

## Eli's Rehab Report

### Outpatient Outlook: Saved by a Thread: Therapy Cap Exceptions Process Safe for Now

See what CMS has up its sleeve for long-term solutions.

Good news: The therapy cap exceptions process that expired July 1, as well as the 10.6 percent Medicare pay cut that took effect, have now been reversed. After a lot of back and forth between Congress, CMS and **President Bush**, the Medicare Improvements for Patients and Providers Act (H.R. 6331) emerged victorious, assuring relief to therapy providers and their beneficiaries.

A hard-fought battle: Congress was unable to reach a solution before its July 4 recess to extend the exception process and halt the 10.6 percent cut to the Medicare Physician Fee Schedule (MPFS), but shortly after its return, on July 9, Congress passed H.R. 6331 -- and was able to override a presidential veto in one day. The controversy over the bill arose due to its cuts to Medicare Advantage plans, which Democrats generally favored and Republicans opposed.

Exceptions, Fee Schedule Rate Still on Timeclock

It's the same old story: the exceptions process and the MPFS are good for several months; then Congress will have to renew them. "I have no doubt that it will be tough when the time comes," says **Christina Metzler**, chief public affairs officer for the American Occupational Therapy Association. But at that point there will be a new president in office, bringing a different dynamic to Capitol Hill -- and health care issues may be lucky enough to take a higher priority, she suggests.

For now: The MIPPA legislation gives therapy providers another 18 months with the exceptions process, with a new expiration date at Dec. 31, 2009. For the MPFS, its conversion factor is back to 2008 rates for another six months, followed by an increase by 1.1 percent on Jan. 1, 2009. This rate will continue until Dec. 31, 2009.

If your claims were affected by the 10.6 percent pay cut, "to the extent possible, contractors will begin to automatically reprocess any claims paid at the lower rate in a timely manner," the agency said in a press release. Likewise, "claims submitted with the therapy cap exception modifier [KX] will be processed as soon as the payment rates have been activated," CMS said.

Don't miss: "Other key provisions [in MIPPA] will delay competitive bidding for durable medical equipment, prosthetics, orthotics and supplies and restore important payment protections for rural providers," notes the American Physical Therapy Association in a July 10 press statement.

In addition, MIPPA includes sections on cardiac and pulmonary rehab standards, one of which requires a psychosocial evaluation. "We'll be making sure OTs are allowed to perform that evaluation because it's definitely within their scope of practice," Metzler says.

5-Year Study May Reveal Other Answers

At least for the exceptions process, the off-and-on pattern of Congressional extensions will continue until new legislation repeals the therapy caps. But experts aren't so sure if a full repeal is the answer. "There's a high cost associated with the repeal, and the exceptions process is a good short-term solution," explains **Ingrida Lusic**, director of federal and policy advocacy for the American Speech-Language Hearing Association.

Metzler believes the exceptions process could even be a good long-term solution and the alternative to the cap everyone's been looking for. "Data from 2006 showed a reduction in the cost of therapy services -- but not in the number

of people receiving those services," she tells TCI. In addition, the exceptions process emphasizes the importance of the clinician's decision making.

But experts agree that constant "temporary fixes" required to keep the exceptions process running is less than ideal. "Congress should be embarrassed to have doctors and seniors come to Washington hat-in-hand every six months or 12 months or 18 months," said Sen. **John Cornyn** (R-TX) in a statement following the Senate's vote passing MIPPA.

Another option: CMS has contracted Research Triangle Institute (RTI) to conduct a 5-year study on Developing Outpatient Therapy Payment Alternatives (DOTPA). The study will include creating a patient assessment tool and a data collection strategy to study beneficiary need for outpatient therapy and the effectiveness of therapy services.

Because it would cost so much money to repeal the caps, it's doubtful the study will trigger a repeal, Lulis says, but it may help develop a different cost-saving method that replaces the caps.

Note: RTI will soon be recruiting individual clinics to participate in the study, so watch for further developments in the next issue of Physical Medicine & Rehab Coding Alert.