Post-Acute Enforcement and Compliance

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Welcome

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Today's Agenda

- What is "post-acute" care?
- Current trends in enforcement - and what it means to us
- Who are the key players (entities) and what are the biggest risks or areas we should be paying attention to
- Case examples and how to identify correct and monitor

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What is "Post-Acute" Care?

Four different prospective payment systems (PPSs); three separate institutional settings

- Skilled nursing facilities (COPs – Part 483)
- Inpatient rehabilitation facilities (acute care hospitals excepted from the IPPS if providing intensive rehabilitation to patients meeting certain criteria – see 42 CFR 412.23, 412.29)
- Long-term care hospitals (acute care hospitals excepted from the IPPS if providing care for patients with an average length of stay exceeding 25 days)
- Home health (COPs – Part 482)

Trends: Recognition by MedPAC that each of these may treat beneficiaries with similar conditions; desire to make payments bundled, site-neutral or at least better to recognize the services provided to beneficiaries based on their diagnoses and co-morbidities.

"Characteristics, Costs, and Payments for Stays within a Sequence of Post-acute Care," a report by the Urban Institute for the Medicare Payment Advisory Commission (MedPac) (Sept. 2018), http://medpac.gov/docs/default-source/contractor-reports/sept2018_pac_sequence_of_care_w_cov_contractor_sec.pdf?sfvrsn=0

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How Do Post-Acute Compliance Issues Differ from Acute Care Compliance?

- Conditions of participation/conditions for payment – hospital + additional payment rules for LTCHs and IRFs; SNFs, HHAs
- May be a necessary referral relationship with a hospital and/or physician that is more developed than with acute care
- Patients are typically "longer term" compared to acute care
- Goals are a bit different than in the acute setting – to restore or maintain function rather than to get an immediate problem under control
  - Multiple types of therapies, PT, OT, SW
  - Role of the physician must be documented – e.g., certifications, orders, plan of care
- For Medicare coverage, special requirements to justify admission
  - SNFs – 3 day hospital precedent stay; need for skilled services (not custodial care)
  - LTACs – for enhanced payment, LOS > 25 days (usually transfer from hospital with ICU stay, Coronary Care unit or vent care)
  - IRFs – Physician Preadmission screen required, need multiple treating disciplines and require close physician supervision
  - Home health – home bound status. No facility – treatment is in patient's home.

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Post-Acute Enforcement Actions

Home health

- 11/2017 – conviction of co-owner, operator, $45M, patient recruiting, unnecessary services
- 11/2017 - RN - $17.1M – patient recruiters, kickbacks to physicians for plan of care and certifications that patient was confined to home
- 12/2017 – owner sentenced to 80 years; patient recruiters

SNFs

- 6/2018 – rehabilitation therapy - $30M
- 10/2017 - rehabilitation therapy - $6M
- 7/2018 - PTs – encouraged unnecessary therapy for SNF patients

IRFs/LTCHs

- 9/2016 - $27.6M – patients admitted and retained without medical necessity or qualification for services; ignored recommendations of its own clinicians to d/c patients

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Post-Acute RAC-Approved Areas from 2018-2019

SNF

- Consolidated billing for therapy services
- ASC services during covered Part A SNF stay

IRF

- Stays meeting requirements to be considered reasonable and necessary

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Post-Acute OIG Audit Reports, 2018-2019

- A-02-16-01001 – home health services
- A-05-16-00055 – home health services
- A-01-16-00500 – home health services
- A-05-16-00043 – SNF – 3 day stay requirement not met
- A-05-17-00506 – SNF – ambulance services subject to bundled payment (CB) [several SNF quality of care reports]
- A-01-15-00500 – IRF – did not meet coverage and documentations requirements

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Post-Acute – Current [active] OIG Work Plan (not complete list)

- SNF – Care for dual eligible
- HHA – duplicate payments under Medicare/Medicaid
- SNF – Involuntary transfers and discharges
- HHA – Hospital compliance with Medicare transfer policy for home health services
- HHA – claims for services with 5 to 10 skilled visits
- HHA – compliance with Medicare requirements

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Current Trends

- Department Of Justice Update - 2019
- 20th Century Act
- PDPM
- Home Health Aides – CMS Audits

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DOJ and Other Guidance

- Justice Manual, Principles of Federal Prosecution of Business Organizations
- United States Sentencing Guidelines
- Benczkowski Memorandum – Oct. 2018
- Rosenstein Update to Yates Memorandum – Nov. 2018
  - Original Memorandum – Sept. 2015
- DOJ Guidance Document: Evaluation of Corporate Compliance Programs, Updated: April 2019.
  - Original publication – Feb. 2017

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DOJ – What does this mean for Post Acute?

- Understand the coverage, payment methodology and conditions of payment for the specific entity (SNF, IRF, LTCH, HHA) to understand compliance vulnerabilities
  - E.g., documentation of physician face-to-face assessment for home health home bound status
- Shoring up Compliance Programs
- Assessing our programs to the DOJ concerns
- Determining how to address risk assessment requirement

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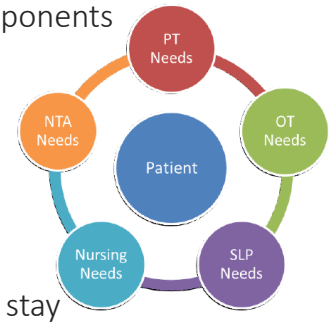
Patient-Driven Payment Model (PDPM)

- Move from traditional RUG – two case-mix adjusted components (Therapy and Nursing)
- Five case-mix adjusted components
  - Physical Therapy (PT)
  - Occupational Therapy (OT)
  - Speech Language Pathology (SLP)
  - Nursing
  - Non-therapy ancillary (NTA) utilization
- Variable per diem (VPD) adjustment – over course of the stay
- PDPM Clinical Categories
- Refinement of CMI



https://www.cms.gov/Outreach-and-Education/Outreach/NPC/Downloads/2018-12-11-SNF-PPS-PDPM.pdf

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Patient-Driven Payment Model (PDPM)

- For the SLP component, PDPM uses a number of different patient characteristics that were predictive of increased SLP costs:
  - Acute Neurologic clinical classification
  - Certain SLP-related comorbidities
  - Presence of cognitive impairment
  - Use of a mechanically-altered diet
  - Presence of swallowing disorder

https://www.cms.gov/Outreach-and-Education/Outreach/NPC/Downloads/2018-12-11-SNF-PPS-PDPM.pdf

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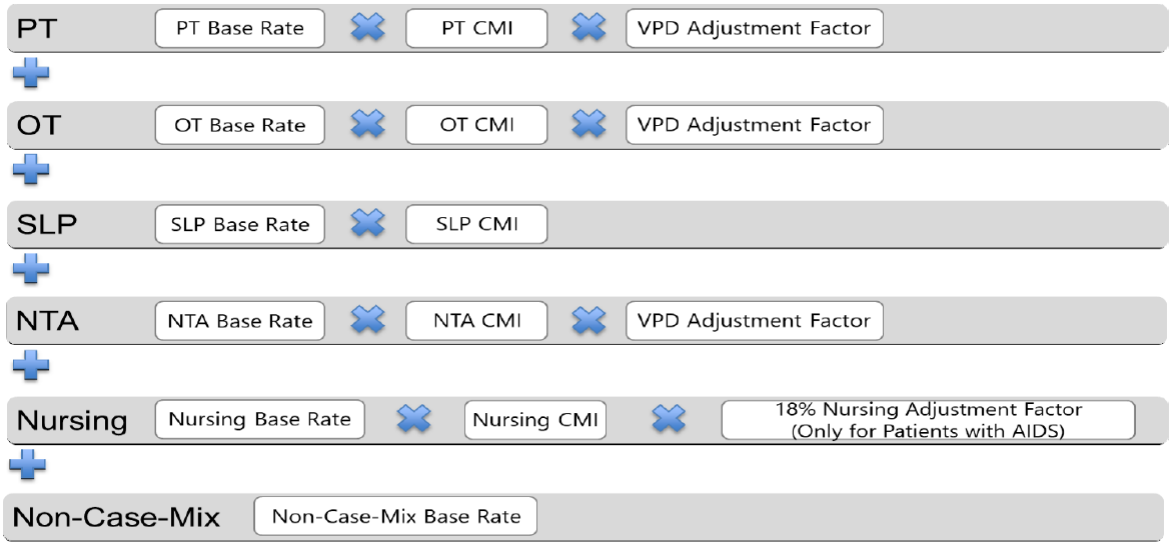
Per CMS – PDPM Snapshot



https://www.cms.gov/Outreach-and-Education/Outreach/NPC/Downloads/2018-12-11-SNF-PPS-PDPM.pdf

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PDPM – What does this mean for Post Acute?

- Auditing and Monitoring of current activity once start on new system
- Focus on diagnosis coding – do we have controls to monitor?
- Documentation of both nursing and therapy support section GG coding
- Documentation support coding of cognitive declines?
- Services reasonable and necessary based on the patient's medical condition
- PT, OT and Nursing Functional Scores
- The delivery of rehab for frequency, duration and intensity no longer has an impact on the reimbursement

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Recent CMS Audits

- Quality of Care
- Three Day Stays
  - CMS Improperly Paid Millions of Dollars for Skilled Nursing Facility Services When the Medicare 3-Day Inpatient Hospital Stay Requirement Was Not Met (A-05-16-00043)
- Medical Necessity
  - Metropolitan Jewish Home Care, Inc., Billed for Home Health Services That Did Not Comply with Medicare Requirements (A-02-16-01001)
  - Excella HomeCare Billed for Home Health Services That Did Not Comply With Medicare Coverage and Payment Requirements (A-01-16-00500)

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Recent Audits – What does this mean for Post Acute?

- Quality of Care
- Coordinated notification mechanisms
- Medical Necessity for Home Health services

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Case Examples

Some Hard Knock Examples

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Case One

- OIG Investigatory Audit of an IRF
  - Reviews 100 stays between 2013 – 2017
  - Looked solely at Medical Necessity
  - Did not review Conditions of Payment such as the Preadmission, Screen, PAPE, IPOC, or team conference documentation

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Case Two

- OIG Review of ICD-10/DRG coding accuracy for LTAC
  - Reviewed documentation from Acute to Post Acute setting for support of diagnosis
  - In-depth review of physician documentation to support DRG, CC, MCC
  - Reviewed potential coder's impact on physician documentation and subsequent coding
  - Investigated interactions between coders and physicians

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Thank you!

Any questions?

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