Home Health Line

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to build profitable home care agencies

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February 20, 2017 | Vol. 42, Issue 8

Trump administration

Prepare your employees for possibility of restrictions on travel, immigration

It's a best practice to keep your employees informed about any travel and immigration restrictions that President Donald Trump's administration puts in place in the coming years, immigration attorneys contend.

Speaking with staff about travel restrictions Trump puts in place could prevent confusion and provide affected employees better detail about how to handle the situation, says attorney Alka Bahal, co-chair of the immigration practice group with Fox Rothschild in Roseland, N.J.

Trump's executive order banning international travel and

*(see **Ban**, p. 6)*

Regulatory compliance

New rule lets home health agencies transport patients to doctors, pharmacies

Home health agencies now can choose to offer patients free or discounted transportation to receive medically necessary items and services, such as a doctor's visit or a trip to the pharmacy.

Doing so won't be a violation of the anti-kickback statute. But note that agencies need to be careful when letting people know about this service.

The local transportation safe harbor was added in a series of

*(see **Transport**, p. 7)*

CMS open door forum

CMS updates agencies about Care Choices model and CoPs — but not pre-claim demo

Home health pre-claim reviews and prior authorization for durable medical equipment (DME) providers were on the initial agenda for CMS to address during its home health, hospice and DME open door forum Feb. 8.

Notably, CMS didn't discuss either item.

It's possible the appropriate CMS employee wasn't available to speak about pre-claim reviews during the call, but it's also possible Rep. Tom Price wanted to do something about the reviews after becoming HHS secretary, speculates Bill Dombi, the National Association for Home Care & Hospice's vice president for law.

DME items, meanwhile, were removed from the forum's agenda at the last minute.

CMS announced in the Federal Register on Dec. 21 that two items (power wheelchairs) had been selected to be subject to prior authorization in four states — Illinois, Missouri, New York and West Virginia — beginning March 20. CMS intends to expand the prior authorization for the affected items in July. View more at *http://go.cms.gov/1UNFX2H*.

Nobody was available from CMS to answer questions about that requirement.

One caller interested in prior authorization details asked CMS if the last-minute changes were a normal occurrence or if there was anything particular about the issue that led to the item being removed. A CMS official said, "I'm not sure there's anything particular about the issue. There's just a few things that the administration would like to review before we go forward with any decisions or commitments to the public."

CMS spent the crux of its forum discussing several other items, including changes to the Medicare Care Choices Model, the release of the Home Health Conditions of Participation (CoPs) and the need to submit the OASIS timely.

CMS eases model's eligibility criteria

Due to lower-than-expected enrollment in the Medicare Care Choices Model and stakeholder feedback, CMS has relaxed four of the model's more restrictive eligibility requirements.

Some of the changes were made several months ago, while others are more recent.

Changes involve the following criteria:

- **At least two hospitalizations.** The requirement has since been reduced to one encounter of any type: ER visit, observation stay or admission.
- **Participation in Medicare Part D.** Instead the model now gathers data on beneficiaries' various drug coverage types as a means to further understand the model's impact.

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 Home Health Line is published 48 times/year by DecisionHealth, 9737 Washingtonian Blvd., Ste. 502, Gaithersburg, MD 20878. ISSN 0893-8121. Price: $627/year.

- **24 months' prior enrollment in Medicare.** This requirement has been reduced to 12 months of enrollment.
- **The requirement for patients to have three office visits with the same physician practice for the eligible diagnosis.** This will change to three office visits with any physician practice for any condition.

"We determined that the 12 months of data for both Medicare Parts A and D would be sufficient for evaluation and create additional opportunities for enrollment," a CMS official said during the call.

The five-year demonstration ultimately is supposed to show whether hospice patients benefit when they receive curative care at the same time as palliative care, contrary to the palliative-only restriction currently part of the Medicare benefit (*HHL 4/4/16*).

But even in the demo's early months, the National Hospice and Palliative Care Organization said CMS had drawn the patient eligibility rules so tightly for the "Medicare Care Choices Model" demo that it won't produce enough data to determine whether paying for acute-plus-palliative care would actually benefit hospice patients.

Date for interpretive guidelines unknown

During the forum, stakeholders asked CMS when interpretive guidelines for the revised CoPs would be released. CMS was unable to provide that information.

CMS revised the CoPs Jan. 13. Many of the changes will be effective July 13, though agencies have until January 2018 to begin conducting performance improvement projects related to QAPI (*HHL 1/16/17*).

Agencies with questions about the revised CoPs should email *NewhhaCoPs@cms.hhs.gov*, CMS said during the call.

Details not released on pre-claim review

CMS did not detail during the call exactly why the topic of the home health pre-claim review demo was not discussed during the forum.

During the forum's Q&A portion, a CMS official said she was unable to comment when a caller asked if the pre-claim review demo's expansion to Florida or implementation of the CoPs would be affected by the Trump administration's recent orders and memorandum, including attempts to stop or delay regulations (*HHL 2/13/17*).

"We're still waiting further guidance from the administration with further directions on those executive orders," the official said. "But any updates we have will be announced through our regular channels."

Illinois is the only state currently participating in pre-claim reviews, but Florida's reviews are expected for services beginning on or after April 1. Reviews ultimately are expected in Massachusetts, Michigan and Texas as well.

More from CMS open door forum

- **Home Health Compare updated.** CMS updated Home Health Compare data and 5-star ratings Jan. 26. View Home Health Compare at *http://bit.ly/1JNibTV*.
- **Remember to submit the OASIS timely.** CMS reminded agencies that beginning in April, it will automatically deny claims where OASIS assessments have not been submitted timely (*HHL 11/14/16*).
- **Mark your calendars for the next open door forum.** CMS' next home health, hospice and DME open door forum is slated for March 22. — *Josh Poltilove (jpoltilove@decisionhealth.com)*

Trump administration

New details discussed about 2-for-1 order's impact on health care industry

President Donald Trump's Jan. 30 executive order requiring removal of two regulations for every new one issued may not have much impact on the big rules CMS puts out, such as the home health PPS rule — but, ironically, a lot will come down to what a little-known federal office decides about it.

Much discussion of the order centers on the two-regulation part, with most experts unsure how such a guideline would be observed in CMS regulation.

"I have no earthly idea how that would work in the case of payment rules, and I'm not sure the folks who wrote the (executive order) do either," says John F. Williams, former press secretary for the House Committee on Government Reform and Oversight and former member of the Republican Senior Communications Staff Committee, now with law firm Hall, Render, Killian, Heath & Lyman in Washington, D.C.

Mike Strazzella, co-head of the Washington, D.C. office of law firm Buchanan, Ingersoll & Rooney and

practice group leader for federal government relations, suggests some departments may cannibalize two old rules in a new rule, then drop the old rules.

But another part of the order suggests the cuts have more to do with offsetting the costs of new regulation than the number of rules: "Any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations." This was clarified in a memorandum issued by the White House on Feb. 2.

A key passage reads:

"Q: What about rules that implement federal spending programs?

"A: In general, federal spending rules that primarily cause income transfers from taxpayers to program beneficiaries (e.g., rules associated with Pell grants and Medicare spending) are considered 'transfer rules' and are not covered by this (executive order). However, in cases where these rules impose requirements on non-federal entities, such as reporting or recordkeeping, agencies would need to account for these costs…"

That may seem at first to suggest "Medicare spending" is exempt from the order. But the "non-federal entities" the memorandum mentions would include Medicare providers, notes Emily Jane Cook, partner with the law firm McDermott Will & Emery LLP in Los Angeles.

So if providers get any extra administrative burden "such as reporting or recordkeeping," CMS will have to find an offset for the computed cost of that under the order.

The need to offset may also apply to burdens placed on contractors such as Medicare Administrative Contractors (MACs) and recovery auditors (RACs): If a new regulation involves the need for contractor education or new claims edits, for example, those would "appear to be costs to the government that would require offset," Cook says.

The guidance also tells bureaucrats to consult with desk officers from the Office of Information and Regulatory Affairs, a division of the Office of Management and Budget (OMB), for matters of interpretation and to submit requests for waivers on the order.

Cook expects the officer for CMS will make key decisions about the interpretation of the law — "or at least one hopes so" given the vagueness of the order, she says. — *Roy Edroso (redroso@decisionhealth.com)*

Trump administration

During early morning vote, Senate confirms Rep. Tom Price as new HHS secretary

The U.S. Senate on Feb. 10 approved Rep. Tom Price to oversee HHS.

The Senate voted 52-47 in favor of Price's nomination.

Price, R-Ga., is a six-term congressman, former orthopedic surgeon and long-time opponent of the Affordable Care Act (ACA). He was tabbed by President Donald Trump to help steer the replacement for the ACA (*HHL 12/19/16*).

Since his nomination, Price had come under fire for stock trading tied to medical companies that were linked to legislation he would later introduce.

Marketing & referrals

Use links, original content to improve your online presence and reap big benefits

To obtain the highest search placements, your agency should create the right keywords, ensure there's a steady stream of fresh, relevant content on your site and have plenty of other sites linking to you.

Search engine optimization (SEO) was the top consumer marketing choice for private duty agencies in 2015, according to Home Care Pulse's annual benchmarking study.

The study also revealed that 88% of customers surveyed researched potential agencies online before making a decision, and 90% of home care customers stated they made care decisions based on what online read online.

Effective SEO used to just mean keywords — including the right search terms on a website. But with constantly changing search engine algorithms, having the right search terms embedded in a website is not enough.

Pepper your website with keywords

Merrily Orsini, CEO and president of corecubed, an aging care marketing firm based in Asheville, N.C., says agencies need to make sure they have websites that are carefully peppered with keywords that are important to potential clients in their community.

Those keywords will vary.

But such keywords aren't enough. To improve rankings, agencies also must regularly update with original content.

When Jerod Evanich, president of A Place At Home in Omaha, Neb., opened the doors to his agency in 2012, he knew that maintaining an online presence was key. He focused a large amount of the private duty, senior care coordination agency's marketing budget on creating a top-notch website.

He spent time researching what words potential clients in Omaha would be using to search for private duty care.

Although Evanich doesn't want to disclose his carefully curated keywords, Imari Adams, a marketing specialist with Alora Home Health Software in Atlanta, Ga., says agencies can find out the most effective keywords in their area by typing into Google relevant words such as "in-home care" or "senior care" to see what competitors pop up.

Adams also suggests signing up for a free Google Analytics account, which will show which keywords led to a visit to your site. This, he says, will show which words should be optimized on your site.

Evanich ensures the keywords are embedded in his agency's website and regularly used in blogs and associated with photos and videos.

The original content the agency creates is particularly key, he adds. Evanich, who employs more than 100 caregivers, makes sure a new blog post is featured on the agency's Facebook page each week, and linked back to the website.

Evanich says although 90% of home care business owners acknowledge that they should be using social media, only about 10% are giving social media the effort that it needs.

In addition to its Facebook page, the agency has a presence on LinkedIn, Google+, YouTube. He also uses local social networking sites including Alignable, a site for local business owners, and Nextdoor, a neighborhood social networking site. Evanich's original content and links between the various social media platforms help drive up the agency's search engine ranking.

Evanich also pays keen attention to Google analytics and tracks his agency's online marketing success each week via the search engine's free account. A Place At Home's efforts have paid off — the agency consistently appears at the top of the page when searching for in-home care in Omaha and the agency will begin franchising this year.

BENCHMARK of the Week

Top 10 consumer marketing sources in 2015

Search engine optimization (SEO) was the top consumer marketing source for private duty agencies in 2015, according to respondents of the 2016 Private Duty Benchmarking Study by Home Care Pulse in Rexburg, Idaho. (*See story, p. 4.*)

Marketing source	Top marketing source	Median percent of 2015 revenue
Internet — SEO (consumers can find you online)	15.1%	16.8%
Internet — Corporate Web Leads (i.e. Franchisors Website, etc.)	9.4%	17.4%
Internet — Google Ad Words/Pay Per Click	7.5%	24.6%
Ads — Senior Directories	6.1%	12.1%
Ads — Newspaper	5.4%	15.6%
Internet — Other	4.9%	23.3%
Internet Lead Sites — Caring.com	4.1%	11.5%
Ads — Local Magazines	3.7%	24.8%
Ads — Radio	3.5%	19.0%
Internet Lead Sites — CareInHomes.com	3.2%	23.1%

Source: Home Care Pulse, Rexburg, Idaho

Don't forget about YouTube

Adams suggests that to improve visibility agencies should create YouTube videos with the free editor and stock music on its channel. Alora Home Health Software, which has more than 12,000 software users, helps its clients market themselves online more effectively by having a clear message of who they are, where they operate and what they do.

Adams suggests agencies develop short videos with content that may appeal to potential clients — such as a tour of the agency's offices to communicate its culture or an informational video on wound care — and be sure to link back to the agency's website.

"Linking is sometimes overlooked in SEO," Adams says, "but sometimes linking literally can be the difference between you being No. 5 or No. 1 in an organic search."

This includes linking between your site and your social media accounts and getting others to link to your site, he says.

He urges agencies to seek out others who will link to their website, such as their Chamber of Commerce, local senior websites or community health organizations.

Do this before diving into an SEO project

- **Make sure your website is easily navigable.** Agencies need to make a clear path for what a website user is supposed to do, Adams recommends.

Highlight your mission statement, explain your service offerings, describe why you care about your home care and provide a map of your coverage area.

Also make sure it's easy for people to contact your agency, he adds.

- **Keep an SEO schedule.** Evanich checks in on Google analytics and makes sure an original blog item is written every week.

He suggests creating a database of topics of interest for inspiration and blocking off time each week for online marketing.

- **Be careful not to "over-optimize."** Orsini warns that agencies that too liberally litter their site with keywords can be guilty of "stuffing," which can result in a drop in Google search engine rankings as punishment.

If the keywords are used so frequently that text is almost unreadable, it's likely to be flagged.— *Angela Childers (angela.childers@gmail.com)*

Ban

(continued from p. 1)

immigration from seven countries is not currently in place, but Trump said the administration is considering its options including filing a new order.

A new order likely would be similar — but perhaps more narrow — than the one written last month, says immigration attorney Susan Cohen of Mintz Levin in Boston.

Regardless of the outcome, people should expect the administration to produce additional executive orders involving travel and immigration, Cohen adds.

Travel restrictions the administration puts in place will affect many industries, but it should be noted that many home care employees are foreign born. A 2013 report from the Institute for Women's Policy Research stated that 28% of home care workers were born in a foreign country.

In large metropolitan areas, the percentage of immigrants in the direct care workforce is much higher: Immigrants comprise 74% of the in-home care workforce in New York/Northeastern New Jersey, 93% in Miami-Hialeah and 53% in the greater Washington, D.C. area.

Although the largest share of immigrants to take these positions come from Central America and the Caribbean, the workforce comes from all over the world, according to the 2013 report.

Issue works its way through courts

Trump signed an executive order Jan. 27 in an attempt to protect national security. It barred entry into the United States for 90 days for people from seven predominantly Muslim countries: Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen.

The order also halted admission of Syrian refugees indefinitely and barred other refugees from entering the country for 120 days.

The order stated that if you're from one of the affected countries and have a green card, you would be barred from re-entry into the United States, Bahal says. (The Department of Homeland Security said Jan. 29 that those with green cards would be allowed to re-enter.)

More recently a U.S. District judge blocked implementation of Trump's executive order, a federal appeals court rejected Trump's attempt to reinstate it and three judges

on the 9th Circuit of Appeals unanimously refused to restore it.

Trump on Feb. 10 said the administration wouldn't immediately appeal to the U.S. Supreme Court.

If the high court did hear arguments before Trump appointee Neil Gorsuch took his seat, the court could potentially have ruled 4-4, notes attorney Robert Markette of Indianapolis-based Hall, Render, Killian, Heath & Lyman. That would have caused the 9th Circuit's ruling to stand.

How to handle speaking with staff

- **Consider the role you want to play in helping employees with immigration issues.** Expect future changes to immigration law under the Trump administration, and think about how or whether you plan on keeping employees abreast of these changes, says Brad Hendrick, an attorney with Caplan and Earnest LLC in Boulder, Colo.
- **Think hard about wording you use when communicating with staff.** Religion, national origin and politics are hot-button issues, and staying neutral is advisable, Bahal warns.

Although some people have called Trump's executive order a "Muslim ban," it's a best practice to stick entirely to facts when communicating with employees, Hendrick says.

- **Alert all your employees.** This communication could come in many forms but it's advisable to do so via email or group text rather than having an agency-wide meeting, Hendrick says.

"Calling everybody into a room may sort of have everybody looking round at each other and cause animosity," Hendrick says.

- **Keep information you send out neutral and simple.** Let employees know about the order and countries it affects, Bahal advises.

Encourage affected employees not to travel internationally while the order is in place. Consider noting that if an affected employee — even one with a green card — needs to travel outside the United States, the employee should first seek advice from an immigration attorney, Hendrick says. — *Josh Poltilove (jpoltilove@decisionhealth.com)*

Transport

(continued from p. 1)

rules and announcements released late last year. The final rule, published in the Federal Register, became effective Jan. 7.

This safe harbor will help agencies ensure patients are getting needed medications and arriving at necessary doctors' appointments, says attorney Elizabeth Pearson of Pearson & Bernard in Edgewood, Ky. It also will help agencies ensure face-to-face visits with doctors occur in a timely manner.

The rule, CMS says, reflects the evolution from fee-for-service medicine to value-based care.

Previously a violation of the anti-kickback statute involving this type of transportation service would have been punishable by fines of up to $25,000 and imprisonment for up to five years. Fines for violating the civil monetary penalties law vary; agencies also could have been subject to thousands of dollars in fines for violating the False Claims Act, Pearson says.

Although no prior rule made clear agencies could transport patients for free or reduced rates, some agencies have done so for years, says attorney Robert Markette of Indianapolis-based Hall, Render, Killian, Heath & Lyman. They inferred from a 2011 advisory opinion from the HHS Office of Inspector General that they wouldn't get into legal trouble for providing this service.

Be careful about marketing efforts

The rule makes clear that providers offering free or reduced transportation to patients must be careful about how they alert people to the service.

The safe harbor wasn't designed to be "a huge marketing hook to drive new business," Markette says.

Free or reduced cost transportation can't be used as a tool to recruit new patients. A patient is "established" once an appointment is made.

You're not allowed to place details about this service on your website, nor are you allowed to create brochures or TV advertisements, Pearson says.

However, you can target existing patients who appear to need transportation and offer them rides, Markette says.

Another thing agencies aren't allowed to do: The driver can't market or advertise your agency's services while the patient is being transported, Pearson says. For instance, the driver can't mention that your agency also offers private duty and hospice care.

Commenters' reactions to the rule

CMS had considered partially or fully excluding home health from the safe harbor, but some commenters contended that agencies are "a critical link for patients to get to necessary appointments — some of which could be to referral sources."

Ultimately CMS decided to include home health. It noted that agencies already travel to patients' homes and regularly communicate with patients and health care providers.

"In addition, patients eligible for home health services may be particularly in need of transportation, which home health agencies may be in a unique position to provide," CMS wrote.

However, CMS noted that home health agencies "have historically posed a heightened risk of program abuse." For instance, CMS said in the rule, it has investigated schemes where agencies recruited beneficiaries and transported them to physicians' offices to get prescriptions and renewals of prescriptions for home health services they didn't need.

"The provision of transportation, in such an instance, would be considered as part of a scheme to submit false claims for unnecessary services."

More key dos and don't on the rule

- **Note that you'll need to pay — not the government.** The agency's expenses for the transportation, including gas, cost for the employee's time and/or cost for paying a transportation service, cannot be included in a cost report, Pearson says.
- **Make sure you have non-owned auto liability coverage.** Doing so covers your agency for employees using their own cars to transport people for work purposes, Pearson says. Note that this is an additional expense that is not allowed to be placed on your agency's cost report.

Markette also advises agencies to check with their state to see if their employees would need commercial driver's licenses to perform this service.

- **Don't only provide transportation for patients from your most common referral sources.** This transportation offer should be uniform across the board, Pearson says.
- **Don't pay for transportation per patient.** The rule makes explicitly clear that employed and contracted drivers are not allowed to be paid per patient, per trip. Instead, Pearson recommends agencies pay drivers for the service at an hourly rate.
- **Note that there are limits on miles you can drive patients.** The limit for "local" transportation is 25 miles in urban areas and 50 miles in rural areas.

The safe harbor also excludes air, luxury or ambulance-level transportation. — *Josh Poltilove (jpoltilove@decisionhealth.com) and Marla Durben Hirsch (pbnfeedback@decisionhealth.com)*

Related link: *Read the rule at http://bit.ly/2gSMOy8.*

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