

<b>CMS Manual System</b>	<b>Department of Health &amp; Human Services (DHHS)</b>
<b>Pub 100-03 Medicare National Coverage Determinations</b>	<b>Centers for Medicare &amp; Medicaid Services (CMS)</b>
<b>Transmittal 75</b>	<b>Date: SEPTEMBER 11, 2007</b>
	<b>Change Request 5727</b>

**SUBJECT: Lumbar Artificial Disc Replacement (LADR)**

**I. SUMMARY OF CHANGES:** Upon completion of a national coverage analysis for reconsideration of the national coverage determination for LADR, the decision was made that LADR is non-covered for Medicare beneficiaries over 60 years of age. This reconsideration decision reflects the change from non-coverage for a specific LADR implant (the Charite) to non-coverage for the LADR procedure for the Medicare population over 60 years of age.

This revision of section 150.10, of Pub.100-03, is a national coverage determination (NCD). NCDs are binding on all carriers, fiscal intermediaries, quality improvement organizations, qualified independent contractors, the Medicare Appeals Council, and administrative law judges (ALJs) (see 42 CFR section 405.1060(a)(4) (2005)). An NCD that expands coverage is also binding on a Medicare advantage organization. In addition, an ALJ may not review an NCD. (See section 1869(f)(1)(A)(i) of the Social Security Act.)

**NEW / REVISED MATERIAL**

**EFFECTIVE DATE: AUGUST 14, 2007**

**IMPLEMENTATION DATE: OCTOBER 1, 2007**

*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**

<b>R/N/D</b>	<b>CHAPTER / SECTION / SUBSECTION / TITLE</b>
<b>R</b>	1/Table of Contents
<b>R</b>	1/150.10/Lumbar Artificial Disc Replacement (LADR) (Effective August 14, 2007)

**III. FUNDING:**

No additional funding will be provided by CMS; contractor activities are to be carried out within their operating budgets.

**IV. ATTACHMENTS:**

**Business Requirements  
Manual Instruction**

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

# Attachment - Business Requirements

Pub. 100-03	Transmittal: 75	Date: September 11, 2007	Change Request: 5727
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**SUBJECT: Lumbar Artificial Disc Replacement (LADR)**

**EFFECTIVE DATE: AUGUST 14, 2007**

**IMPLEMENTATION DATE: OCTOBER 1, 2007**

## I. GENERAL INFORMATION

**A. Background:** This is a reconsideration of the national coverage determination (NCD) on LADR (section 150.10 of the NCD Manual).

On November 28, 2006, the Centers for Medicare and Medicaid Services (CMS) initiated a national coverage analysis for the reconsideration of the NCD on LADR. The original NCD for LADR was focused on a specific lumbar artificial disc implant (Charite™) because it was the only one with FDA approval at that time. In the original decision memorandum for LADR CMS stated that when another lumbar artificial disc received FDA approval we would reconsider our policy. Subsequently, another lumbar artificial disc, ProDisc®-L, received FDA approval which initiated the reconsideration of our NCD on LADR. After reviewing the evidence, CMS was convinced that indications for the procedure of LADR exclude the over age 60 population; therefore, the revised NCD addresses the procedure of LADR rather than LADR with a specific manufacture's implant.

This CR includes requirements for physicians and hospitals to provide appropriate liability notices to beneficiaries assuming the providers bill separately. Any provider who performs another part of the service described in this instruction that is expected to be non-covered on the basis of this coverage decision should also provide the beneficiary with appropriate liability notice in advance of the procedure consistent with chapter 30, Pub 100-04, the Medicare Claims Processing Manual.

**B. Policy:** Effective for services performed on or after August 14, 2007, the CMS has found that LADR is not reasonable and necessary for the Medicare population over 60 years of age. Therefore, LADR is non-covered for Medicare beneficiaries over 60 years of age as identified in section 150.10, of Pub.100-03, the NCD Manual.

For Medicare beneficiaries 60 years of age and younger, there is no NCD, leaving such determinations to continue to be made by the local contractors.

## II. BUSINESS REQUIREMENTS TABLE

Use "Shall" to denote a mandatory requirement

Number	Requirement	Responsibility (place an “X” in each applicable column)										
		A / B  M A C	D M E  M A C	F I    	C A R R I E R	D M E R C	R H H I	Shared-System Maintainers				OTHER
								F I S S	M C S	V M S	C W F	
5727.1	Contractors shall consider LADR a non-covered service for Medicare beneficiaries over 60 years of	X		X	X							

Number	Requirement	Responsibility (place an "X" in each applicable column)										
		A / B  M A C	D M E  M A C	F I	C A R R I E R	D M E R C	R H H I	Shared-System Maintainers				OTHER
								F I S S	M C S	V M S	C W F	
	age as indicated in Pub.100-03, the Medicare NCD Manual, section 150.10.  <b>NOTE:</b> For Medicare beneficiaries 60 years of age and younger, there is no national coverage determination, leaving such determinations to continue to be made by local contractors.											
5727.1.1	Contractors shall deny claims submitted with Category III Codes 22857 and 0163T for Medicare beneficiaries over 60 years of age, (i.e. on or after a beneficiary's 61 <sup>st</sup> birthday).	X			X							
5727.1.2	Contractors shall deny claims submitted with ICD-9-CM procedure code 84.65 for Medicare beneficiaries over 60 years of age.	X		X								
5727.1.3	Contractors need not search their files to recoup payment for claims already paid. However, contractors shall adjust claims brought to their attention.	X		X	X							
5727.1.4	Contractors shall use Medicare Summary Notice (MSN) 21.24 "This service is not covered for patients over age 60." Spanish translation: "Este servicio no está cubierto en pacientes mayores de 60 años."	X		X	X							
5727.1.5	Contractors shall use Claim Adjustment Reason Code 96 "Non-covered charge(s)."	X		X	X							
5727.1.6	Contractors shall use Remittance Advice Remark Code N386 "This decision was based on a National Coverage Determination (NCD). An NCD provides a coverage determination as to whether a particular item or service is covered. A copy of this policy is available at <a href="http://www.cms.hhs.gov/mcd/search.asp">http://www.cms.hhs.gov/mcd/search.asp</a> . If you do not have web access, you may contact the contractor to request a copy of the NCD."	X		X	X							
5727.2	Contractors shall be aware that providers shall issue the appropriate liability notice to a beneficiary over 60 years of age for a LADR procedure.	X		X	X							
5727.2.1	Contractors shall be aware that providers shall issue an Advanced Beneficiary Notice (ABN) to beneficiaries over 60 years of age who choose to have this procedure. The ABN shall indicate that after a national coverage analysis, Medicare issued a national coverage determination (NCD) (section	X			X							

Number	Requirement	Responsibility (place an “X” in each applicable column)										
		A / B  M A C	D M E  M A C	F I	C A R R I E R	D M E R C	R H I	Shared-System Maintainers				OTHER
								F I S S	M C S	V M S	C W F	
	150.10 of the Medicare NCD Manual) that states that LADR is not reasonable and necessary for Medicare beneficiaries over 60 years of age. Therefore Medicare never pays for this service for this Medicare population.											
5727.2.2	Contractors shall advise hospitals that a hospital issued notice of noncoverage (HINN) must be signed by a beneficiary over 60 years of age who chooses to have LADR.	X		X								

### III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility (place an “X” in each applicable column)										
		A / B  M A C	D M E  M A C	F I	C A R R I E R	D M E R C	R H I	Shared-System Maintainers				OTHER
								F I S S	M C S	V M S	C W F	
5727.3	A provider education article related to this instruction will be available at <a href="http://www.cms.hhs.gov/MLNMattersArticles/">http://www.cms.hhs.gov/MLNMattersArticles/</a> shortly after the CR is released. You will receive notification of the article release via the established "MLN Matters" listserv.  Contractors shall post this article, or a direct link to this article, on their Web site and include information about it in a listserv message within 1 week of the availability of the provider education article. In addition, the provider education article shall be included in your next regularly scheduled bulletin. Contractors are free to supplement MLN Matters articles with localized information that would benefit their provider community in billing and administering the Medicare program correctly.	X		X	X							

### IV. SUPPORTING INFORMATION

**A. For any recommendations and supporting information associated with listed requirements, use the box below:**

*Use "Should" to denote a recommendation.*

X-Ref Requirement Number	Recommendations or other supporting information:
	N/A

**B. For all other recommendations and supporting information, use this space:**

## V. CONTACTS

### Pre-Implementation Contact(s):

Deirdre O'Connor, (410) 786-3263

[Deirdre.oconnor@cms.hhs.gov](mailto:Deirdre.oconnor@cms.hhs.gov) (Coverage);

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### Post-Implementation Contact(s):

Appropriate RO

## VI. FUNDING

### *A. For Fiscal Intermediaries, Carriers, and the Durable Medical Equipment Regional Carrier (DMERC),:*

No additional funding will be provided by CMS; contractor activities are to be carried out within their operating budgets.

### *B. For Medicare Administrative Contractors (MAC), use the following statement:*

The contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the Statement of Work (SOW). The contractor is not obligated 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.

# Medicare National Coverage Determinations Manual

## Chapter 1, Part 2 (Sections 90 – 160.26)

### Coverage Determinations

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#### Table of Contents

*(Rev. 75, 09-11-07)*

150.10 - Lumbar Artificial Disc Replacement (LADR) (Effective *August 14, 2007*)

## **150.10 - Lumbar Artificial Disc Replacement (LADR) (Effective *August 14, 2007*)**

***(Rev.75, Issued: 09-11-07, Effective: 08-14-07, Implementation: 10-01-07)***

### **A. General**

The LADR is a surgical procedure on the lumbar spine that involves complete removal of the damaged or diseased lumbar intervertebral disc and implantation of an artificial disc. The procedure may be done as an alternative to lumbar spinal fusion and is intended to reduce pain, increase movement at the site of surgery and restore intervertebral disc height. The FDA has approved the use of the lumbar artificial disc for spine arthroplasty in skeletally mature patients with degenerative or discogenic disc disease at one level for L3 to S1.

### **B. Nationally Covered Indications**

N/A

### **C. Nationally Non-Covered Indications**

Effective for services performed *from* May 16, 2006 *through August 13, 2007*, the Centers for Medicare and Medicaid Services (CMS) has found that LADR with the Charite™ lumbar artificial disc is not reasonable and necessary for the Medicare population over 60 years of age; therefore, LADR with the Charite™ lumbar artificial disc is non-covered for Medicare beneficiaries over 60 years of age.

*Effective for services performed on or after August 14, 2007, CMS has found that LADR is not reasonable and necessary for the Medicare population over 60 years of age; therefore, LADR is non-covered for Medicare beneficiaries over 60 years of age.*

### **D. Other**

For Medicare beneficiaries 60 years of age and younger, there is no national coverage determination for LADR, leaving such determinations to continue to be made by the local contractors.

*For dates of service May 16, 2006 through August 13, 2007, Medicare coverage under the investigational device exemption (IDE) for LADR with a disc other than the Charite™ lumbar disc in eligible clinical trials is not impacted.*

(This NCD last reviewed *August 2007*.)