HCFA Rulings

Department of Health and Human Services

Health Care Financing Administration

Ruling No. 97-1 Date: February 1997

HCFA Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous statutory or regulatory provisions relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, and related matters.

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This Ruling states the policy of the Health Care Financing Administration concerning the requirements for determining if Medicare payment will be made under the limitation on liability provision, section 1879 of the Social Security Act, to a provider, practitioner, or other supplier for partial hospitalization services for which Medicare payment is denied.

HCFAR 97-1-1

MEDICARE PROGRAM

Hospital Insurance (Part A) and Supplementary Medical Insurance (Part B)

REQUIREMENTS FOR DETERMINING LIMITATION ON LIABILITY OF A MEDICARE BENEFICIARY, PROVIDER, PRACTITIONER, OR OTHER SUPPLIER FOR PARTIAL HOSPITALIZATION SERVICES FOR WHICH MEDICARE PAYMENT IS DENIED.

PURPOSE: This Ruling states the policy of the Health Care Financing Administration concerning the requirements for determining if Medicare payment will be made under the limitation on liability provision, section 1879 of the Social Security Act, to a provider, practitioner, or other supplier for partial hospitalization services for which Medicare payment is denied.

CITATIONS: Sections 1142, 1154, 1814, 1815, 1833, 1834, 1835, 1861, 1862, 1866, and 1879 of the Social Security Act (42 U.S.C. 1320b-12, 1320c-3, 1395f, 1395g, 1395l, 1395m, 1395n, 1395x, 1395y, 1395cc, and 1395pp) and 42 CFR 411.400, 411.402, 411.404, 411.406, and HCFA Ruling 95-1.

RULING APPLICABLE TO DETERMINING LIMITATION ON LIABILITY OF A MEDICARE BENEFICIARY, PROVIDER, PRACTITIONER, OR OTHER SUPPLIER FOR PARTIAL HOSPITALIZATION SERVICES FOR WHICH MEDICARE PAYMENT IS DENIED

I. BACKGROUND

Section 1879 of the Social Security Act (the Act) provides financial relief to beneficiaries, providers, practitioners, and other suppliers by permitting Medicare payment to be made, or requiring refunds to be made, for certain services and items for which Medicare payment would otherwise be denied. We refer to this section of the Act as "the limitation on liability provision." The claims payment and beneficiary indemnification provisions (sections 1879(a) and (b)) of the limitation on liability provision are applicable only to claims for beneficiary items or services submitted by providers, or by practitioners and other suppliers that have taken assignment, and only to claims for services, not otherwise statutorily excluded, that are denied on the basis of section 1862(a)(1), 1862(a)(9), 1879(e), or 1879(g) of the Act. Section 1879(h) of the Act provides for refunds by the supplier to the beneficiary in the case of certain claims for medical equipment and supplies which are furnished on an assignment-related basis, and for which payment is denied. This Ruling deals primarily with section 1879(a) through (g), whereby Medicare

payment may be made, or the beneficiary may be indemnified, under certain circumstances.

The purpose of this Ruling is to provide a detailed clarification of our policy with regard to the limitation on liability provision as it applies to partial hospitalization services to ensure that Medicare payment under the policy is made in an appropriate and consistent manner. This Ruling supplements and extends HCFA Ruling 95-1.

II. DENIALS FOR WHICH THE LIMITATION ON LIABILITY PROVISION DOES NOT APPLY

Medicare payment under the limitation on liability provision cannot be made when Medicare coverage is denied on any basis other than one of the provisions of the law specified in section I. of this Ruling. There are certain claims, however, that may appear to involve a question of medical necessity, as described in section 1862(a)(1)(A) of the Act (that is, services and items found to be not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member), but the actual Medicare payment denial is based on a statutory provision other than section 1862(a)(1)(A). Under these circumstances, Medicare payment under the limitation on liability provision cannot be made because the denial is not based on one of the statutory provisions specified in section I. of this Ruling.

A particular situation in which protection under the limitation on liability provision cannot be afforded is in the case of certain partial hospitalization services coverage denials in which Medicare payment is denied on the basis of either section 1861(ff) of the Act or section 1835(a)(2)(F) of the Act.

If an individual beneficiary does not qualify for the partial hospitalization services benefit because the certification requirements of section 1835(a)(2)(F) are not met (e.g., the beneficiary would not require inpatient psychiatric care in the absence of such partial hospitalization services), then all items and services billed as partial hospitalization services must be denied under section 1835(a)(2)(F).

If the certification requirements of section 1835(a)(2)(F) are met, then, in adjudicating a partial hospitalization services claim for items or services furnished to the qualified beneficiary, an intermediary must first apply the criteria of section 1861(ff)(1)-(3) to determine whether the particular items or services furnished to that beneficiary meet the definition of partial hospitalization services, particularly the specific definitions of items and services in section 1861(ff)(2)(A)-(I). **If, thereupon, the items or services do not meet the definition of partial hospitalization services (e.g., the items or services furnished do not qualify for**

the partial hospitalization services benefit under section 1861(ff)(2)(A)-(I), or the partial hospitalization services program does not qualify for the partial hospitalization services benefit under section 1861(ff)(3)), then all those items and services billed as partial hospitalization services must be denied under section 1861(ff). These denials may be referred to as "technical denials" in contradistinction to "medical necessity denials."

III. DENIALS FOR WHICH THE LIMITATION ON LIABILITY PROVISION DOES APPLY

If the certification requirements of section 1835(a)(2)(F) are met **and** the items or services furnished to the qualified beneficiary qualify as partial hospitalization services under section 1861(ff), **then**, in adjudicating a partial hospitalization services claim, an intermediary must apply the medical necessity criteria in section 1861(ff)(2) (following section 1861(ff)(2)(I)) to determine whether the items or services furnished qualify for the partial hospitalization services benefit as being "reasonable and necessary for the diagnosis or active treatment of the individual's condition and functional level and to prevent relapse or hospitalization...", that is, whether the items or services are "medically necessary." **If, thereupon, the items or services furnished do not qualify for the partial hospitalization services benefit because they were not medically necessary, then they must be denied under section**

1862(a)(1)(A) of the Act. Such a medical necessity denial would not be denied under section 1861(ff)(2); rather, it would be denied under section 1862(a)(1)(A), which is the medical necessity exclusion of title XVIII, since Congress has not indicated an intent to give medical necessity denials of partial hospitalization services claims any less section 1879 protection than other types of medical necessity denials. Therefore, partial hospitalization services which are **otherwise covered under section 1835(a)(2) and under section 1861(ff)** can be denied under section 1862(a)(1)(A) for lack of medical necessity, in which case the protection under the limitation on liability provision can be afforded if all the elements are satisfied.

IV. DEFINITION OF "QUALIFYING"

When reference is made to a beneficiary qualifying for the partial hospitalization services benefit, this refers to provisions of the law which condition coverage upon the needs of the individual Medicare beneficiary. In order for a beneficiary to qualify for the partial hospitalization services benefit, the beneficiary first must require at a minimum the partial hospitalization level of care. The beneficiary cannot qualify under section 1835(a)(2)(F) unless he or she would require inpatient psychiatric care in the absence of partial hospitalization services, the services are based on an individualized written plan for

furnishing such services which has been established by a physician and is reviewed periodically by a physician, and the services were furnished while the individual was under the care of a physician. The beneficiary's physician must certify the beneficiary's need for partial hospitalization services. If the beneficiary meets the criteria of section 1835(a)(2)(F), then the beneficiary must also qualify for the specific partial hospitalization Services benefit actually furnished. The beneficiary cannot qualify under section 1861(ff)(2) unless he or she has a need, for the diagnosis or active treatment of his or her condition, for one or more of the covered partial hospitalization services items and services (which are defined in section 1861(ff)(2)(A)-(I)), which items and/or services would be reasonably expected to improve or maintain the beneficiary's condition and functional level and to prevent relapse or hospitalization. When reference is made to an item or service qualifying for the partial hospitalization services benefit, this refers to provisions of the law which condition coverage upon the item or service meeting the definition of partial hospitalization services, that is, whether it meets the criteria of section 1861(ff).

V. RELEVANCE OF STATUTORY BASIS FOR DENIALS

Where either section 1861(ff) or section 1835(a)(2)(F) of the Act is the statutory basis for denial of a partial hospitalization services claim, limitation on liability

under section 1879 of the Act is not applicable and such denied partial hospitalization services claims cannot be paid under limitation on liability, nor can providers or beneficiaries either be protected or be held liable under limitation on liability, because such partial hospitalization services "technical denials" are statutory coverage denials.

An intermediary can deny partial hospitalization services which are not "reasonable and necessary for the diagnosis or active treatment of the individual's condition, reasonably expected to improve or maintain the individual's condition and functional level and to prevent relapse or hospitalization" on the basis of medical necessity under section 1862(a)(1)(A) of the Act, but only when the item or service cannot be denied under either section 1861(ff) or section 1835(a)(2)(F). In these "medical necessity" denials, limitation on liability under section 1879 of the Act is applicable and such denied partial hospitalization services claims can be paid under limitation on liability, if all the elements are satisfied. Likewise, providers or beneficiaries may either be protected or be held liable under limitation on liability in such denials.

Therefore, the precise statutory basis for the coverage or denial of partial hospitalization services is crucial and determinative as to whether or not limitation on liability protections can be applied.

VI. APPEAL RIGHTS

Providers have no appeal rights with respect to partial hospitalization services denials under either section 1861(ff) or section 1835(a)(2)(F) of the Act. Providers do have appeal rights with respect to partial hospitalization services denials under section 1862(a)(1)(A) of the Act.

There are no explicit statutory limitation on liability protections for beneficiaries in the case of partial hospitalization services "technical denials" under section 1861(ff) or denials for failure to meet the certification requirements of section 1835(a)(2)(F) of the Act. Usually, this means that the provider is free to bill the beneficiary for any such denied items and services. However, beneficiaries may have some other protections. If there are issues of fraud and abuse, the provisions of sections 1128, 1128A, and/or 1128B of the Act may provide certain protections to the beneficiaries. In addition, beneficiaries may have protection under various State statutes.

VII. EFFECTIVE DATE

This Ruling is effective *February 10 , 1997*.

Dated: *2/10/97*

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Bruce C. Vladeck,
Administrator,
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