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FINALLY, A PERMANENT FIX TO THE THERAPY CAPS

We recently released an alert about the expiration of exception processes for the Medicare therapy caps as of January 1, 2018. Since that article, the Bipartisan Budget Act of 2018 was signed into law and includes a permanent fix to the therapy caps effective back to January 1, 2018. Therapy providers should review the changes made by this legislation to ensure they are in compliance with the therapy caps and exception processes.

Summary of Therapy Caps. Medicare has two separate therapy caps: one for outpatient physical therapy and speech-language pathology services (i.e., a combined therapy cap for these services); and a second for outpatient occupational therapy services. The therapy caps are applied on a per beneficiary, per calendar year basis and increased from $1,980 in 2017 to $2,010 in 2018.

Exception Processes. Prior to January 1, therapy services above the caps were subject to the automatic exception process. Then, once therapy services exceeded $3,700 for a beneficiary, services were subject to a manual review exception process.

For dates of service on or after January 1, 2018, when therapy services are provided above the cap amounts, therapy providers can still receive payment if continued services are still medically necessary and they append the KX modifier. Then, once a beneficiary reaches $3,000 in a year for therapy services, the services become subject to a targeted medical review process.

Application of Therapy Caps to Hospital Outpatient Services. Prior to 2012, therapy services furnished to a hospital outpatient were not subject to the therapy caps, but the same legislation that created the exception processes also made the therapy caps applicable to hospital outpatient departments. In addition to extending the exception processes, the Bipartisan Budget Act of 2018 permanently extends the application of the therapy caps to hospital outpatient departments.

This also means that, once again, the provider-based regulations will not apply to facilities that only furnish outpatient therapy services since there is no payment difference compared to freestanding facilities. That is, provider-status determinations for purposes of payment will not be made for locations that only provide outpatient therapy services.

Application of Therapy Caps to CAHs. Historically, CMS did not apply the therapy caps to services at critical access hospitals ("CAHs"). However, in 2014, after reviewing the statutory language, CMS concluded that the therapy caps should be applied to outpatient therapy services furnished by CAHs. To apply the therapy caps, CMS applies the amount that would be paid under the Medicare Physician Fee Schedule toward the therapy caps rather than the actual amount that a CAH is reimbursed for the services since CAHs are reimbursed based on reasonable costs subject to cost report reconciliation and settlement. It is important to note that the application of the therapy caps to CAHs is set by regulation and was not impacted by the recent legislation.

It is important to note that the provider-based regulations still apply to outpatient departments of CAHs that only provide outpatient therapy services.

PRACTICAL TAKEAWAYS

- The Bipartisan Budget Act of 2018 permanently extends the exception processes and the application of the caps to hospital-based therapy providers.
- Providers should continue to use the KX modifier for any services that are above the cap amounts and are still medically necessary.
- Since the therapy caps and exception processes apply equally to freestanding and hospital-based outpatient departments, the provider-based regulations will not apply to facilities that only furnish outpatient therapy services.
- There are no changes with respect to the applicability of the therapy caps to services provided at CAHs, and the provider-based regulations continue to apply to outpatient departments of CAHs that only provide outpatient therapy services.

If you have questions or would like additional information about this topic, please contact:

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