

## **Medicare Therapy Cap Exceptions Process Should be Made Permanent**

As bipartisan support emerges for a permanent fix to the Sustainable Growth Rate (SGR) formula, the Leadership Council of Aging Organizations (LCAO) strongly urges Congress to include a permanent fix to the therapy cap exceptions process.

### **Background**

The Balanced Budget Act of 1997 imposed a limit on the annual amount of Medicare coverage available for beneficiaries receiving outpatient therapy services. Two distinct caps were placed on therapy services: for physical therapy (PT) and speech language pathology service (ST) combined, the limit on incurred expenses is \$1,900 in 2013; for occupational therapy (OT) services, the limit is also \$1,900 in 2013.<sup>1</sup> The therapy cap applies to all Part B outpatient therapy settings and providers, including: private practices, skilled nursing facilities, home health agencies, outpatient rehabilitation facilities, comprehensive outpatient rehabilitation facilities, and hospital outpatient departments.

The caps were intended to go into effect in 1999, however, starting that year, Congress acted approximately ten times to prevent the implementation of the therapy caps either through a moratoria or by establishing an “exceptions” process to partly compensate for these coverage limits.

This exceptions process, created through the Deficit Reduction Act (DRA) of 2005, allows individuals and providers to seek coverage above the cap. Automatic exceptions are available when therapists attest that ongoing therapy services are reasonable and necessary and must be justified by supporting documentation in the beneficiary’s medical record. Starting in 2012, claims exceeding a threshold of \$3,700 (either for PT and ST combined, or separately for OT) are subject to a mandatory manual medical review by Medicare contractors.<sup>2</sup>

Extension of the exceptions process in recent years has been included as an “extender” to the annual “doc fix” legislation preventing the Medicare physician payment formula (Sustainable Growth Rate or SGR) from going into effect. Most recently, the American Taxpayer Relief Act of 2012 extended the therapy cap exceptions process through the end of 2013.

### **Our Position:**

The Medicare therapy caps serve as a significant barrier to accessing necessary therapy services for individuals with long-term, chronic conditions. These arbitrary caps are aimed at federal cost savings rather than providing clinically appropriate service. Further, these caps disproportionately affect the most vulnerable Medicare beneficiaries who require ongoing therapy services.

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<sup>1</sup> Centers for Medicare and Medicaid Services (CMS), [“Therapy Cap Fact Sheet”](#) (January 2013)

<sup>2</sup> Centers for Medicare and Medicaid Services (CMS), [“Overview of the Therapy Threshold of \\$3,700 for Calendar Year 2013”](#) (2013)

**LCAO urges Congress to repeal the therapy caps. In the absence of full repeal of Medicare therapy caps, Congress should make the exceptions process permanent.** While flawed, the current exceptions process is the only avenue for an individual to obtain needed therapy services that exceed the annual cap.

**Further, the current exceptions process should be revised.** The current manual review process, triggered when a beneficiary reaches the \$3,700 cap, has proven burdensome for health care providers. As a consequence, it deters some providers from processing exceptions, thus limiting beneficiary access to needed therapy services. As a result, many beneficiaries with chronic conditions who need ongoing therapy, arguably those who most need the care, go without therapy services altogether, and access is not restored until the beginning of the next calendar year.

**As bipartisan support emerges for a permanent SGR fix, the LCAO strongly urges Congress to include a permanent fix to the therapy cap exceptions process.** At the same time, LCAO urges a permanent solution be included for the Qualified Individual (QI) program.<sup>3</sup>

### **Our Rationale:**

**A permanent SGR fix, absent a permanent therapy cap exception fix, would jeopardize beneficiary access to needed therapy services.** While hurdles remain, particularly with regard to offsets, bipartisan support for a permanent SGR fix appears to be gradually emerging. This presents serious opportunities and risks for the therapy cap exceptions process and the vulnerable Medicare beneficiaries who depend on it.

A permanent SGR fix provides a vehicle for making permanent the therapy cap exceptions process. On an annual basis, the one-year SGR patch or “doc-fix” served as the catalyst for a one-year extension of the therapy cap exceptions. In the absence of this legislative vehicle, ongoing extension of the therapy cap exceptions would be at risk, threatening beneficiary access to needed care.

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<sup>3</sup> See: Leadership Council of Aging Organizations, [“Medicare Part B Premium Low-Income Protections Under the Qualified Individual \(QI\) Program Should be Made Permanent”](#) (July 2013)