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SunSolutions **SPOTLIGHT** News Break

February 16, 2012, CMS Update: Conferees are Scheduled to Sign the Conference Agreement

February 16, 2012 conferees are scheduled to sign the conference agreement which includes an extension of the therapy cap exceptions process through December 31, 2012. The House and Senate to are expected vote on the agreement either Friday or Saturday.

The following is a summary of the "Health-Related Provisions in the Middle Class Tax Relief and Job Creation Act of 2012" prepared by health committee staff. The details on the extension continue to be vague and the summary language is similar to the House-passed version from December in some respects. Once the actual bill is released, we will see greater detail as to how the reformed exceptions process will be structured. In addition, the original House language saved money over 10 years due to the extension of the therapy cap to hospitals outpatient settings. This summary doesn't validate any savings, instead indicates a cost, so it is possible that there have been some adjustments made to that specific provision.

Other interest to LTC Providers:

The following are the major points of the Therapy Cap exceptions process legislative language included in the Payroll Tax Cut Final Agreement.

- Extension of the exceptions process through December 31, 2012.
- When an exception is requested, the claim shall contain an appropriate modifier (such as the KX modifier) indicating services are medically necessary, and justified by appropriate



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documentation in the medical record.

- All outpatient therapy services that exceed the \$3,700 threshold shall be subject to a manual medical review process.
- Temporary application of Therapy Caps to the hospital outpatient settings.
- Requirement for inclusion on the claim of the NPI of physicians who review the therapy plan.
- Requires a MedPAC report on "improved Medicare therapy benefits" by June 15, 2013.
- HHS to collect additional claims based data beginning January 1, 2013.

Below is the exact section from the Agreement on the exceptions process.

Section 3005 - Outpatient Therapy Caps – This provision extends the therapy caps exceptions process through December 31, 2012, with modifications that will require that the physician reviewing the therapy plan of care be detailed on the claim, reject all claims above the spending cap that do not include the proper billing modifier, and provide for a manual review of all claims for high cost beneficiaries to ensure that only medically necessary services are being provided. Furthermore, the spending caps (\$1,880 in 2012), which have been in effect since 2006, would be extended to the hospital outpatient department setting to prevent a shift in the site of service to higher cost settings once enforcement of the current exceptions process begins. Exempting these services in the HOPD setting made sense when the hard therapy cap was in place, but it no longer makes sense with the exceptions process. Additionally, HHS is required to collect data to assist in reforming the payment system for therapy services. MedPAC is required to recommend improvements to the outpatient therapy benefit to reflect the individual needs of patients. *CBO estimates this provision would increase spending by \$700 million from 2012 through 2022.*

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