

Eli's Rehab Report

Outpatient Outlook: Get Ready: Therapy Caps Exceptions Hang on a String for 2012

U.S. House and Senate hammering out a last-minute fix.

Once again, outpatient therapists face more than their share of holiday stress with a plummeting SGR and therapy cap exceptions expiring in 2012. It's the same old story every December, with similar last-minute Congressional bailouts, but this year, Congress is drafting some fixes with a different twist.

Cross Your Fingers for the House Version

The House of Representatives recently drafted HR 3606, the Middle Class Tax Relief and Job Creation Act, which includes not only an extension to the therapy cap exceptions process, but also changes the 27.4 percent cut to the Medicare Physician Fee Schedule Sustainable Growth Rate (SGR) to a 1 percent increase.

Even better: HR 3630 would fix these two looming issues not for one, but two years (until Jan 1, 2014). "The two-year extension is key because it would get us through the big election year in 2012," says **Tim Nanof**, director of federal affairs for the American Occupational Therapy Association. Passing any kind of legislation during a presidential election and lame duck session is challenging, he explains.

HR 3630 also puts the therapy cap exceptions process and the fee schedule issues in the same legislation. "Keeping those two issues connected is very important for [legislative] action in the future," Nanof says.

The Senate's legislation, on the other hand, doesn't include as many bells and whistles for the therapy community. "There is not a lot of support for this general, overall bill in the senate," Nanof observes. "I would be surprised if this House-passed bill goes through as-written, but I do think [Congress] will act to address the fee schedule and the cap before the end of the year."

"I envision that pieces of [HR 3630] will likely be in a final bill, predicts **Mandy Frohlich**, director of federal affairs for the American Physical Therapy Association.

Following Eli's interview with Nanof and Frohlich, the Senate passed its version of the legislation, which includes a two-month extension to the therapy cap exceptions process. Now, the two chambers must agree on a bill for the President to sign into law.

2 New Therapy Cap Ideas Emerge

Although nothing is set in stone at this point, be aware of two major changes the House bill proposes.

1) Hospital outpatient settings would fall under the therapy caps. "We can't truly support an arbitrary cap being placed in another setting, but we think this would be a better approach than having segmented policy across different outpatient settings," Frohlich says.

Good news: High-dollar therapy utilization in outpatient hospital settings is around 4 percent of beneficiaries, compared to 15 percent in other settings, so the impact to hospitals would be reasonably low, Nanof says.

2) Therapy cap exceptions would become "two-tiered." After reaching a patient's \$1880 limit, therapists would bill with the KX modifier, as usual, but after hitting \$3700, a manual review would have to take place to ensure the plan of care would be medically necessary. "Generally we're happy about this because it would still allow, overall, a path to care,"



Frohlich says.

So, hang tight while Congress irons out a solution for the therapy caps exceptions and SGR for 2012. Even if HR 3630 is scrapped, bits and pieces could show up in the final legislation -- this year or further down the road.