

## HEALTH CARE PAYMENT ALERT

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### Home Health Pre-Claim Review Halted – *Except* for Illinois Agencies

By *[Avery Delott](#)*, Partner

In August 2016, the Centers for Medicare and Medicaid Services (“CMS”) began a Pre-Claim Review (“PCR”) demonstration for all Illinois-based home health agencies. CMS described the intent of the PCR demonstration as testing whether PCR would improve methods to identify, investigate, and prosecute Medicare fraud related to the provision of home health services (while also eyeing a reduction in expenditures for such services). The PCR demonstration was designed as a three-year project to begin in Illinois and then be rolled-out at intervals in Florida, Texas, Michigan, and Massachusetts. These states were selected since they had demonstrated instances of home health fraud and billing abuse that were significantly greater than abuses in other states.

Under the PCR process, home health agencies are required to submit documentation to support the necessity and Medicare payment criteria for home health services. The submission of such documentation **follows** the initial assessment and the beginning of the 60-day home health service period but precedes submission of the final claim for payment to Medicare. This differs from traditional Medicare pre-payment review, which requires a provider to demonstrate medical necessity and meet payment criteria for services **prior to** providing any service. If CMS “affirms” the PCR submission, the service presumptively is payable and associated claims may be free from future “look-back” audits. If a PCR submission is not affirmed, the home health provider may resubmit after correcting any technical errors. If CMS ultimately determines that the services do not meet criteria for payment, the home health agency will not receive Medicare payment for the services. In a few limited circumstances where CMS refuses to pay a claim, the home health agency may be able to request payment for the service directly from the patient. In all other instances, the home health agency will have no recourse for payment. If a claim for payment is made without first going through the PCR process, CMS will treat the claim as it would one subject to pre-payment review. If then affirmed, such claims will be subject to a 25% payment reduction effective in month four after the PCR demonstration start date. An agency may not require the patient to pay the amount equal to the 25% reduction.

Since the PCR demonstration began, it is estimated that between 60%-80% of PCR submissions in Illinois have been “non-affirmed” by CMS. Further, there have been a number of issues with the demonstration, including delays in processing by CMS, confusion regarding the information process and patient uncertainty regarding their ultimate responsibility for payment. Recognizing these important and unresolved issues, CMS recently postponed the scheduled implementation of the PCR demonstration in all other states where the PCR demonstration was to begin, but it has refused to terminate or modify the demonstration in Illinois.

In response, Illinois Senator Dick Durbin and the entire Illinois delegation formally requested that CMS cease the PCR demonstration pending resolution of the concerns acknowledged by CMS. In a letter dated October 3, 2016, Senator Durbin noted that “Seven weeks into the [PCR Demonstration], the experience of this pilot in Illinois has resulted in severe burdens on patient access to care and provider capacity. We urge CMS to delay further implementation of the [PCR Demonstration] in Illinois, which CMS has already announced they will do for other states.” To date, CMS has issued no formal response. How CMS chooses to respond to this request is important not only to Illinois home health agencies and the patients they serve, but all Medicare providers, as the success or failure of this demonstration may affect the provisions of similar projects for other service providers that CMS implements in the future.

For additional information on how Roetzel attorneys can assist you with the PCR demonstration and up-to-date information on legislative efforts to terminate the demonstration, please contact one of the listed Roetzel attorneys.

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