CHAPCA

April 2024 Regulatory Update

It is rule-making season! Every year, there are proposed rules published for which a comment letter is needed. There are final rules published for rules where comments were submitted some time ago. This year is no exception. Most of the Regulatory Update this month focuses on rules, both proposed and final. Read about them, determine which staff should know more, and ask questions about them. CHAPCA wants to make sure that your agency is in the know!

Proposed Rules

Comments To Be Submitted

Due date: May 28, 2024

- **FY 2025 Hospice Wage Index and Quality Reporting Proposed Rule – CMS**

  The FY 2025 Hospice Wage Index proposed rule was published in the Federal Register on April 4, 2024. CHAPCA published an analysis of the proposal and held a webinar on April 18, 2024. The recording of the webinar can be found here.

  The CHAPCA Public Policy Committee will meet on April 25 to discuss the elements of the CHAPCA comment letter.

  We need your feedback: Thoughts, concerns, and questions are welcome as the comment letter is developed and can be sent to jlundperson@calhospice.org with FY 2025 Hospice Wage Index proposed rule in the subject line.

  Key Takeaways:

  1. Proposed rate increase of 2.6% for hospices participating in HQRP. A -1.4% decrease is proposed for those hospices not participating in HQRP.
  2. Changes to the wage index and CBSA classification due to the 2020 US Census.
  3. HOPE Tool is proposed beginning on or about October 1, 2025.
  4. Two new process measures to be added to HQRP in 2027 after the implementation of HOPE.

5. CAHPS® Hospice Survey now proposed to be sent in an web-mail format. Changes to the survey itself to make it easier for respondents.

Due date: May 6, 2024

- **Request for Information on Cross-Government Public Inquiry into Private Equity and Other Corporations' Increasing Control over Health Care**

  The Federal Trade Commission, the Department of Justice's (DOJ) Antitrust Division, and the U.S. Department of Health and Human Services (HHS) jointly launched a cross-government public inquiry into private-equity and other corporations' increasing control over health care.

  The agencies issued a Request for Information (RFI) requesting public comment on deals conducted by health systems, private payers, private equity funds, and other alternative asset managers that involve health care providers, facilities, or ancillary products or services. The RFI also requests information on transactions that would not be reported to the Justice Department or FTC for antitrust review under the Hart-Scott-Rodino Antitrust Improvements Act.

Comments Submitted

- **CMS Oversight of Accrediting Organizations – CMS-3367-P**

  On February 15, 2024, CMS issued a proposed rule on CMS Oversight of Accrediting Organizations. CHAPCA prepared comments on this proposed rule and submitted the comment letter when they were due on April 15, 2024.

  Comment letters submitted: A complete list of comment letters with links can be found in the bulk download section of regulations.gov>

Final Rules

FTC Votes to Publish Final Noncompete Rule

- On April 23, 2024, the Federal Trade Commission (FTC) voted to publish the Non-Compete Clause Final Rule, which states that a non-compete clause is an "unfair method of competition for persons to, among other things, enter into a non-compete clause with workers on or after the final rule's effective date" [specified in the rule as 120 days after publication in the Federal Register]. The rule specifies a different approach for senior executives than for other workers. The rule states "for senior executives, existing non-competes can remain in force, while existing non-competes for other workers are not enforceable after the effective date."

  Effective Date: The final rule is effective 120 days after the date of publication in the Federal Register.

- **2025 Medicare Advantage and Part D Rule Finalized**

  Third Party Marketing Restrictions Included in the 2025 Medicare Advantage Rule: CMS posted the 2025 Medicare Advantage and Medicare Prescription Drug Benefit program final rule on April 4, 2024. Of particular interest is the limitation of distributing personal beneficiary data by third-party marketing organizations (TPMO). CMS states that "some TPMOs have been selling and reselling personal beneficiary data, which can undermine existing rules that prohibit cold calling people with Medicare and results in other aggressive marketing tactics for Medicare Advantage and Part D plans."

  Some TPMOs have been selling and reselling personal beneficiary data, which can undermine existing rules that prohibit cold calling people with Medicare and result in other aggressive marketing tactics for Medicare Advantage and Part D plans. According to the final rule, which takes effect on June 3, 2024, the TPMO will need to obtain written consent through a "transparent, and prominently placed, disclosure from the individual" to share that information and contact enrollees for marketing or enrollment purposes, CMS says. That consent will need to be obtained on a one-to-one basis, meaning separate consent for each TPMO that receives the data

  Mid-Year Enrollee Notification of Available Supplemental Benefits: The final rule requires Medicare Advantage plans to make enrollees aware of supplemental benefits available to time, and to issue a "Mid-Year Enrollee Notification of Unused

Supplemental Benefits" annually between June 30 and July 31, personalized for each enrollee.

New Standards for Supplemental Benefits for the Chronically Ill: CMS is finalizing new requirements for Medicare Advantage plans to demonstrate, with support from research by the time they submit bids, that SSBCI items and services meet the legal threshold of having a **reasonable expectation of improving the health or overall function of chronically ill enrollees**. Medicare Advantage plans must establish and maintain bibliographies of relevant research studies or other data to demonstrate that an SSBCI meets these requirements. Additionally, CMS updated SSBCI marketing and communications requirements to prevent misleading marketing and communications related to these benefits that may make it appear that the benefits are available to everyone.

Quality Improvement Organizations: In the final rule, the QIO is required to handle untimely fast-track appeals for post-acute care and eliminates a provision requiring enrollees to forfeit their right to appeal terminations of post-acute care services once they've left the facility.

- **Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting** **Final Rule** was published on April 22, 2024. It consists of three core staffing requirements for Medicare and Medicaid certified nursing homes:
    1. minimum nurse staffing standards;
    2. a requirement to have an RN onsite 24 hours a day, seven days a week; and
    3. enhanced facility assessment requirements.

  According to CMS, the rule has a staggered implementation approach of up to 5 years and a hardship exemption from the minimum nurse staffing standards and the 24/7 on-site RN requirement in limited circumstances. The final rule also creates transparency around the percent of Medicaid payments that are spent on compensation for direct care workers and support staff in nursing facilities and intermediate care facilities for individuals with intellectual disabilities.

  The CMS Fact Sheet provides an excellent overview of this final rule and can be found HERE.

  This rule will impact hospice and palliative care providers who work with patients in nursing homes and hospices who have contracts with nursing homes for GIP and respite. CHAPCA will do further analysis on this rule in the coming days.

- **Ensuring Access to Medicaid Services - CMS-2442-F**

  The *Ensuring Accessing to Medicaid Services* final rule takes a comprehensive approach to improving access to care, quality, and health outcomes, and better addressing health equity issues in the Medicaid program across fee-for-service (FFS), managed care delivery systems, and in home and community-based services (HCBS) programs. Specifics of the final rule follow:

  - CMS finalized the requirement that 80% of Medicaid payments for homemaker, home health aide, and personal care services be spent on direct care compensation for direct care workers furnishing these services provided under Sections 1915(c), 1915(i), 1915(j), 1915(k), and 1115 of the SSA. State plan services covered under 1905(a) and 1929 of the SSA are not subject to wage requirements.
  - The timeline for enforcement of the 80/20 wage requirement has been extended from four years, specified in the proposed rule, to six years in the final rule (July 2030).
  - Definition of direct care worker compensation finalized as proposed with a few modifications.
    - Clarification that compensation includes benefits, such as health and dental benefits, life, and disability insurance, paid and sick leave, retirement, and tuition reimbursement.
    - Clarification that the intent to include employers' payroll tax contributions for unemployment insurance and workers' compensation.
    - Excluded from the calculation completely are costs related to training, travel cost, and PPE (meaning not in numerator or dominator)
  - CMS clarified that minimum performance level policy would apply at the provider level, meaning that the State must ensure that each provider spends Medicaid payments they receive for certain HCBS on direct care worker compensation in accordance with the minimum performance level requirement.
  - CMS provided states with two exemptions to 80/20 wage mandate: option to define and exempt small providers and provide for hardship exemptions.
  - Self-direct care is excluded from the requirements when the Medicaid beneficiary sets the worker payment rate.

  The CMS Fact Sheet on the final rule can be found HERE.

- **Medicaid and Children's Health Insurance Program Managed Care Access, Finance, and Quality Final Rule (CMS-2439-F)**

  CMS's efforts to improve access to care, quality and health outcomes, and better address health equity issues for Medicaid and Children's Health Insurance Program

(CHIP) managed care enrollees. This final rule provides detailed information on timely access to care and State monitoring requirements. In addition, it establishes a quality rating system for Medicaid and CHIP managed care plans.

Hospice Compliance and Implementation of New Regulations

- **Physician Enrollment Deadline CLOSE – APRIL 30, 2024**

  This is your last reminder to ensure that your hospice physicians and attending physicians are enrolled in PECOS or have a valid opt-out affidavit. On April 19, CHAPCA sent out an URGENT Alert with all the details for physician enrollment and a set of FAQs based on questions that have come into the CHAPCA offices.

  On May 1, 2024, the MAC will begin to deny claims that do not have the hospice physician or attending physician's name on the claim. CMS has directed that no claims with missing information will be paid.

- **CMS Tests Risk-Based Survey Process for Nursing Homes**

  In April 2024, the Centers for Medicare & Medicaid Services (CMS) described a risk-based survey (RBS) that it is currently testing to provide shorter, "more focused" surveys for "consistently higher-quality facilities." CMS states that the risk-based survey takes less time and resources than the traditional standard recertification survey, while ensuring compliance with health and safety standards.

  Higher quality could be indicated by a history of fewer citations for noncompliance, higher staffing, fewer hospitalizations, and other characteristics (e.g., no citations related to resident harm or abuse, no pending investigations for residents at immediate jeopardy for serious harm, compliance with staffing and data submission requirements).

If any concerns about resident safety were encountered during the RBS, it would immediately be expanded. Resident safety will always be prioritized, regardless of the type of survey process. The RBS process would not apply to complaint surveys.

CMS is working with states to test the process and will provide updates about the progress.

- **Hospice & Palliative Care Handbook: Quality, Compliance, and Reimbursement, 4th Edition**

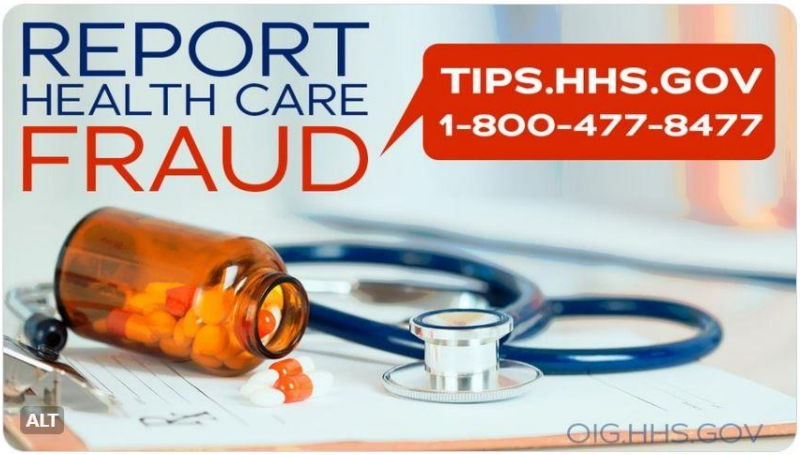
  McGraw Hill - Access APN; textbook by Tina M. Marrelli and Jennifer Kennedy; 3/28/24

  Review: "*Hospice & Palliative Care Handbook, Fourth Edition,* is an invaluable resource for timely hospice regulatory and compliance information, documentation, care planning, and case management. It provides clear guidance for hospice managers, clinicians, and interdisciplinary group members. I have utilized Tina Marrelli's home health and hospice handbooks to support training new clinical staff and students for decades and consider these resources to be the gold standard." – Kimberly Skehan, MSN, RN, HCS- D, COS-C, Vice President of Accreditation - Community Health Accreditation Partner.

Healthcare Fraud

OIG at HHS

HHS-OIG investigates fraud schemes targeting federal health care programs and enrollees. Anyone can report suspected health care fraud at 1-800-447-8477 or tips.oig.hhs.gov.



Hospice Quality Reporting Program

- **14 Joint Commission patient safety goals for post-acute facilities**
  From Becker's Hospital Review, by Mariah Taylor; 3/21/24

  The Joint Commission released a breakdown of patient safety goals for post-acute care facilities in 2024. The organization published an easy-to-read resource outlining goals for nine sectors of healthcare, including nursing facilities, surgery, hospitals, and behavioral care. For post-acute facilities, the goals mostly revolved around identifying patients correctly, using medicines safely, and preventing infections and falls. Here are the patient safety goals for post-acute facilities: ...

  Editor' s Note: *Ensure that your interdisciplinary team members who make hospice/palliative care visits in post-acute facilities are trained to tend these safety goals--within the scope of their roles and responsibilities--and in collaboration with the*

facility's compliance standards (especially if you or they are accredited by The Joint Commission).