

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services



REMINDER product from the Medicare Learning Network® (MLN)

- [“Medicare Coverage of Imaging Services”](#) Fact Sheet, ICN 907164, downloadable

MLN Matters® Number: MM8426

Related Change Request (CR) #: CR 8426

Related CR Release Date: January 17, 2014

Effective Date: January 1, 2014

Related CR Transmittal #: R2859CP

Implementation Date: January 31, 2014

Applying the Therapy Caps to Critical Access Hospitals (CAHs)

Provider Types Affected

This MLN Matters® Article is intended for physicians, other providers, and suppliers who submit claims to Medicare Administrative Contractors (MACs) for outpatient therapy services provided in a Critical Access Hospital (CAH) setting to Medicare beneficiaries.

Key Points

This article is based on Change Request (CR) 8426 and alerts providers that:

- Beginning January 1, 2014, outpatient therapy services furnished by a CAH are subject to the therapy cap and related policies;
- Pursuant to statute, the exceptions process, including the use of the KX modifier to attest the medical necessity of therapy services above the caps, applies to services furnished by a CAH in CY2014;
- Similarly, pursuant to statute, the manual medical review of claims in excess of the \$3,700 threshold applies to services furnished by a CAH in CY2014; and

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- MACs will no longer automatically apply the KX modifier to CAH services, effective January 1, 2014.

Please be sure your billing staffs are aware of this fee update. See the Background and Additional Information Sections of this article for further details regarding these changes.

Background

The Balanced Budget Act of 1997, Section 4541c, amended Section 1833(g) of the Act to create annual limits on per beneficiary incurred expenses on therapy services known as the “therapy caps.” This provision expressly applies the therapy caps to outpatient therapy services described at Section 1861(p) of the Social Security Act (or the Act), which also applies to therapy services described under Sections 1861(g) and 1861(ii)(2) of the Act, and exempts outpatient therapy services described in Section 1833(a)(8)(B) of the Act, which is known as the “outpatient hospital services exemption.” When the therapy caps were implemented in Calendar Year (CY) 1999, the Centers for Medicare & Medicaid Services (CMS) interpreted the outpatient hospital services exemption to include therapy services furnished by a CAH.

The Middle Class Tax Relief and Job Creation Act of 2012 (MCTRJCA) temporarily removed the outpatient hospital services exemption from October 1, 2012, through December 31, 2012. CMS concluded that the MCTRJCA amendment only affected the outpatient hospital services described under Section 1833(a)(8)(B) of the Act for which payment is made under Section 1834(k)(1)(B) of the Act. (MCTRJCA, Section 3005; see <http://www.gpo.gov/fdsys/pkg/PLAW-112publ96/pdf/PLAW-112publ96.pdf> on the Internet).

The American Taxpayer Relief Act of 2012 (ATRA) removed the outpatient hospital services exemption through December 31, 2013. The ATRA also amended the Act to count outpatient therapy services furnished between January 1, 2013, and December 31, 2013, by a CAH towards a beneficiary’s annual cap and threshold using the amount that would be payable if such services were paid under Section 1834(k)(1)(B) of the Act instead of being paid under Section 1834(g) of the Act. The ATRA amendment specifically does not change the method of payment for outpatient therapy services furnished by a CAH. CMS concluded that the ATRA amendment does not explicitly make the therapy caps applicable to services furnished by CAHs, but provides a methodology to count CAH services towards the caps using the Medicare Physician Fee Schedule rate. As a result, from October 1, 2012, to December 31, 2013, CAH services came to be exempt from the therapy caps, whereas services furnished in other outpatient hospital settings are subject to the cap policies.

In August 2012, CMS issued CR 7881, which created a mechanism to allow Medicare Administrative Contractors (MACs) both to count CAH services towards the cap amounts and to apply the caps to services furnished by CAHs, if necessary. In order to ensure that CAH services counted towards the cap amounts without being subject to the cap policy, CMS issued subsequent instructions for MACs to automatically apply the KX modifier to CAH services found to be over the caps, effective January 1, 2013. To review CR7881 you may go to <http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R2537CP.pdf> on the CMS website. A related MLN

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Matters® Article MM7881 is available at <http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/MM7881.pdf> on the CMS website.

Additional Information

The official instruction, CR8426, issued to your MAC regarding this change may be viewed at <http://www.cms.hhs.gov/Regulations-and-Guidance/Guidance/Transmittals/Downloads/R2859CP.pdf> on the CMS website.

If you have any questions, please contact your MAC at their toll-free number, which may be found at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/provider-compliance-interactive-map/index.html> on the CMS website.

News Flash - Generally, Medicare Part B covers one flu vaccination and its administration per flu season for beneficiaries without co-pay or deductible. Now is the perfect time to vaccinate beneficiaries. Health care providers are encouraged to get a flu vaccine to help protect themselves from the flu and to keep from spreading it to their family, co-workers, and patients. Note: The flu vaccine is not a Part D-covered drug. For more information, visit:

- [MLN Matters® Article #MM8433](#), "Influenza Vaccine Payment Allowances - Annual Update for 2013-2014 Season"
- [MLN Matters® Article #SE1336](#), "2013-2014 Influenza (Flu) Resources for Health Care Professionals"
- [HealthMap Vaccine Finder](#) - a free, online service where users can search for locations offering flu and other adult vaccines. While some providers may offer flu vaccines, those that don't can help their patients locate flu vaccines within their local community.
- The CDC website for [Free Resources](#), including [prescription-style tear-pads](#) that allow you to give a customized flu shot reminder to patients at high-risk for complications from the flu.

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