

Health Law Alert

A report
for clients
and friends
of the firm

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New Instructions Permit Providers to Reopen Previously Denied Claims

Skilled nursing providers ("SNFs") sanctioned with payment bans for new admissions ("DPNA") imposed by the Centers for Medicare and Medicaid Services ("CMS") now have the ability to resubmit and obtain reimbursement for certain improperly denied Medicare Part A and B payments. These and other directives were set forth in a Program Memorandum ("PM"), designated as Transmittal AB-01-131, that CMS issued to Intermediaries and Carriers on September 21, 2001. The PM clarifies CMS's policies regarding the application of payment sanctions imposed for adverse survey findings and directs fiscal intermediaries and carriers ("FIs") to reprocess and pay certain categories of claims previously denied in connection with new admissions that took place during the sanctions period. The PM is retroactive to January 1, 1999 but is not due to be implemented until October 22, 2001.

SNFs potentially affected by the PM include those denied payment for beneficiaries (1) who were admitted before the effective date of the DPNA but who returned to the facility after a temporary leave to receive inpatient hospital care, outpatient services, or other therapeutic services; (2) who met the technical requirements for Part A coverage, were admitted during the DPNA, but for whom benefits were denied; and (3) who were eligible for Part B benefits but for whom Part B payment was denied during the DPNA.

SNFs that were denied payment for beneficiaries falling into any of these categories must request the FI to reopen denied claims because reopenings will be done *on a request basis only*. This firm can assist any SNF in assessing whether claims denied due to a DPNA were erroneously denied and in resubmitting denied claims.

The PM specifically clarifies fourteen issues that generated confusion among FIs, frequently resulting in claims being denied:

- Part B payments will continue even when a Part A ban is in effect.
- "New Admissions," for the purpose of a Part A ban, do not include residents who leave temporarily.
- Readmitted residents will be evaluated based upon their beneficiary status to determine if they are subject to a ban.
- Part A payments for new residents admitted during a ban will begin on the date the sanction is lifted.
- A provider's assumption of responsibility for beneficiary costs during a ban will be considered the same as a program payment.
- SNFs liable for Part A stays are required to provide the necessary covered Part A services mandated under consolidated billing.
- SNF days during a ban will be used to track breaks in a Part A stay.
- Beneficiaries may not be held financially responsible for copayments during a Part A stay during a ban.
- The 30-day transfer requirements for SNFs that are not under sanctions also apply to facilities under sanctions.
- SNFs must perform MDS assessments even while under a ban.
- Physician certification requirements apply during a ban but will not serve as the sole basis for denying claims.
- Beneficiaries admitted after a qualifying hospital stay and grouped into a top 26-RUG-III group are presumed to meet the Medicare level of care criteria.

- FIs will initiate action only when a sanction has actually been imposed.
- FIs must reprocess and pay claims denied during a sanction after the ban has been retroactively removed.
- Providers are authorized to request that FIs reopen and process bills denied as a result of the FI's misunderstanding of the sanction requirement.

Background

Under federal laws and agency regulations, CMS *may* impose a denial of payment for new admissions against a SNF whenever CMS finds that the facility is not in substantial compliance with requirements of participation. Still, a DPNA *must* be imposed under the regulations in two circumstances: (1) when a SNF fails to be in substantial compliance for three months after the last day of the survey identifying the noncompliance; or (2) when a SNF is found to have provided substandard quality of care on the last three consecutive standard surveys. Once CMS has imposed a DPNA sanction, FIs must apply the sanction to new SNF admissions.

In a host of situations, however, different FIs adopted disparate methods of applying these sanctions. The result was a hodgepodge of interpretations that muddled the already murky waters of Medicare reimbursement. Providers had few options available to them. When a FI misapplied the rules, providers had three equally unpalatable courses of action at their disposal. First, they could challenge the FI's decision administratively.¹ Second, they could simply accept the FI's erroneous construction at the price of lost reimbursements. Third, as a longer-term strategy, providers could attempt to change FIs - an often cumbersome and difficult procedure.

The new instructions should eliminate much of the confusion created by the lack of consistency on the part of FIs and will permit many providers to obtain payment for claims previously denied. The PM directs the FIs to administer payment bans as follows:

Payment Bans and SNF Services

Because SNFs under a denial of payment sanction are still considered Medicare-participating providers, a Medicare beneficiary who is not in a Part A stay but who is residing in a SNF subject to a Medicare Part A payment ban is entitled to Part B payment

for all services that are normally covered under Part B for any SNF resident in a participating facility.

New Admissions

"[T]emporary leave," as it is used in 42 CFR § 488.401, applies to any resident who leaves temporarily for any reason. Residents not subject to a denial of payment when they went on temporary leave would not, upon their return, be considered new admissions for the purposes of the denial of payment.

Readmissions and Transfers

When determining whether a readmitted resident is subject to a ban, the actual status of the beneficiary will govern. This means, for example, that when a private pay resident transfers to a hospital for care and returns to the SNF after a qualifying Medicare Part A stay, the resident will be exempted from the denial of payment sanction.

Beneficiaries Admitted During Ban

When facilities admit new residents to certified beds, Part A payments for eligible beneficiaries will begin on the date the sanction is lifted.

Calculating Part A Benefit Periods

If a Medicare-participating SNF assumes responsibility for the beneficiary's costs during the sanction period, it will be considered the same as a program payment and the days will count towards the 100-day benefit period.

Consolidated Billing Requirements

When the SNF is liable for the Part A stay, the SNF is required to provide all necessary covered Part A services mandated under consolidated billing. However, the beneficiary is entitled to reimbursement for those services excluded from the SNF PPS rate.

Tracking the Benefit Period

SNF days during the sanction period will be used to track breaks in the spell of illness. If the patient is receiving a skilled level of care, the benefit period cannot end.

¹This avenue was problematic in its own right because it is not entirely clear whether the DAB or the PRRB has jurisdiction over matters of this sort. While the fact that the matter derives from a sanction suggests that the DAB would have jurisdiction, the reimbursement nature of the issue suggests that the PRRB would have jurisdiction. In either case, however, the long and drawn out nature of administrative challenges is often cost prohibitive for providers

Beneficiary Financial Responsibility

SNFs may collect the copayment for beneficiaries whose stays are not subject to the payment ban; however, they may not charge a copayment for Part A-covered days for beneficiaries admitted after the effective date of the payment ban.

Meeting Transfer Requirements

Because it is possible that a beneficiary may remain at a facility under sanction for a period of time and later transfer to a second SNF, FIs must apply the 30-day transfer requirement in the same way it would be for a beneficiary transferring between two SNFs that are not under sanction.

Completing MDS Assessments

A SNF's responsibility to perform MDS assessments in accordance with the clinical schedule defined in the SOM is not waived under the imposition of sanctions.

Physician Certification

SNFs that are operating under a payment ban must still obtain physician certification for treatments rendered. However, when processing reconsiderations for service periods prior to the effective date of this PM, the lack of a physician certification should not be used as the sole reason for denial.

SNF PPS Coverage Criteria

Under the SNF PPS, beneficiaries who are admitted directly to a SNF after a qualifying hospital stay and who fall into one of the top 26 RUG-III groups on the Medicare 5-day assessment are presumed to meet the Medicare level of care criteria. When a beneficiary is admitted to a SNF when a payment ban is in effect, Medicare benefits are not available until the date the sanction is lifted. However, the SNF PPS coverage presumption is calculated from the date the beneficiary was transferred from the hospital to the SNF.

FI Processing Responsibilities

FIs should initiate action only when notified that sanctions actually have been imposed.

Retroactive Removal of Sanctions

When a ban is removed retroactive to its effective date and claims were denied before the FI received notice that the ban had been reversed, the FI should reprocess and pay the claims.

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