

Ensure Skilled Nursing Patients Continue to Receive Medically-Necessary Medicare Part B Outpatient Therapy Services

Action for Congress: Congress should immediately reinstate the exceptions process that expired on December 31, 2009, so that skilled nursing facility patients whose medically-necessary Medicare Part B therapy services needs exceed the annual payment cap for these services. Also, Congress should direct CMS to modernize its payment policy for Medicare Part B outpatient therapy services by developing a separate prospective payment system and creating a permanent solution for repeal of the therapy cap.

Skilled nursing facilities (SNFs) provide critical and life-saving rehabilitative therapies to many medically frail, disabled, and elderly patients under the Medicare Part B program. As part of the *Balanced Budget Act of 1997 (BBA)*, annual payment caps on outpatient rehabilitation therapy services—speech language pathology, physical therapy, and occupational therapy—were established. Congress has placed numerous moratoria on these caps, and mandated in the *Deficit Reduction Act of 2005 (DRA)* that the Centers for Medicare & Medicaid Services (CMS) develop an exceptions process for Part B beneficiaries with certain conditions who exceeded the cap on therapy services in 2006. Multiple Congressional actions have extended authority for this exceptions process; the most recent extension, which granted under the *Medicare Improvements for Patients & Providers Act of 2008*, sunset on December 31, 2009. Both the *Affordable Health Care for America Act (H.R. 3962)* and the *Patient Protection & Affordable Care Act (H.R. 3590)*, would extend the exceptions process—by one year and two years respectively—although neither bill has been passed into law yet. In the meantime, many SNF patients will undoubtedly reach the current cap of \$1,860 for either physical and speech language therapies combined, or occupational therapy alone within a matter of weeks. Because continued access to therapy services is essential for so many SNF patients, AHCA strongly encourages swift Congressional action to reinstate the Medicare Part B therapy caps exceptions process.

Because SNF patients are often the most chronically ill and require significant amounts of therapy services, they are most harmed by the imposition of the therapy caps. Since SNF patients, on average, are also 10 to 15 years older than other Part B beneficiaries, the vast majority are unable to seek services in hospital outpatient departments, which are not restricted by these caps, either due to SNF consolidated billing rules that prohibit it, or because these patients are non-ambulatory and unable to access that setting. Many patients suspend or cut back on therapy when the hard cap is reached as they may be unable to pay 100 percent of the cost rather than just the co-payment for these services. Some dually-eligible patients encounter another problem – since Medicare will no longer pay for these therapy services, Medicaid may decline to cover these services as well. Regardless of the circumstance, it is poor public policy to discourage Medicare beneficiaries from achieving their highest level of functioning as quickly as possible.

While the current exceptions process recognizes the acuity and unique vulnerability of SNF residents, it was intended only as a “stop gap” measure. In the long term, AHCA supports a repeal of the therapy caps as well as the development of a new and permanent prospective payment system, built upon solid clinical factors and without artificial caps. This new system should be applicable to all settings, and reflective of clinical diagnoses, rehabilitation complexity, patient comorbidities, and duration of episode of care. Until such a system is in place, Congress must reinstate the therapy cap exceptions process immediately to ensure that Medicare beneficiaries have continued access to medically necessary Part B therapy services.

For more information, please contact Reed Franklin at rfranklin@ahca.org or (202) 898-2805.