

Eli's Rehab Report

Outpatient Outlook: Therapy Caps Knock on Critical Access Hospitals' Doors

Proposed 2014 Medicare Physician Fee Schedule creates discrepancy between CAHs, regular hospitals.

Heads up, critical access hospitals: Therapy caps could come to your neighborhoods in 2014 ☐ and stick around for good. In an attempt to formalize and interpret language in the American Taxpayer Relief Act of 2012, the **Centers for Medicare & Medicaid Services'** (CMS) proposed 2014 Medicare Physician Fee Schedule rule suggests applying therapy caps to critical access hospitals (CAHs) ☐ the one setting remaining that is exempt from the therapy caps.

CAHs are special hospitals located in rural areas. To be considered a CAH, the facility must be either 35+ miles from another hospital or 15+ miles from another hospital in mountainous terrain/an area with only secondary roads.

Background: Congress deemed hospitals under therapy caps for the first time in late 2012 under the Middle Class Tax Relief and Job Creation Act, then extended this ruling through the end of 2013 via the American Taxpayer Relief Act. However, CAHs were declared exempt. The inclusion of hospitals under the therapy caps will expire on Dec. 31, 2013, without an act of Congress.

CAHs vs. Hospitals: Not So Fair and Square

In the proposed rule, "CMS has modified its previous interpretation of the law to include CAHs [permanently, under the therapy caps], regardless if Congress continues to extend the provisions of the therapy caps to all hospitals," says **Lisa Satterfield**, director of health care regulatory advocacy for the **American Speech-Language Hearing Association**.

Therapy advocates consider this faulty interpretation ☐ that both CAHs and regular hospitals should be treated in the same fashion. In other words, if hospitals don't remain under the therapy caps next year, then neither should CAHs.

Experts are also concerned because hospitals and CAHs have been a "safety net" for medically complex patients who required services above the therapy caps.

Therapy Cap Exceptions Left Hanging

As usual, the ability to use the KX modifier for therapy cap exceptions expires at the end of the year without an act of Congress.

Also, the proposed rule "does not couple the extension of the therapy cap exceptions process with the permanent application of the cap to hospital outpatient departments and CAHs," notes **Jennifer Hitchon, JD, MHA**, counsel & director of regulatory affairs for the **American Occupational Therapy Association**. CMS does, however, propose to subject services above \$3,700 to medical review in CAH settings.

Take action: You have until Sept. 6, 2013, to comment on this proposed rule. Contact your professional association with your specific concerns so they may comment on your behalf, or submit your own comments via www.regulations.gov. Follow the instructions for "submitting a comment."

To view the proposed rule, see <http://tinyurl.com/l4gtw28>. CMS will publish its final rule around Nov. 1, 2013.

