

Medicare Part B Drug CAP Q&As:

Assurance of CAP Drug Administration and Beneficiary Cost Sharing

Background: The following Qs and As address the impact of Section 108 of the Tax Relief and Healthcare Act of 2006 (TRCHA) on the collection of beneficiaries' coinsurance and deductible.

Under Section 1847B(a)(3)(A) of the Social Security Act, "collection of amounts of any deductible and coinsurance applicable with respect to such drugs and biologicals shall be the responsibility of such contractor and shall not be collected unless the drug or biological is administered to the individual involved."

Q1: When may an approved CAP vendor proceed with billing a Medicare beneficiary for any applicable coinsurance and deductible associated with CAP drugs?

A: After receipt of payment by Medicare the approved CAP vendor must bill any applicable supplemental insurance policies. If a balance remains after the supplemental insurer pays its share of the bill, or if there is no supplemental insurance, the approved CAP vendor may bill the beneficiary. However, the approved CAP vendor may not collect any applicable coinsurance and deductible without verification of drug administration.

Q2: Since TRCHA Section 108 requires CMS to pay CAP claims upon receipt and to verify drug administration in a post-payment review, the initial payment by Medicare can no longer serve as proof that a CAP drug was administered. In light of this statutory change, how can the vendor verify that the drug was administered prior to collecting any applicable cost sharing and therefore avoid noncompliance with Section 1847B(a)(3)(A)?

A: An approved CAP vendor may obtain information about whether a CAP drug was administered from a participating CAP physician by a voluntary agreement to exchange such information with the physician. If the participating CAP physician is unwilling to enter into a voluntary agreement to verify drug administration, the approved CAP vendor may contact the physician's office to request verbal confirmation of drug administration. The vendor is expected to document verbal confirmation of CAP drug administration, the identities of individuals who exchanged the information and the date and time that the information was obtained. The vendor is also expected to make such information available for post payment review, as necessary. The specific information required to demonstrate that a CAP drug was administered to a beneficiary is presented in the next answer.

In addition to verifying administration through contact with the physician's office, we also suggest that the approved CAP vendor place a statement on beneficiaries' bills informing them of the statutory requirement and suggesting that they contact their physician to verify that they received the dose of the drug for which they are being billed prior to paying any cost sharing amount.

We note that under the CAP regulations the participating CAP physician has a responsibility to notify the approved CAP vendor when a drug is not administered or a smaller amount was administered than was originally ordered. The approved CAP vendor should address compliance issues directly with the physician. If the approved

CAP vendor is unsuccessful in resolving the issue the vendor can ask for assistance from the designated carrier under the dispute resolution process.

Q3: What specific information could be used to demonstrate that a CAP drug was administered to a beneficiary?

A: At a minimum, the beneficiary's name, health insurance claim number, (HIC) expected date of service, actual date of service, identity of the CAP physician and prescription order number. If the approved CAP vendor receives this information verbally, the vendor is expected to document such information, the identities of individuals who exchanged the information and the date and time that the information was obtained. The vendor is also expected to make all of this information available for post payment review, as necessary.

Q4: Is a participating CAP physician required to enter into an agreement with the approved CAP vendor to verify drug administration?

A: In our November 21, 2005 final rule (71 FR 70251) , we stated that nothing in the CAP statute or regulations prohibits CAP vendors and CAP physicians from entering into voluntary written arrangements about a number of matters. We specified that such voluntary written agreements could include the following:

- An arrangement between a participating CAP physician and an approved CAP vendor to notify the approved CAP vendor after the CAP drug has been administered to the beneficiary;
- An arrangement between a participating CAP physician and an approved CAP vendor to communicate with the beneficiary about coinsurance for CAP drugs on behalf of the approved CAP vendor.

In particular, an agreement to provide notification of drug administration must be voluntary on the part of the physician: it cannot be required in any way by the vendor as a condition of participation in the CAP. Physicians who believe that they are being required to provide such notifications without having entered into such an agreement may employ the dispute resolution process under section 414.917 of the regulations to resolve the issue.