

News Currents

In Brief

Therapy Caps Exception Plan Released

Most SNF Patients Meet CMS Criteria

Medicare patients with certain medical diagnoses, clinical conditions, and complexities will automatically be excluded from the Part B cap on therapy services, which took effect Jan. 1 under an exceptions process developed by the Centers for Medicare & Medicaid Services (CMS).

The American Health Care Association (AHCA) is seeking to replace therapy caps altogether with a condition-based payment system that takes into account a patient's diagnosis, age, gender, and other variables. To ease the immediate impact of the \$1,740 annual cap, however, AHCA and the National Association for the Support of Long Term Care pushed for a provision in the recently enacted Deficit Reduction Act, requiring an exceptions process for beneficiaries whose therapy needs exceed the ceiling.

As a result, CMS has developed two types of exceptions that allow patients to qualify for additional services.

Automatic exceptions apply to patients whose medical problems are among those included in a list of 93 diagnostic codes and clinical conditions. The list—published by CMS as Transmittal 853, Publication 100-4—includes joint replacement (hip, knee, or shoulder), diabetes, obesity, dementia, Parkinson's disease, nervous system

disorders, congestive heart failure, pneumonia, chronic obstructive pulmonary diseases, chronic skin ulcer, rheumatoid arthritis, osteoarthritis, difficulty walking, and various types of bone fractures.

In addition to these conditions,

patients may be automatically exempted from the cap for certain “clinically complex situations,” such as the need for therapy to reduce assistance with activities of daily living. Com-

plexities that qualify for an automatic exception are described in a CMS fact sheet available on its Web site at www.cms.hhs.gov/apps/media/press/release.asp?Counter=1782.

CMS expects that most beneficiaries who need therapy beyond the cap limit will qualify for automatic exceptions. Those who do not, however, may still gain approval for additional services with a written request from providers.

Under this manual process, requests must be accompanied by documentation—including evaluation and certified care plans, progress reports, and treatment notes—showing that services are medically necessary.

Exception requests should be submitted before patients reach the cap and must reflect the amount of additional therapy the beneficiary is expected to need, up to a maximum of 15 days. New requests must be submit-



AIA Avoids Prescriptive Guidelines

The American Institute of Architects' (AIA) “2006 Guidelines for Design and Construction of Hospitals and Health Care Facilities,” scheduled for publication this month, will preserve the resident-centered model as the standard for assisted living facilities, according to AIA.

While these guidelines carry no direct authority, AIA says 42 states and many federal agencies use them as a basis for licensing and regulatory policies. A multiyear lobbying effort, spearheaded by the National Center for Assisted Living, helped convince AIA to exclude highly prescriptive construction guidelines such as the size of residents' rooms, the number of parking spaces per unit, and the number of Alzheimer's units per facility—all of which threatened the residential and consumer-oriented environment that typifies assisted living facilities.

The AIA guidelines are updated on a four-year cycle by the institute's multidisciplinary Health Guidelines Revision Committee. Individuals knowledgeable about health care practices and health care facility design—including architects, physicians, facility managers, engineers, nurses, and state regulators—participate in the development of the guide's content.

—Lisa Gelhaus

ted each time a patient's needs are expected to surpass approved limits.

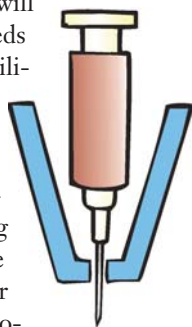
The exception process takes effect March 13. CMS says providers whose claims were denied due to the cap should ask carriers to reopen them. In addition, providers with outstanding therapy claims since the cap took effect should submit them for payment, the agency says.

—Lynn Wagner

Pandemic Planning In The Works

New Guide For Long Term Care Due Out Soon

A group of long term care stakeholders, including the American Health Care Association (AHCA), have joined forces with the federal Centers for Disease Control and Prevention (CDC) on a checklist to help providers plan for an influenza pandemic. The tool will target the special needs of long term care facilities and help providers manage a variety of challenges, such as creating contingencies for staffing shortages, says Janice Zalen, AHCA's senior director of special programs. A separate checklist is being prepared for Alzheimer's care.



AHCA, along with the Alzheimer's Association, the American Medical Directors Association, the American Association of Homes and Services for the Aging, and the National Association of Directors of Nursing Administration/Long Term Care are collaborating with CDC on the initia-

tive. CDC has created similar checklists for hospitals and doctors.

The hospital checklist, which is part of a larger toolkit, covers a range of operational issues, including:

- n Development of a written plan for pandemic influenza;
- n Development of a communications plan that assigns responsibility for communicating with public health agencies, the media, and other health facilities;
- n A facility access plan that sets poli-

cies for closure of a hospital to new admissions and visitors;

- n A facility guide for training staff on the influenza plan;
- n A housing strategy allowing personnel to remain on site; and
- n A system for managing symptomatic personnel.

Once the long term care checklist is approved, it will be released as part of the Department of Health and Human Services.

—Lynn Wagner

Still Time To Prebook Flu Vaccine

The American Health Care Association (AHCA) is advising long term care providers who have not already done so to place advance vaccine orders for the 2006-2007 influenza season. One manufacturer, Sanofi Pasteur, began pre-booking on Jan. 31 and experienced such a huge demand—more than 200,000 requests in the first eight hours—that it has committed all of its doses for the next season.

Providers should contact their pharma-

cies or distributors now, AHCA says. Other potential sources for injectible vaccines include Chiron Corp., which plans to produce 40 million doses, and GlaxoSmithKline, which expects to have at least 7 million doses available. Though not yet approved, GSK/ID Biomedical is planning for 15 million to 20 million doses.

Vaccine supplies can fall short as new virus strains emerge, which is why prebooking is so important.

Bill Would Give A Boost To Long Term Care Insurance

A proposed bill would encourage more Americans to purchase long term care insurance by allowing employers to offer coverage as part of their cafeteria plans and flexible spending accounts.

The Aging with Respect and Dignity Act, introduced by Sen. Rick Santorum (R-Pa.), would change tax rules to allow employers to offer the insurance plans to employees using pretax dollars, similar to a 401k plan. The legislation would also expand flexible spending account rules, allowing the

accounts to be used for long term care services for family members.

“If more middle-class Americans plan and save for their long term care needs, an added benefit will be that the significant financial pressures will be lessened on safety net programs such as Medicaid,” said Santorum. Other provisions of the bill would enable individuals to establish independent retirement account-like long term care accounts, to which they could contribute up to \$5,000 a year, and create life care annuities that would allow dis-

tributions from long term care riders. “As America will soon confront its greatest unfunded liability—the public cost of future retirees’ long term care needs—Congress needs to pass a variety of new approaches that utilize the tax code to more effectively meet those costs and to help empower every American with the ability to plan and finance their future long term care needs,” said Bruce Yarwood, president and chief executive officer of the American Health Care Association.

—Lynn Wagner

Group Seeks Immigration Relief

AHCA, Others Look To Senate For Reform

Immigration reform is expected to take center stage in Congress this year following last year's House approval of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (HR 4437). In preparation for the battle, the American Health Care Association (AHCA) joined an unlikely coalition of business leaders, immigrant advocates, and union leaders—known as the Essential Worker Immigration Coalition (EWIC)—to shine a spotlight on the issue at a recent news conference in Washington, D.C.

HR 4437, which passed in the House last December and a version of which was introduced in the Senate last month, imposes fines and requires all employers to verify employees' work eligibility through an existing pilot program. Existing, undocumented workers are considered "aggravated felons."

Speaking to a standing-room-only crowd of reporters and camera crews, AHCA at-large board member Kelley Rice-Schild expressed the coalition's disappointment with the 2005 House legislation. "In addition to being reliant upon an unproven employment verification database, the unprecedented, uncapped, and excessively severe fines proposed in this legislation make it unworkable in the real world," she said.

"We now look forward to Senate action on what we expect to be a more comprehensive bill, which would fix the underlying dysfunctional immigration system while also enhancing border security and interior enforcement," said Rice-Schild, who is owner and executive director of the Miami-based Floridean Nursing and Rehabilitation Center. "An intelligent and workable immigration reform policy will help us

ensure that our chronic staffing problem does not become a national health care catastrophe."

Also participating in the news conference were Thomas Donohue, president and chief executive officer of the U.S. Chamber of Commerce; Andy Stern, president, Service Employees International Union; Mark Franken, executive director of Migration and Refugee Services, U.S. Conference of Catholic Bishops; and Terry O'Sullivan, general president of the Laborers' International Union. "We are ready, willing, and able to offer tens of thousands of good-paying jobs that, if filled, will help boost the quality of seniors' care in nursing homes across America," said Rice-Schild, noting that business coalitions, immigrant advocates, and union leaders are calling on the Senate to take a deeper look at the issues.

"It is encouraging to see divergent organizations coming together to support a total reform of our broken immigration system," said EWIC Co-Chair Laura Reiff, an immigration attorney with Greenberg Traurig, Washington, D.C.

The Senate version introduced by Sen. Arlen Specter (R-Pa.), chairman of the Senate Judiciary Committee,

would create a guest worker program and enable hundreds of thousands of foreign workers already in the United States to remain, provided they register with the Department of Homeland Security, pay back taxes, remain employed, and obey the law.

The proposal would require employers to show they were unable to hire American workers before bringing in additional labor from abroad. The Specter bill is an attempt to reconcile the schism in Congress between those who wish to tightly control immigration at the borders and levy heavy fines on employers who hire illegal immigrants and those who see immigrant labor as a vital and necessary segment of the American workforce.

Any legislation passed in the Senate would have to be reconciled with the earlier House bill.

The U.S. Department of Labor estimates that between 5.7 million and 6.5 million nurses, nurse assistants, home health aides, and personal care workers will be needed by 2050 to care for the 27 million Americans who will require long term care—a figure that represents at least a 100 percent increase from the 13 million Americans requiring long term care in 2000.

—Meg LaPorte

Kindred Broadens Holdings

Kindred Healthcare, Louisville, Ky., has completed the \$125 million cash acquisition of the Commonwealth Communities holdings.

The transaction allows Kindred to expand its holdings in hospitals, long term acute care hospitals (LTAC), skilled nursing facilities, and assisted living facilities.

"One item that drew us to Commonwealth was its ability to successfully develop programs and processes to integrate and market its LTAC, skilled nursing, and assisted living operations," said Paul Diaz, Kindred's president and chief executive officer, in a statement.

—Lisa Gelhaus

Senate Addresses ALF Co-Pays

Part D Bills Target Dual Eligibles

Two Senate bills recently introduced seek to eliminate the drug co-pays that dual eligibles in assisted living and residential care facilities must pay in order to receive their medications under Medicare's new Part D prescription drug program. An estimated 120,000 assisted living and residential care residents are considered dual eligibles—people eligible for both Medicare and Medicaid.

The bills would extend a benefit currently awarded to dual-eligible residents in nursing facilities. Unlike nursing facility residents, dual-eligible beneficiaries residing in noninstitutional settings such as assisted living facilities must pay co-payments for each prescription they receive.

The bills were announced at a recent

hearing conducted by the Senate Special Committee on Aging to discuss problems arising from the Part D program. A number of senators expressed concerns about Part D's effect on dual-eligible assisted living residents.

Committee Chairman Sen. Gordon Smith (R-Ore.) introduced his bill, S. 2234, which would eliminate cost sharing for individuals receiving home- and community-based services, including dual-eligible assisted living and residential care residents. Sen. Jeff Bingaman (D-N.M.) is co-sponsoring the bill.

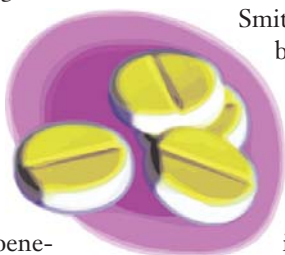
National Center for Assisted Living (NCAL) Executive Director David Kylo expressed satisfaction with the bill. "NCAL applauds Sens. Smith and Bingaman for introducing legislation that would help ensure that assisted

living residents who don't have the monetary means to purchase medications have access to their prescription drugs," he says. "NCAL will continue to push for this bill on Capitol Hill until assisted living residents no longer have to make co-payments."

At the hearing, New York Sen. Hillary Clinton (D) and Sen. Bill Nelson (D-Fla.) also discussed a similar bill that they introduced, which would remove cost sharing for dual eligibles in assisted living facilities.

Both bills seek to eliminate co-payments. The Clinton-Nelson bill, however, would be retroactive to Jan. 1, 2006, when the new Medicare prescription drug bill went into effect.

—Lisa Gelhaus



By The Numbers



Source: Nursing Home Family Satisfaction Survey data collected in 2005 by My InnerView Inc.™ (www.myinnerview.com)

Five Star Reports Loss

Five Star Quality, Newton, Mass., has reported an \$81.2 million loss for 2005, hitting the company's shareholders with a \$5.46 decrease per share. This compares with a profit of \$5.7 million in 2004.

In fourth quarter 2005, the company attributed a \$1.1 million loss to the termination of a management agreement with Sunrise Senior Living that cost the company \$4.8 million. Without that charge, Five Star's fourth-quarter results would have shown a profit of \$3.6 million, or \$0.18 per share, according to the company's statement.

Total occupancy for the fourth quarter was 91 percent, up from 89 percent for the fourth quarter 2004. The average daily rate for the fourth quarter was \$133, a \$12 per day increase from the same quarter in 2004.

Five Star owns and leases 153 communities, with more than 17,100 units in 28 states. The company also operates four institutional pharmacies, including one mail-order operation.

Attitudes Differ Toward End-Of-Life Care

Researchers Test Various Ethnic-Racial Groups

Race, ethnicity, gender, and religion have a strong influence on peoples' attitudes towards end-of-life care, according to a recent study by researchers at the Center for Practice Management and Research at the Ann Arbor Veteran's Affairs Hospital, Ann Arbor, Mich.

"The findings from this study can provide insights into the development of culturally and sex-sensitive end-of-life interventions," said lead researcher Sonia Duffy, RN. The research was published in the January 2006 edition of the *Journal of the American Geriatrics Society*.

To examine attitudes, researchers asked 73 adults from five different racial and ethnic groups, about end-of-life care. The participants included Arab Muslims, Arab Christians, Hispanics, African Americans, and Caucasians.

Participants were asked to imagine they had just been diagnosed with a terminal illness and had six months to live. Once answers were recorded, a moderator asked participants to explain the reasons for their choices.

Arab American respondents indicated that their families would take care of them; that they were against assisted suicide, extending life artificially, or nursing facility care; and that they were generally unfamiliar with the concept of hospice. While most felt uncomfortable with the idea of speaking directly about impending death or terminal illness, there was a strong belief that "it was important to make

peace on earth before entering heaven."

Most Hispanics in the survey expressed a desire to control their place of death, and they were adamant about death with dignity—no feeding tubes, ventilators, or other extraordinary measures. They felt it was important to avoid nursing facilities but, as a group, were open to receiving care in a hospital or hospice. Hispanic men

were the only group to say they would refuse dialysis and pain medications in order to stay alert and were open to assisted suicide, which they called "assisted dying." Hispanic women, on the other hand, felt assisted suicide was a sin.

African Americans indicated they wanted to die away from home and preferred a nursing facility, intensive care unit, or hospice rather than burden their family with care. Women in this group were for the most part opposed to assisted suicide. Both men and women favored extensive medical intervention, including antibiotics, pain medications, and dialysis, but did not wish to go on life supports. Several men were in favor of assisted suicide.

Caucasians were somewhat open to hospice and nursing facility care, yet many preferred to die at home. It was important to have choices, and all wished to have an advance directive. As a group, Caucasians wanted to know what to expect physically and wished to have pain controlled, even at the expense of staying alert.

‘Hispanic women felt assisted suicide was a sin.’

—Lisa Gelhaus

Nursing Facility Stays Shorter

Researchers at Miami University's Scripps Gerontology Center have found that nursing facility stays are of shorter duration than ever. The recent study looked at length of stay and the spend-down practices of nursing facility patients.

Scripps' researchers found that the length of stay, compared to just seven years ago, has dropped dramatically, by as much as 16 percent: Of patients who entered nursing facilities in 1994, 57 percent were patients three months later and 32 percent were still patients one year later. In 2001, comparable figures were 43 percent and 16 percent, respectively.

"Shorter stays in nursing facilities are a result of increases in home care services as

‘After six months only 12 percent of private-pay patients had shifted to Medicaid.’

well as private assisted living options for seniors, combined with an increase in rehabilitation admissions covered by Medicare as a result of federal changes in hospital reimbursement patterns," said Shahla Mehdizadeh, director of research for the Ohio Long Term Care Project.

With regard to spend-down practices, the study reports that after six months in a nursing facility, only 12 percent of private-pay patients had shifted to Medicaid, while after one year, 32 percent of private-pay patients had shifted to Medicaid.

What's more, only 8 percent of those who entered paying privately were still there three years later.

The researchers stated that while fewer people stay in nursing facilities, those who do have more disabilities, so costs have not declined proportionally.

—Meg LaPorte

ARC, Kindred Enter Joint Venture

Companies To Develop Pharmacy Startup

American Retirement Corp. (ARC) recently formed a new joint venture with Kindred Healthcare that will allow the companies to develop new institutional pharmacies in five markets. According to ARC, the company is negotiating lease space for the pharmacies in the San Antonio, Dallas, Houston, Phoenix, and Denver markets.

The Brentwood, Tenn.-based ARC says the startup pharmacies will sell medications to skilled nursing facilities and retirement centers owned by the company and its competitors.

ARC and Kindred would own 49 and 51 percent, respectively; of the yet unnamed venture, Louisville, Ky.-based Kindred will manage the pharmacies.

In related news, ARC announced its investment in TabSafe, a private company that manufactures and markets a state-of-the-art personal medication management systems for the senior market. TabSafe, based in Roswell, Ga., currently operates pharmacies in Tampa, Fla., and Atlanta. ARC noted that the combination of technology to improve quality assurance in medication delivery and the opportunity to be a business partner in providing pharmacy services supports the company's ancillary service business and quality care goals.

"We are delighted by these opportunities to improve the pharmacy services provided to our communities," said ARC's Chairman, President, and Chief Executive Officer Bill Sheriff. "The

joint venture pharmacies will begin by better filling the needs of our residents and then expand into serving a much broader market. We feel that partnering with a proven provider adds another strong element to our ancillary services programs." Sheriff also noted that "the TabSafe system, which is supported with a direct electronic data link to local pharmacies, will provide our residents with enhanced drug management safety through a consumer-friendly operating system. While still early in its development, TabSafe has great potential," Sheriff said.

—Meg LaPorte

Sale-Leaseback Agreement Signed

Following its 2006 business plan to strengthen its balance sheet and maximize return on investment, Dallas-based Capital Senior Living announced recently an agreement to sell and lease back to Ventas its largest senior living community, The Town Centre in Merrillville, Ind., in a transaction valued at approximately \$29 million.

"We are pleased to further our mutually beneficial relationship with Ventas," stated James Stroud, chairman of Capital Senior Living. "Ventas has purchased communities from one of our joint ventures, from a third party, and now will purchase a community from the company itself. We look forward to exploring additional opportunities together."

Capital Senior Living estimates it will gain approximately \$14.5 million from its sale to Ventas, which will lease the property back to Capital Senior Living under an initial 10-year lease.

—Meg LaPorte

X-rays Yield Clues To Alzheimer's Disease

A new X-ray technique is likely to accelerate research on the cause of Alzheimer's disease and could lead to the first diagnostic procedure for patients while they are alive, according to University of Florida researchers, who are studying degenerative diseases in the brain using a synchrotron at the U.S. Department of Energy's Argonne National Laboratory near Chicago to pinpoint tiny particles associated with these disorders.

A synchrotron, also known as the advanced photon source, is an electron accelerator that produces high-powered X-rays, the researchers say. Normally utilized in basic science experiments in high-energy physics, the synchrotron is being used for the new purpose of analyzing brain tissue.

"It's the equivalent of being up in an airplane, looking at the city of Tampa,

and telling you whether there is a penny there or not," said Mark Davidson, a University of Florida engineer in its materials science and engineering department. "And then once we zoom in, we can tell you what kind of penny it is."

"If we can adjust the magnetic resonance imaging [MRI] to look for specific iron compounds related to Alzheimer's, we may be able to provide a technique for early diagnosis before clinical symptoms appear," Davidson said. "The major advantage of this is that most treatments currently in development rely on early detection to slow or halt progression of the disease, as they cannot reverse it." The group is planning experiments that could lead to using MRIs to highlight the damaging iron in patients' brains.

—Meg LaPorte