

2024 Home Care and Hospice National Update



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The Landscape

- Medicare Home Health
- Medicare Hospice
- Medicaid HCBS
- Private Duty Personal Care
- Medicare Advantage
- Innovations for Health Care at Home

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Medicare Home Health

- Market Consolidation ongoing
- CY2024 Prospective Payment Final Rule
 - \$140 million in estimated increase in expenditures
 - -\$455 million in payment rate reduction (2.89%)
 - +\$525 million in Market Basket Index update (3.0%)
 - +\$70 million in outlier adjustment
 - 5.779% permanent PDGM rate adjustment due to Budget Neutrality calculation; applied at 2.890% for 2024
 - 1.636% added for CY22
 - \$3,489,523,364 in Temporary Adjustments (hold on action)

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Medicare Home Health: Action Plan

- HHA closures, service area reductions; and referral rejections underway
- Estimated 48% of HHAs with <0% overall margins projected for 2024
 - Medicare FFS margins used to subsidize MA plans and Medicaid
- PDGM Action Plan
 - Congress
 - S.2137; H.R. 5159
 - Eliminates permanent and temporary adjustment authority
 - Requires MedPAC to expand its analysis of HHA financial status to include all payers.
 - Litigation
 - *NAHC v. Recerra*
 - Challenges CMS/HHS budget neutrality methodology

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Medicare Home Health: PDGM

- CMS is required to set rates at a level that is budget neutral to the level of spending that would otherwise occur under the pre-PDGM payment model
- Rate cuts to date
 - 4.36% assumed behavioral adjustment (2020)
 - 3.925% Permanent Adjustment (2023)
 - 2.89% Permanent Adjustment (2024)
- Temporary Adjustment
 - \$3,439,284,729 (2020-2024 accumulated)

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Pending Legislation

- Senate and House bipartisan bills would:
 - Eliminate all cuts except the "assumed behavioral adjustment"
- Estimated "score" is between \$15B and \$20B
- SFC Chair Wyden supportive of some help
 - Must help small and rural HHAs
 - Must have some offsets
- Full relief contained in pending bills not likely

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PDGM elements in play

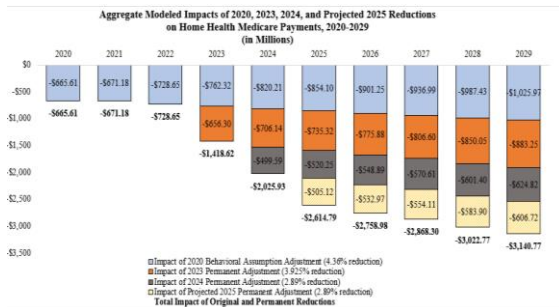
- 4.36% behavioral adjustment
- 3.925% (2023) and 2.89% (2024) Permanent Adjustments
- Remaining Permanent Adjustment from 2024 (2.89%)
- \$3.4B Temporary Adjustment
- Future Permanent Adjustments (\$TBD through CY2026 data year)
- Future Temporary Adjustments (\$ depends on timing of full Permanent Adjustments; expect additional \$500M from 2024)

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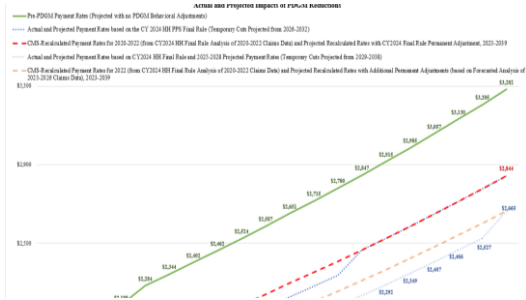
PDGM Reforms: Option Goals

- Reverse all rate cuts
- Future Permanent Adjustments
- Current Temporary Adjustments
- Future Temporary Adjustments
- Combination of the Above

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QUESTIONS TO RESOLVE

- What are acceptable fallback goals?
- What are acceptable offsets?
 - Increase QRP non-submission penalty from 2% to X%
 - Modify HHVBP to increase penalties/decrease bonuses
 - Expand Review Choice Demonstration Program (RCD)

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Medicare Hospice

- Focus on Program Integrity and Oversight
 - Media and Congressional focus
 - Hospice-specific rule changes
 - New and hospices with ownership changes moved to "high risk" screening category
 - Extension of 36-month rule in hospice
 - Hospice physician enrollment in Medicare
 - Deactivation where 12 months of non-billing
 - Expanded "managing employee" definition to include hospice administrator and medical director
- Is moratoria and intensified claims review in the near-term future?
- Quality of Care
 - Special Focus Program
 - Enhanced oversight of 10% of hospices with a risk of poor care quality
 - Informal Dispute Resolution process instituted
- Future benefit and payment reforms???

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NAHC v Becerra: update

- Lawsuit challenges CMS "budget neutrality" methodology
 - Alleged violation of plain language of Medicare law
 - Alleged violation of requirement that therapy volume outside of PDGM operation
 - Alleged violation of Administrative Procedure Act
- Parties filed cross Motions for Summary Judgment
- Court ruled on April 26, granting HHS motion
 - Held that NAHC was required to first seek a "Request for Expedited Judicial Review" prior to lawsuit
 - Held that budget neutrality adjustment methodology is open for judicial review if administrative remedies are exhausted
- NAHC evaluating options of appeal or exhaustion of administrative remedies (case is not over!)

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Medicare Hospice: Proposed FY2025 Rule

- 2.6% Market Basket Index rate update
- Hospice Cap at \$34,364.85
- HOPE patient data project implementation
- Modified CBSAs for wage index applications
- Clarification on Election Statement, Notice of Election, and Hospice Certification
- RFI on a service intensity adjustment for special high cost services
- No program integrity proposals
- No change on Special Focus program standards
- <https://public-inspection.federalregister.gov/2024-06921.pdf>

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Medicaid HCBS Rule

- Applies to certain HCBS waiver programs and care workers
 - Home health aide
 - Personal care attendant
 - homemaker
- Finalizes proposal that 80% of payment rate make up compensation to Direct Care Workers (in the aggregate)
 - Expanded inclusion of costs under the definition of "compensation" (FICA)
 - Excludes certain costs from the calculation, e.g. training, nursing supervision, mileage
 - Permits exemptions of providers based on "hardship," size, or rural location
 - Applies on a provider-specific basis
- 6-year phase-in for states (4-year phase-in proposed)
- Analyses shows compliance difficult
 - Final modifications do ease compliance standards a bit

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Medicaid HCBS Rule

- Rule may be subject to challenges
 - Congressional Action
 - Litigation
- Rule includes numerous other positive elements
 - Improved rate evaluation and transparency standards
 - Appeal rights
 - HCBS quality measures requirements
- <https://public-inspection.federalregister.gov/2024-08363.pdf>
- Medicaid Managed Care rule
 - <https://public-inspection.federalregister.gov/2024-08085.pdf>

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Private Duty Personal Care

- Limited regulation continues, but more may be on the horizon
- Staffing shortages continue to haunt community
- State-based minimum wage increases pose some challenges
- US DoL continues FLSA audits and prosecutions
 - Overtime compensation dominates focus
 - Independent contractors
 - Home care aide model employment contract
- Some MA plans drop personal care as benefit add-on
- Demand showing no signs of slowing

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Private Duty Personal Care

- Elizabeth Dole Home Care Act HR 542; S141 (VA)
- Home Care for Seniors Act HR1795
 - Allows use of HSA for home care
- Better Care Better Jobs Act S100; HR547
- HCBS Access Act S762; HR 1493
- Supporting Our Direct Care Workforce and Family Caregivers Act S1298
HCBS
- S. 1211/H.R. 3729 Social Security Caregiver Credit Act of 2023
- Immigration
 - [High-Skilled Immigration Reform for Employment Act](#)
 - [Immigrants in Nursing and Allied Health Act](#)
 - [Visa Processing Improvement Act](#)
 - [Healthcare Workforce Resilience Act](#) (recently reintroduced)—nurse and physician visas

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Recent Other Rules

- DoL FLSA Salary-Based Exemption
 - <https://public-inspection.federalregister.gov/2024-08038.pdf>
 - Effective July 1, 2024, the salary threshold will increase to the equivalent of an annual salary of \$43,888 (Present annual salary threshold of \$35,568)
 - Increase to \$58,656 on Jan. 1, 2025.
 - Starting July 1, 2027, salary thresholds will update every three years, by applying up-to-date wage data to determine new salary levels.
- FTC Non-Compete Employment Contract Ban
 - <https://www.ftc.gov/legal-library/browse/rules/noncompete-rule>
 - Litigation expected

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Medicare Advantage

- Enrollment surges
- Plans acquiring home health care
- Federal oversight increases
 - Marketing
 - Transparencies
 - Prior authorization
 - Medicare rate overpayment
- Flexibilities provide opportunities
- Current home health payment rates pose growing problem for HHAs
 - Will reduced Medicare PMPM payments to plans trigger efforts to reduce payment rates to providers

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Home Care Innovations and Reforms: Status Report

- Choose Home (SNF at Home)
- Hospital at Home demonstration
- Telehealth services
- Medicaid HCBS supports
- VA home care
- Workforce improvement
- Medicare Advantage
 - Hospice VBID; United drops participation
 - Provider service and payment relationships

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Forecast

- Demand and interest HIGH
- Supports at risk in government funded programs
- Value will eventually drive action with managed care
- Marketplace continues to be very interesting
