

CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-03 Medicare National Coverage Determinations	Centers for Medicare & Medicaid Services (CMS)
Transmittal 169	Date: June 27, 2014
	Change Request 8825

SUBJECT: Invalidation of National Coverage Determination 140.3 - Transsexual Surgery

I. SUMMARY OF CHANGES: The purpose of this change request (CR) is to implement the Departmental Appeals Board decision consistent with 42 CFR § 426.560(b)(2) by removing section 140.3, Transsexual Surgery, from Pub. 100-03, Medicare National Coverage Determinations Manual. Additionally, references to transsexual surgery have been removed from Pub. 100-02, Medicare Benefit Policy Manual.

EFFECTIVE DATE: May 30, 2014

**Unless otherwise specified, the effective date is the date of service.*

IMPLEMENTATION DATE: June 29, 2014 - (For clarification, 6/29/14 was referred to as the 'effective' date in recent communication; 6/29/14 is the 'implementation' date)

Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual is not updated)

R=REVISED, N=NEW, D=DELETED-*Only One Per Row.*

R/N/D	CHAPTER / SECTION / SUBSECTION / TITLE
D	1/140.3/Transsexual Surgery

III. FUNDING:

For Medicare Administrative Contractors (MACs):

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC statement of Work. The contractor is not obliged to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

IV. ATTACHMENTS:

Business Requirements

Attachment - Business Requirements

Pub. 100-03	Transmittal: 169	Date: June 27, 2014	Change Request: 8825
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EFFECTIVE DATE: May 30, 2014

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I. GENERAL INFORMATION

A. Background: The purpose of this Change Request (CR) is to inform you that the Department of Health and Human Services Departmental Appeals Board (DAB) has invalidated National Coverage Determination (NCD) 140.3 “Transsexual Surgery” pursuant to section 1869(f)(1)(A)(iii) of the Social Security Act (SSA). (Docket #A-13-47, Decision #2576) dated May 30, 2014. As a consequence of this decision, NCD 140.3 is no longer valid. Implementation of this policy shall be June 29, 2014.

B. Policy: Because the NCD is no longer valid as of the effective date, its provisions are no longer a basis for denying claims for Medicare coverage of “transsexual surgery” under 42 CFR §405.1060. Moreover, any local coverage determinations used to adjudicate such claims may not be based on or rely on the provisions or reasoning from section 140.3 of Pub. 100-03, Medicare NCD Manual. In the absence of an NCD, contractors and adjudicators should consider whether any Medicare claims for these services are reasonable and necessary under §1862(a)(1)(A) of the SSA consistent with the existing guidance for making such decisions when there is no NCD.

Therefore, the Centers for Medicare & Medicaid Services will implement the DAB decision with this CR consistent with 42 CFR §426.560(b)(2). Section 140.3 will be removed from the Medicare NCD Manual.

II. BUSINESS REQUIREMENTS TABLE

"Shall" denotes a mandatory requirement, and "should" denotes an optional requirement.

Number	Requirement	Responsibility								
		A/B MAC		H H H	D M E M A C	Shared- System Maintainers				Other
		A	B			F I S S	M C S	V M S	C W F	
8825 - 03.1	Effective for claims with dates of service on and after May 30, 2014, coverage determinations under section 1862(a)(1)(A) of the SSA for transsexual surgery will be made by the local Medicare Administrative Contractors.	X	X							

III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility				
		A/B MAC			D	C
		A	B	H H H	M A C	E D I
8825 - 03.2	CR as Provider Education: Contractors shall post this entire instruction, or a direct link to this instruction, on their Web sites and include information about it in a listserv message within 1 week of the release of this instruction. In addition, the entire instruction must be included in the contractor's next regularly scheduled bulletin. Contractors are free to supplement it with localized information that would benefit their provider community in billing and administering the Medicare program correctly.	X	X			

IV. SUPPORTING INFORMATION

Section A: Recommendations and supporting information associated with listed requirements: N/A

"Should" denotes a recommendation.

X-Ref Requirement Number	Recommendations or other supporting information:

Section B: All other recommendations and supporting information: N/A

V. CONTACTS

Pre-Implementation Contact(s): Pat Brocato-Simons, 410-786-0261 or patricia.brocatosimons@cms.hhs.gov (Coverage), Janet Brock, 410-786-2700 or janet.brock@cms.hhs.gov (Coverage), Lori Ashby, 410-786-6322 or lori.ashby@cms.hhs.gov (Coverage)

Post-Implementation Contact(s): Contact your Contracting Officer's Representative (COR).

VI. FUNDING

Section A: For Medicare Administrative Contractors (MACs):

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ATTACHMENTS: 0