



NY Home Care Faces Double-Digit Losses, Reimbursement Controls and a Duty to High-Cost Patients – Yet CMS Continues to Sharpen Its Negligent Cuts

CMS indifferent to the disastrous impact on safety-net services, issuing another round of rebasing cuts that endanger NY home care by causing Medicare operating losses to plummet

Beginning in January, home care providers will face a fourth consecutive year of immense cuts imposed by the U.S. Centers for Medicare and Medicaid Services (CMS) under CMS's proposed Home Health Prospective Payment System (HHPPS) for 2017.

This proposal is due to be finalized in the fall, with the likelihood that CMS will continue its destructive 'rebasings' cuts (defined below), as authorized by the Affordable Care Act.

These cuts tragically undermine needed services for the elderly and disabled, affecting 3.5 million homebound seniors and persons with permanent disabilities who use home health care annually.

Rebasing is a method of recalculating the statistical base for Medicare reimbursement. CMS's 'rebasings' formula, a major part of the HHPPS, includes a 3.5% Medicare home health reduction annually that started with the 2014 HHPPS and is scheduled to end with the upcoming Calendar Year (CY) 2017 HHPPS. These annual reductions have already reduced payments to home health providers by \$520 million nationally between 2014 and 2016.

Furthermore, CMS estimates that Medicare home health payments will be reduced by another \$180 million in 2017, for a staggering total of \$700 million in Medicare payment reductions between 2014 and 2017.

These cuts dramatically worsen an already disastrous, decade-long trend of deep and escalating Medicare losses for New York State home health agencies, threatening access to care for homebound elderly and disabled Medicare beneficiaries.

Adding further threat, the Medicare Payment Advisory Commission (MedPAC) is separately recommending that CMS implement a new two-year rebasing of the HHPPS beginning in 2018. This will extend a regimen of already siphoning cuts beyond the ACA timetable for rebasing. MedPAC would also have Congress direct the Secretary to revise the HHPPS to eliminate use of therapy visits as a factor in payment determinations concurrent with rebasing.



New York Impact

New York's home care Medicare margins have remained negative for fourteen years in a row, with an unweighted average margin of -16.36% in 2014 (the most recent year of data available).

And unlike other providers, home health has no other payors that can offset these losses in Medicare and Medicaid (which account for about 90% of home care coverage in New York). In fact, an HCA analysis earlier this year (in a February 2016 report called *Risk Factors*) found that over 70% of NY home care providers were operating at a loss across all payors in 2014, not just Medicare – which leaves no resources for capital to keep pace with increasing regulatory requirements (mandatory minimum wage increases and physician documentation burdens under the Medicare face-to-face rule) and modernization through technology (i.e. home telehealth and electronic health records).

An operation can't remain viable for very long with a double-digit negative margin. Providers are at the mercy of CMS reimbursement controls and a mission to serve patients eligible for Medicare with a range of intensive needs. Some relief mechanism is desperately needed, and it has to come from the arena of sensible policymaking and reimbursement.

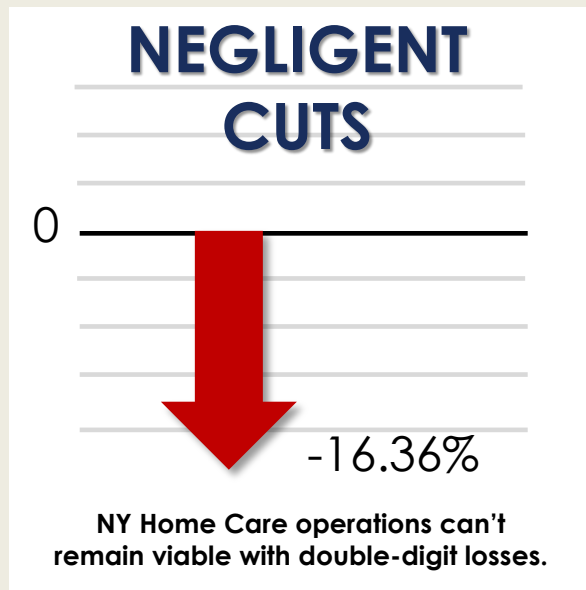
Meanwhile, as New York's operating margins plummet, other regions of the country see positive margins that continue to fuel the CMS and MedPAC recommendations nationally. These other regions will continue to report positive margins in some cases, given that the rebasing formula is evenly applied regardless of regional variations in Medicare growth or spending patterns.

New York State has among the nation's highest labor costs, now alarmingly exacerbated by the state's implementation of a phased-in \$15 per-hour minimum wage hike, the balance of which is unfunded by Medicare. This mandate, when fully phased-in, will cost a stunning \$2 billion for New York agencies across all payors (Medicaid, Medicare, managed care, commercial insurance and private-pay). New York also has a high concentration of dual-eligible beneficiaries and costlier chronic-care cases, as revealed in reimbursement data showing a comparatively weighty number of outlier episodes in New York State – those cases where CMS pays more for high-need beneficiaries, but only up to a capped threshold well below the need for coverage to New York State beneficiaries.

Major Flaws in CMS's Rebasing Formula

Aside from the practical impacts of rebasing cuts on New York providers, CMS's process is structurally and statistically flawed. These flaws, deployed across the reimbursement schedule, have created the ripple effect of double-digit negative margins in New York State.

By statute, CMS must use the "most reliable, available data" in its rebasing process. HCA asserts that CMS used neither reliable, nor complete, nor recent data in developing its formulas across the entire period of rebasing and, in fact, passively continued the maximum cut allowed by law in each of the four years, indifferent to the negative toll on states like New York.





Major Flaws – continued

- **CMS's estimates use outdated, incomplete data that create a false picture of home care's finances.** To "normalize" home care reimbursement, CMS first determines the national operating margin of home care agencies; its goal is to minimize this aggregate margin, ensuring that revenues are substantially devoted to services and other expenditures in the aim of providing care, which is a noble goal if approached thoughtfully. CMS has estimated a 13.09% national operating margin in 2013, but this estimate, suggesting a high ratio of revenue to expenses, is based on 2011 data – and incomplete data at that. For instance, CMS's projections do not account for major new cost impacts affecting providers since 2011, including: the increasing cost of employee health and worker compensation benefits; regulatory requirements such as the administratively burdensome physician documentation requirements under the face-to-face rule, New York State's multi-billion-dollar minimum wage increase, and past cuts. HCA and the home care community nationally also question CMS's sampling methods.
- **CMS only assesses a one-year annual impact of rebasing and fails to account for the effect on access to care.** In assessing only an annual impact in each of the past four years, CMS disregards the cumulative and prolonged devastation of rebasing that has already occurred between 2014, 2015 and 2016, not to mention the implications of additional rebasing cuts upcoming in the 2017 HHPPS.
- **CMS's approach is indifferent to regional differences, reimbursement needs and at-risk providers.** By attempting to zero-out the national average home health operating margin, CMS's formula severely jeopardizes providers in states like New York who are already operating at a net loss compared to other regions. Even with additional cuts, regions of the country with robust margins will still have positive margins; regions in the middle of the curve (with slightly positive margins) will hover within positive or negative territory; and New York's margins will plummet further into double-digit negative red ink.

Recommendations

The Secretary of Health and Human Services has the authority to revise the rebasing cut to protect seniors' access to home health, and Congress can help ensure that this happens.

HCA has drafted a letter for the New York Congressional Delegation to send to HHS and CMS asking the Secretary to: 1) mitigate the current and future rebasing implementation; 2) require CMS to establish transparent and accurate processes for revising the HHPPS payment rates and case-mix adjustments as set forth in the "Home Health Care Access Protection Act"; and 3) ensure full market basket updates to Medicare home health payments.

HCA urges support from New York's Congressional Delegation to mitigate rebasing and create a process for CMS to recalculate its formula using more complete, accurate and up-to-date data.

Rebasing at a Glance

- Rebasing is a process required by the Affordable Care Act to update the payment rates to providers.
- CMS's rebasing initiative has already cut \$520 million in Medicare payments to providers between 2014 and 2016.
- CMS's rebasing formula is rooted in unreliable, incomplete and outdated sets of data.
- HCA urges: Congressional action to mitigate the current and future rebasing implementation.



For more information contact us at:



388 Broadway
Fourth Floor
Albany, New York 12207
P • (518) 426-8764 F • (518) 426-8877
W • www.hca-nys.org