

## SGR Delay – Impact on SNF Operations Frequently Asked Questions March 30, 2015

Facility operators are entering a period of operational uncertainty and risk related to Medicare Part B services due to the U.S. Senate's not voting on a new Sustainable Growth Rate (SGR) bill – also known as the Doc Fix – prior to the March 31 expiration of the current SGR and therapy cap exceptions process. There are two major issues that we want to alert you to and provide preliminary recommendations, as there is no current guidance from the Centers for Medicare and Medicaid Services (CMS).

These recommendations, as well as the content provided in the detailed FAQ document below, are based upon current available information and have been reviewed and commented on by the AHCA Finance Committee's Billing and Operations Subcommittee and the Therapy Policy Advisory Group. We encourage SNF operators to review and consider these recommendations within the context of their current operational policies.

### **First Issue**

Technically, a -21.2 percent adjustment would apply to the Part B fee schedule effective April 1. However, if the SGR bill is enacted when the Senate returns from recess, this will not apply and there will be a 0.0 percent adjustment from April 1 – June 30. CMS will most likely hold processing of Part B claims for up to 14 days to avoid changing its billing systems while Congress acts.

**To mitigate this risk, AHCA recommends that SNF operators hold any Part B claims with dates of services on or after April 1 until it is clearer what will happen in the Senate.**

Most SNF operators typically bill on a monthly basis so that April dates of service would not be billed until May. We believe this will be sufficient time to let the legislative process proceed so that care centers will not have to change charge masters or resubmit claims, assuming the SGR bill is enacted after the Senate returns from recess in two weeks.

### **Second Issue**

Technically, the therapy cap exceptions process expires on March 31 and there will be a hard \$1,940 therapy cap with no exceptions. However, if the SGR bill is enacted when the Senate returns from recess, this will not apply. The problem is that until Congress acts, any therapy services furnished over the \$1,940 threshold during this period of uncertainty could pose payment liability risks.

**To mitigate this risk, AHCA recommends that SNF operators issue Advance Beneficiary Notices (ABNs) to beneficiaries needing Part B therapy services beyond the \$1,940 threshold as of April 1, 2015.** This notice will provide necessary beneficiary and provider payment liability protections depending on the resolution of the current SGR vote delay in the Senate.

For a more detailed explanation of these risks, please review the following FAQs and share within your billing, therapy and other affected operational personnel.

Please contact Dan Ciolek at [dciolek@ahca.org](mailto:dciolek@ahca.org) with any questions.

## **Claims Processing**

- Q: When the Senate passes the SGR bill, will the original 21.2 percent reduction in the Therapy fee schedule apply from April 1, 2015 until the day of enactment?
- A: Technically, no. Section 101 of the SGR bill provides very specific dates for the update factors of the SGR. The current language would require CMS to apply a 0.0 percent adjustment (instead of a -21.2 percent adjustment) from January-June 2015 and a 0.5 percent positive adjustment from July-December 2015, as well as an adjustment schedule through 2025 and beyond. Any negative adjustments that may have been applied to claims by CMS before the date of enactment would be readjusted to the SGR bill's mandated rates.
- Q: If the Senate passes the SGR bill, how will SNF claims be processed from April 1, 2015 until the date of enactment?
- A: For Part A SNF PPS claims and Part B claims with dates of service on or before March 31, 2015, there will be no impact, as this legislation does not apply to those services. For Part B claims with dates of service on or after April 1, 2015, CMS is likely to put a hold on processing these claims, which they are permitted to do for up to 14 calendar days after receipt. [CMS has indicated](#) that such notice will be provided no later than April 11, 2015. AHCA recommends submitting Part A claims as usual. However, until CMS provides further guidance, we recommend that SNF operators hold the submission of Part B claims with dates of service on or after April 1, 2015.
- Q: What will happen if the Senate does not pass the SGR bill before the latest date that CMS is permitted by law to hold claims?
- A: CMS has provided notice that its systems are prepared to apply the -21.2 percent Part B fee schedule rate adjustment as required by law if the Senate delay extends beyond the last day CMS can legally hold claims. Because of this potential scenario, AHCA recommends holding Part B claims with April 1, 2015 or later dates of service until further notice. Typically, SNF providers submit claims on a monthly basis, so we anticipate that this potential issue would not impact most SNF operators if the Senate passes the legislation before the end of April. If SNF operators did submit claims under this scenario and received a negative adjustment, any negative adjustments that may have been applied to claims by CMS before the date of enactment would be readjusted to the SGR bill's mandated rates.
- Q: Does AHCA have a fee schedule calculator available that would reflect the applicable procedure code rates?

A: Yes. The current AHCA [2015 Medicare Part B Fee Schedule \(January 1, 2015 through March 31, 2015\)](#) file will continue to be valid for all claims through June 30, 2015 based upon the bill. We will rename this file and post the new fees for July 1, 2015 through December 31, 2015 as soon as possible on the AHCA [Medicare Resources](#) page once the applicable rates are known. We will also post revised fees effective April 1, 2015 in the unlikely event the legislation does not pass.

## Therapy Cap

Q: If the Senate passes the SGR bill, will the hard \$1,940 therapy cap apply from April 1, 2015 until the date of enactment?

A: Technically, no. Section 202 of the bill clearly extends the exceptions process through December 31, 2017 with no interruptions from the onset of the exceptions process several years ago. However, it is unclear how therapy providers would be able to submit claims for services above the \$1,940 threshold furnished during the period of uncertainty, from April 1, 2015 until enactment of the SGR legislation. AHCA has submitted a request for guidance from CMS, which it has indicated will be available early this week.

Q: Can therapy services continue to be furnished to beneficiaries above the \$1,940 threshold beginning April 1, 2015?

A: Yes. However, it is currently unclear who would be responsible for payment of the services because:

1. The SGR bill authorizing Medicare Part B therapy cap exceptions process coverage has not been enacted yet; and
2. CMS has not issued guidance yet regarding beneficiary notice and coding requirements.

Q: Do we need to notify beneficiaries/responsible parties that have reached the \$1,940 cap threshold that they could be liable for continued Part B therapy services furnished on or after April 1, 2015?

A: That does appear to be true. According to the most recent relevant [CMS ABN FAQ](#) regarding this subject:

*Section 603 (c) of the American Taxpayer Relief Act (ATRA) of 2012 (PL 112-240, January 3, 2013) amended §1833(g)(5) of the Social Security Act (the Act) to provide limitation of liability (LOL) protections to beneficiaries receiving outpatient therapy services on or after January 1, 2013, when services are denied and the services provided are in excess of therapy cap amounts and don't qualify for a therapy cap exception. **Now, the provider/supplier must issue a valid, mandatory ABN to the beneficiary before providing services above the cap when the therapy coverage exceptions process isn't applicable.** The ABN informs the beneficiary why Medicare may not or won't pay for a specific item or service and allows the beneficiary to choose whether or not to get the item or service and accept financial responsibility. ABN issuance allows the provider to charge the beneficiary if Medicare doesn't pay. If the ABN isn't issued when it is required and Medicare doesn't pay the claim, the provider/supplier will be liable for the charges.*

However, this CMS guidance is dated and the examples provided only describe scenarios where there is an exceptions process in place and not the current situation where legislation permitting exceptions is essentially 'pending.' AHCA has submitted a request for guidance from CMS, which it has indicated will be available early this week.

Q: Do we need to do any special coding if we furnish therapy services on or after April 1, 2015 and before the enactment of the SGR bill?

A: We do not believe so. Under the existing exceptions process, therapy providers that attest the services furnished above the \$1,940 threshold to be medically necessary must use the -KX modifier to obtain Medicare Part B payment as described in the [CMS ABN FAQ](#). However, it is unclear how therapy providers would be able to submit claims for services above the \$1,940 threshold (including use of the -KX modifier) during the period of uncertainty, from April 1, 2015 until enactment of the SGR legislation. AHCA has submitted a request for guidance from CMS, which it has indicated will be available early this week. However, pending further clarification from CMS, we recommend no changes be made to the current process of appending the -KX modifier to services furnished above the \$1,940 threshold.

Q: Where do we obtain a copy of the Advance Beneficiary Notice (ABN) form and instructions?

A: <http://cms.gov/Medicare/Medicare-General-Information/BNI/ABN.html>

For questions related to this FAQ, please contact Dan Ciolek at [dciolek@ahca.org](mailto:dciolek@ahca.org).