

MEMORANDUM

To: AHCA State Affiliates
Board of Governors
Past Chairs
Council of States
Council for Post-Acute Care
Regional Multifacility Council
Independent Owner Council
Not for Profit Council
Finance Committee
Advocacy Department

From: Bruce Yarwood

Subject: Updates on Medicare Part B Physician Fee Schedule & Therapy Caps

Date: March 3, 2010

Last night, the U.S. Senate passed a bill providing for a short term extension of a number of provisions – including the Medicare Part B therapy caps exceptions process and the freeze in the physician fee schedule – that had expired. The legislation which reinstates the exceptions process through March 31, 2010, was previously passed by the House and was promptly signed into law by President Obama last night.

These two provisions provide critical, though short term relief, with respect to two therapy issues.

- The Medicare physician fee schedule was scheduled to be slashed on January 1, 2010. Congress delayed that until Feb 28. By signing this legislation into law, the prohibition against the 21% slash has been extended through March 31, 2010. Please note that the fee schedule rates posted on the AHCA web site are thus correct until March 31, 2010. The fee schedule is not precisely the same as that in CY 2009 because of various adjustments but does not contain the threatened 21% cut.

As an update to an AHCA memorandum of last evening, providers may now file Medicare Part B therapy claims at this time without fear of a reduced reimbursement rate.

- The exceptions process for the Part B Medicare therapy cap expired at the end of December 2009. It has now been extended it through March 31, 2010. It appears that the re-implementation of the therapy cap exceptions process is retroactive to January 1 of this year, but as of yet CMS has not yet put out guidance on how to use the KX modifier.

These are short term extensions. Both the physician fee issue and the therapy caps are fixed until the end of March, not until the end of the year as some have reported. Also the bill did not contain a six month extension of the additional Medicaid Federal Medical Assistance Percentage (FMAP) support contained in last year's stimulus bill as some have reported.

We are pleased that Congress has addressed these issues for the immediate future, and are encouraged by the bipartisan commitment to take up a more long term solution by end of the month.

We are grateful to all the AHCA/NCAL members who have worked so hard to assist us with our grassroots advocacy campaign and remain committed to vigorously pursuing our objectives on Capitol Hill. As these issues continue to move forward, we will provide timely updates.

As we reported yesterday, Congress continues to work to develop legislation that would provide a longer term extension to the therapy cap exceptions process and the physician fee schedule through December 31, 2010, as well as address other programs that must be extended. Unlike previous versions that have been vehemently objected to by Senator Bunning, this legislation would draw down nearly \$18 billion from the Medicare Improvement Fund (MIF) to fully fund the doc fix and the therapy caps exceptions process. This proposal also includes a six month extension – through June 30, 2011 – of the current enhanced FMAP funding.

A summary of the health provisions as contained in this larger “extenders” package is listed below.

SUMMARY OF HEALTH EXTENDERS

Medicare Part A

Extension of Certain Payment Rules for Long-Term Care Hospital Services and of Moratorium on the Establishment of Certain Hospitals and Facilities. Extends Sections 114 (c) and (d) of the Medicare, Medicaid and SCHIP Extension Act of 2007 by one year.

Extension of the Medicare Rural Hospital Flexibility Program. Extends the authorization for the Flex Grant program through FY2011.

Section 508 Hospital Wage Index Program. Extends hospital reclassifications under section 508 of the Medicare Modernization Act (P.L 108-173) through the end of FY2010.

Technical Correction Related to Critical Access Hospitals (CAHs). Makes a technical correction to clarify that CAHs are eligible to receive 101 percent of reasonable costs for providing outpatient care regardless of eligible billing method the facility uses and for providing qualifying ambulance services.

Medicare Part B

Outpatient Hospital Hold Harmless. Extends the existing hospital outpatient hold harmless provision for small rural hospitals under 100 beds through December 31, 2010. Applies hospital outpatient hold harmless provision to sole community hospitals over 100 beds through December 31, 2010.

Sustainable Growth Rate (SGR) Extension. As of March 1, 2010, the sustainable growth rate update formula requires a 21 percent reduction in physician payments. The provision would delay this payment reduction by 10 months through December 31, 2010, effective as of March 1, 2010.

Extension of Exceptions Process for Medicare Therapy Caps. Current law places annual per beneficiary payment limits for all outpatient therapy services provided by non-hospital providers. The Secretary was required to implement an exceptions process for cases in which the provision of additional therapy services was determined to be medically necessary and this process expired on December 31, 2009. The provision would extend, through December 31, 2010, the therapy caps exception process.

Extension of Physician Fee Schedule Mental Health Add-On. The provision would extend, through December 31, 2010, the 5 percent increase in payments for certain Medicare mental health services that expired on December 31, 2009.

Extension of Ambulance Add-On. The provision would extend, through December 31, 2010, the increased Medicare rates for ambulance services, including in super rural areas that expired on December 31, 2009.

Extension of the 1.0 Floor on the Work Geographic Practice Cost Index (GPCI). The provision would extend, through December 31, 2010, the existing 1.0 floor on the work geographic adjustment that expired on December 31, 2009.

Extension of Payments for the Technical Component of Certain Physician Pathology Services. The provision would extend, through December 31, 2010, the ability of independent laboratories to receive

direct payments for the technical component for certain pathology services that expired on December 31, 2009.

Extension of Direct Billing for Indian Health Service Providers. The provision would extend, through December 31, 2010, the authorization for Indian Health Service providers to be directly reimbursed by Medicare Part B.

Accreditation Exemption for Certain Pharmacies that Furnish Durable Medical Equipment. Under current law, suppliers of durable medical equipment, prosthetics, orthotics, and other supplies (DMEPOS) must prove their compliance with quality standards by being accredited. Certain eligible professionals are specifically exempted from the accreditation requirement. The provision would make pharmacies eligible for an exemption from the accreditation requirements under certain circumstances.

Electronic Health Record Clarification. The provision clarifies the health information technology provision in current law that allows non-hospital-based physicians and other health professionals who bill Medicare and Medicaid through a hospital to receive electronic health record incentives.

Reduction in the Medicare Improvement Fund. The Medicare Improvement Fund (MIF) contains funds that are available to the Secretary to make improvements to the original fee-for-service program under Parts A and B of Medicare. Under current law, approximately \$20.7 billion is available. The provision reduces the funding available in the MIF by approximately \$17.9 billion.

Medicare Part C

Medicare Advantage Changes. The bill extends the authority of certain types of private plans to offer coverage under Medicare Advantage for one year, 2011. Those plan types are special needs plans, cost plans, and senior housing programs. The bill also includes a technical fix for existing employer-sponsored private fee-for-service plans. Finally, it provides \$20 million in added funds for State Health Insurance Assistance Programs and similar organizations that assist beneficiaries with Medicare benefits.

Other Health Extenders

Court Improvement Programs. Extends funding for court improvement and handling of court proceedings relating to foster care and adoption programs through FY 2011, originally authorized in the Deficit Reduction Act of 2005.

Family to Family Centers. Extends funding for the development and support of Family to Family Health Information Centers through FY 2011, which helps families of children with disabilities or special health care needs make informed decisions about health care. The policy was first authorized in the Deficit Reduction Act of 2005.

Extends Gainsharing Demonstration for another 21 months. The demonstration was authorized in the Deficit Reduction Act of 2005 and under current law was to end on December 31, 2009.

AHCA News Releases

Patients To Congress: Save Our Vital Therapy Services Today

Patients and Providers Advocate The Need For Immediate Extension of Financial Cap

Katherine Lehman
202 - 898-2816
FOR IMMEDIATE RELEASE
3/3/2010

Washington, DC – Afflicted patients and provider groups joined together to bring a unified message to Congress today – immediately reinstate the exceptions process for Medicare Part B outpatient therapy services. In less than sixty days, tens of thousands of individuals exceeded their arbitrary financial limit on therapy services, putting their health in jeopardy, with more hitting the cap everyday.

At a press conference on Capitol Hill, a coalition of over forty groups representing patients and providers led the fight in opposing this bad public policy. The speakers illustrated that the present statute governing the caps hinders critical therapy services, which aids patients in reaching the highest level of functioning possible.

Dr. Eric Aldrich, the president of the board of directors of the Mid-Atlantic Affiliate of the American Heart Association and American Stroke Association and an associate professor of neurology and physical medicine and rehabilitation at Johns Hopkins School of Medicine, spoke on behalf of Medicare beneficiaries who have suffered a stroke and have been forced to suspend or reduce their medically-necessary therapy when they near or exhaust their financial caps. "Now that Congress has provided some immediate relief to Medicare beneficiaries being affected by the caps, it is critical to extend the exceptions process for the longer term to allow these individuals to have the peace of mind that therapy services will be there when they need them."

"This short term reprieve of the cap is welcome. However, our advocacy efforts on behalf of our patients continue for a long-term solution to the therapy cap," said Justin Moore, PT, DPT, Vice President of Government and Advocacy at the American Physical Therapy Association (APTA).

John Schall, Deputy Chief Executive Officer of the Parkinson's Action Network highlighted the key role therapy plays for those who are afflicted by Parkinson's disease. "Our Congressional champions understand that patients' care needs are not arbitrary—in many cases, we are talking about the ability to walk or the ability to swallow. It is unfortunate that the present statute capping therapy services is based on cost rather than based on care considerations."

"These uninformed financial limits harm the most fragile of populations, cutting off crucial therapy services that are needed to help live life to its fullest and allow them to continue receiving the care they need and deserve," stated Tim Nanof, Federal Affairs Manager of the American Occupational Therapy Association (AOTA).

"We would like to thank Members of Congress who have worked to protect Medicare beneficiaries' access to critical rehabilitative services and urge them to continue the fight towards a permanent solution to the therapy caps," stated Tommie L. Robinson, Jr. PhD, CCC-SLP, and President of the American Speech-Language Hearing Association (ASHA).

As the nation's largest association of long term and post-acute care providers, the American Health Care Association (AHCA) advocates for quality care and services for frail, elderly and disabled Americans. Compassionate and caring employees provide essential care to one million individuals in our 11,000 not-for-profit and proprietary member facilities.

AHCA Applauds Congress For Passing Short-Term Fix On Therapy Services for Nation's Elderly

Long Term Care Leader Urges Congress To Enact A Longer Term Solution For Financial Limits On Therapy Services For Nation's Elderly

Katherine Lehman
202-898-2816
FOR IMMEDIATE RELEASE
3/3/2010

Washington, DC – The nation's largest long term care advocacy organization praised the Senate today for recognizing the need to reinstate the exceptions process for Medicare Part B outpatient therapy services in the short term, but urged Congress to take swift action on enacting a longer term fix for the onerous financial caps on therapy services.

"We thank the Congress for passing a short term fix to these arbitrary caps, and for recognizing that capping therapy services is based on cost but not based on care considerations," stated Bruce Yarwood, President and CEO of AHCA. "In the two short months since these financial limits on therapy services had expired, more than ten thousand vulnerable individuals in our member facilities had hit the cap and been forced to relinquish essential therapy services."

The long term care organization was one of over forty groups that came together at a press conference on Capitol Hill today, elevating the need to repeal the exceptions process for therapy services to the national spotlight. The Therapy Coalition – made up of consumer, patient, professional, and provider organizations – detailed that the arbitrary financial limits on physical therapy, occupational therapy, and speech-language pathology services could force tens of thousands of Americans to forgo critical therapy services, which aid patients in reaching the highest level of functioning possible.

"Congress has responded six times in the past to prevent Medicare beneficiaries from being negatively impacted by the therapy cap policy and we hope that they will take a permanent step and ensure that not another elderly citizen is cut off from these crucial therapy services needed to improve their conditions," Yarwood concluded. "I urge Congress to work in a bipartisan way to ensure that all Americans have access to critical rehabilitative services they need and deserve."

As the nation's largest association of long term and post-acute care providers, the American Health Care Association (AHCA) advocates for quality care and services for frail, elderly and disabled Americans. Compassionate and caring employees provide essential care to one million individuals in our 11,000 not-for-profit and proprietary member facilities.