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MLN Matters® Number: SE0637 **Revised**

Related Change Request (CR) #: NA

Related CR Release Date: NA

Effective Date: April 1, 2006

Related CR Transmittal #: NA

Implementation Date: April 3, 2006

Use of the KX Modifier on Claims Submitted to the Fiscal Intermediary When Some Services Exceed the Therapy Caps

Note: This article was revised on April 17, 2009 to add this note referring providers to two additional MLN Matters® articles that reference the use of the KX modifier on therapy claims after December 31, 2007. Those articles are MM5871 and SE0826, which are available at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM5871.pdf> and <http://www.cms.hhs.gov/MLNMattersArticles/downloads/SE0826.pdf>, respectively.

Provider Types Affected

All providers billing Medicare fiscal intermediaries (FIs) and regional home health intermediaries (RHHs) for physical therapy, speech-language pathology, and occupational therapy services

Background

The Centers for Medicare & Medicaid Services (CMS) is aware that some claims processed by fiscal intermediaries are being improperly denied. These improper denials occur when some services on the claim are below the therapy cap and not billed with the KX modifier, and other services on the same claim are above the therapy cap, and billed with the KX modifier.

This Special Edition (SE) article outlines the proper use of the KX modifier only for claims submitted to and processed by fiscal intermediaries. **These instructions are temporary until December 31, 2007.**

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Key Points

- The KX modifier is added to each claim line for an outpatient therapy service procedure when the beneficiary is qualified for exception to the therapy caps through either the automatic process or the manual process of exception.
- When the KX modifier is appropriate for at least one of the outpatient therapy service line items on an intermediary claim, providers should bill the KX modifier on all outpatient therapy service line items on the same claim for those services representing the same therapy cap (that is, either the combined physical therapy, and speech-language pathology cap, or the separate occupational therapy cap).
- Do not add the KX modifier to line items that would not be eligible for exception if the service was provided after the cap is reached. That is, if the services would require a manual exception if the cap is exceeded and that exception has not yet been approved, do not bill for that service using the KX modifier.
- Services for billing periods after the cap has been exceeded which are not eligible for exceptions may be billed for denial using condition code 21.
- Do not submit claims that have the KX modifier on some, but not all, lines that apply to the same cap for outpatient therapy services.
- The Medicare system will recognize the services that fall below the therapy cap and those that fall above the therapy cap and process for payment accurately.
- Providers will not be penalized for using the KX modifier on medically necessary services that would be eligible for an exception above the cap when those services are below the therapy cap and billed on the same claim as services that appropriately use the KX modifier to signify services from the same therapy cap that appropriately exceeds that therapy cap.
- Continue to avoid using the KX modifier on claims where none of the therapy services on that claim that count toward the same therapy cap is appropriate for the use of the KX modifier.

Examples

The following examples are applicable only when the provider has researched Medicare policies and identified that the beneficiary is reaching the therapy cap threshold and the billed services are medically necessary:

- When providers submit claims with multiple line items for physical therapy and/or speech-language pathology services; **and**

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- Some of the lines represent services that are appropriate for use of the KX modifier; **but**
- None of the lines represent services that would not be eligible for use of a KX modifier if the cap was exceeded; **then**
- Apply the KX modifier to all of the physical therapy and speech-language pathology line items on that same claim.
- Services may be eligible for use of the KX modifier either by qualifying for use of the automatic exception process, or with approval of the contractor for manual exceptions.
- When providers submit claims with multiple line items for occupational therapy services, the presence or absence of the KX modifier on the physical therapy-speech-language pathology line items does not affect the use of the KX modifier for occupational therapy services.
- Apply the KX modifier to all of the occupational therapy line items if:
 - All of the line items would represent services that are appropriate for use of the KX modifier if the services exceeded the cap; and
 - Some of the lines represent services that are currently eligible for use of the KX modifier on this claim.
- Or, apply the KX modifier to none of the occupational therapy line items, if appropriate.

Note: These rules do not apply to suppliers billing to carriers. For carrier claims, continue to use the KX modifier only on the lines that exceed the therapy cap. Where the therapy cap is being approached, use the KX for the services that might exceed the therapy cap.

Additional Information

If you have questions, please contact your Medicare FI or RHHI at their toll-free number which may be found at

<http://www.cms.hhs.gov/MLNProducts/downloads/CallCenterTollNumDirectory.zip> on the CMS website.

The CMS Fact Sheet, "Outpatient Therapy Caps: Exceptions Process Required by the Deficit Reduction Act (DRA)," may be found at

<http://www.cms.hhs.gov/apps/media/press/release.asp?Counter=1782> on the CMS website.

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MLN article MM4364 describes the Therapy Caps Exception Process and may be viewed at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM4364.pdf> on the CMS website.

See also Publication 100-04, Chapter 5, Section 10.2, for a description of therapy caps and exceptions at <http://www.cms.hhs.gov/manuals/downloads/clm104c05.pdf> on the CMS website.

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