basis," Westfall notes.

"Providers who have had significant changes in their wage index values year over year appreciate the cap on the amount of the decrease," the National Hospice and Palliative Care Organization tells CMS in its comment letter. "This measure will provide hospices with more stability year over year and allow them to appropriately plan for the future years," NHPCO President **Edo Banach** praises.

The American Academy of Hospice and Palliative Medicine agrees with CMS that the change "will reduce instability and mitigate the worst negative impacts of year-to-year wage index changes," AAHPM President **Tara C. Friedman** says in the organization's comment letter.

While most commenters seem to agree that taking action on wage index swings is good, they have many suggestions for how to do it better, including:

- **Cover lower decreases.** In the rule, CMS admits that "typical year-to-year variation in the hospice wage index has historically been within 5-percent, and we expect this will continue to be the case in future years." That means that the cap won't help most providers. For example, according to analysis by CPA **Dave Macke** of VonLehman & Co. of the proposed hospice wage index that accompanies the rule, no rural areas would hit the negative 5 percent threshold for the cap in 2023, and two CBSA areas would by just a smidge. (See more wage index details in HCW by AAPC, Vol. XXXI, No. 13.)

"The percentage cap should be lower than the proposed 5 percent," urges **Donna Wilhelm** with Trinity Health at Home, a health-system based hospice serving six states, in its comment letter. "Most wage indices do not swing by 5 percent but even a 2 percent wage decrease impacts operations," Wilhelm tells CMS. "We urge CMS to finalize the permanent cap on hospice wage index decreases to 2 percent."

"With tight budgets and financials, even a 2 or 3 percent decrease can be a challenge for hospice providers," NHPCO's Banach says. "An analysis of the impact of various cap percentages, such as a cap of 2 percent, 3 percent or 4 percent, would be a helpful addition to the final rule," the trade group suggests.

NAHC also calls for CMS to run those numbers. "CMS did not indicate that it has examined other options for limiting the negative impact of changes to wage index values, such as the impact of imposition of a 2 percent or 3 percent cap on wage index decreases from year to year," NAHC's Dombi observes in its letter. "While imposition of a 5 percent cap will protect providers from a precipitous reduction in payments, we believe CMS should model the impact of imposition of a smaller cap and provide information on that analysis to the public. This would help in determining the level of impact a smaller cap would have … and whether it is feasible and advisable to adjust the cap to a lower value."

- **Throw out budget neutrality.** "This 5-percent cap on negative wage index changes would be implemented in a budget neutral manner through the use of wage index standardization factors," CMS says in the proposed rule.

  But "applying the cap in a non-budget neutral way will ensure that when significant economic downturns occur, all hospices will be protected from significant reductions," Trinity at Home's Wilhelm says. "The cap should be applied in a non-budget neutral way," she urges.

- **Consider timeframe.** Lowering the cap to 2 or 3 percent would also help combat the problems brought about by the short notice of hospices' wage index values, NAHC's Dombi points out. "Because the most current hospital wage index data serves as the basis for the hospice and home health market basket values and final values are only made public roughly 60 days prior to going into effect, these providers have very limited ability to anticipate a forthcoming drop in their wage index value and take steps to adapt operations to meet new financial projections," NAHC tells CMS.
- **Put hospices on equal footing with hospitals.** Hospice and home health agencies "do not have the same protections under wage index policies as hospitals; for example, neither have the benefit of reclassification," NAHC's Dombi highlights.

  "We ask that CMS … consider working with Congress on policies to reform the wage index such as revisiting [the Medicare Payment Advisory Commission's] 2007 proposal or one that would allow hospices and other post-acute providers to utilize a reclassification board similar to hospitals," Trinity at Home's Wilhelm urges. "Hospice providers are not afforded these same options to adjust their wage indices yet must compete for the same types of caregiving professionals as hospitals."

- **Make the 5 percent cap retroactive to 2022.** Changes in the Office of Management and Budget's core based statistical area (CBSA) delineations that took effect this year are hammering some agencies, multiple commenters shared.

  For example: Many of New Jersey's post-acute providers experienced significant cuts due to CBSA changes in 2022, says a letter signed by Dombi, the Home Care & Hospice Association of New Jersey's **Nancy Fitterer**, the Home Care Alliance of Massachusetts' **Jake Krilovich**, and other hospital and home care representatives and providers. "Four New Jersey counties (Middlesex, Monmouth, Ocean, and Somerset) were shifted from their previous CBSA to a newly created CBSA for FY 2021," the letter notes. "This 'significant rearrangement in the constituent counties among the New York City Area Metropolitan Divisions' has resulted in a nearly 17 percent decrease in the wage index for impacted providers in those counties," it adds.

  "Recognizing how damaging these cuts could be for affected providers, CMS provided transitional relief in the form of a 5 percent cap on any decrease in a facility's wage index from the previous year," the letter acknowledges. "CMS extended that policy for acute care hospitals for an additional year ... but chose not to extend the additional year of relief to other payment systems," the letter says.

"To address this discrepancy - and to mitigate the damaging cuts that have already occurred - the undersigned organizations request that CMS treat affected providers' 2023 AWI adjustment as if the 5 percent cap had also been in place in 2022," the providers and reps urge.

- **Look at specific area scenarios.** Agencies lodge complaints about specific wage index cases nearly every year.

  For example: The Washington, D.C.-area CBSA designation has led to agencies in rural areas having an advantage and agencies in the Montgomery County and Frederick County, Maryland area being underpaid, says **Todd Schenk**, CEO with the Jewish Social Service Agency, which runs a hospice based in Montgomery County.

  "Since CMS began using CBSAs to determine payment in 2006, hospices in Montgomery County have received lower payments than the hospices in the rural parts Washington-Arlington-Alexandria, DC-VA-MD-WV," Schenk tells CMS in the hospice's comment letter. "Montgomery County has similar living and business costs compared to Washington, DC, and it shares the same market when competing for labor."

  The bottom line: "Hospices in Montgomery County are at a long-term competitive disadvantage due to the federal payment inequity involving CBSAs," Schenk insists.

Stay tuned: Hospices will find out whether CMS listens to their pleas when it issues the final hospice rule for 2023, expected in later summer.

Note: A link to the rule is at https://www.cms.gov/medicaremedicare-fee-service-paymenthospicehospice-regulations-and-notices/cms-1773-p.