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CMS Allows Exceptions to Local Coverage Determinations

Mark A. Stanley
410-347-7353
mastanley@ober.com

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Payment Group

The Payment Group is a work group within Ober|Kaler's Health Law Group.

Principals

Thomas W. Coons

Leslie Demaree Goldsmith

Carel T. Hedlund

S. Craig Holden

Julie E. Kass

Paul W. Kim

Robert E. Mazer

In certain circumstances, providers may receive payment for care that is otherwise precluded from coverage under a local coverage determination (LCD). The Centers for Medicare and Medicaid Services (CMS) has amended its Program Integrity Manual (PIM) to authorize Medicare contractors to create exceptions to LCDs during complex medical review. **Transmittal No. 303** [PDF] allows contractor medical directors (CMDs) to override LCDs and utilize clinical criteria to support or deny a claim. Recovery Audit Contractors (RACs) may utilize the LCD exception to allow a claim, but may not use it to deny a claim that is otherwise covered under existing LCD guidance.

The exception only applies to LCDs and may not be used to avoid national coverage determinations (NCDs), CMS manuals or MAC articles. Although the transmittal does not define the term "MAC article," the PIM defines "article" to include any guidance (other than reasonable and necessary guidance, which is established through LCDs) that a contractor makes available to providers by any means of publication. Therefore, it appears that CMS removed "MAC articles" from the scope of the exception in order to limit the exception to reasonable and necessary determinations that are otherwise required under a LCD.

CMS anticipates that the exceptions process will be used rarely, and requires contractors to reevaluate their LCDs in the event that LCD exceptions are not rare.

Ober|Kaler's Comments: Given that the manual change leaves national guidance intact, providers should continue to look to NCDs and manuals for guidance whenever it is available. If such guidance is not available, the clinical bases for choosing (or avoiding) a particular course of treatment may trump the LCD during complex medical review. In the event that a LCD is ambiguous or contradicts the clinically-indicated treatment, proper documentation may prove to be a provider's best friend.

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Christine M. Morse

Laurence B. Russell

Donna J. Senft

Susan A. Turner

Associates

Kristin Cilent Carter

Joshua J. Freemire

Mark A. Stanley

Lisa D. Stevenson