Kentucky Hospital Association

Comments on

907 KAR 10:014 Outpatient hospital service coverage provisions and requirements

February 28, 2014

The Kentucky Hospital Association (KHA), represents all hospitals in the Commonwealth. On behalf of our members, we appreciate the opportunity to comment on the Department for Medicaid Services’ proposed amendments to the outpatient hospital coverage regulation. We are extremely concerned and object to the exclusion of coverage for occupational therapy provided in a hospital outpatient setting, and request that this be reversed.

Sections 2 and 3 of this regulation set out those outpatient services which will be covered or excluded from coverage when provided in an outpatient hospital setting. Both sections contain language specifically excluding the provision of occupational therapy services. Specifically, Section 2, which contains coverage criteria, covers therapeutic services ordered by a physician, except for occupational therapy services. Section 3 identifies noncovered services and (7) specifically excludes coverage for occupational therapy services. The exclusion of coverage for outpatient occupational therapy services under this regulation is discriminatory to hospitals and the occupational therapists employed by hospitals as well as Medicaid patients by limiting their access to these services when medically necessary.

The regulation contains no exclusion on the delivery of physical therapy or speech therapy services in the outpatient hospital setting; therefore, there is no rational basis for excluding occupational therapy which has the practical effect of discriminating against those patients that require occupational therapy as part of their rehabilitation treatment. It is not unusual that patients requiring rehabilitation services receive orders for all three types of therapy services. A stroke patient, for example, will often need physical therapy to walk and maintain range of motion, speech therapy for communication, and occupational therapy in order to perform activities of daily living which are important for ongoing self-care. As written, a patient could receive physical and speech therapy at their local hospital, but not occupational therapy. This is disruptive to patient continuity of care and will increase costs by requiring a patient to travel elsewhere to obtain these services.

The regulatory impact statement indicates that the regulation’s proposed changes conform to the alternative benefit plan which is mandated by the Affordable Care Act. The alternative benefit plan must be based on the “benchmark” plan selected
by the state, which is also the benchmark for coverage under the insurance exchange. Kentucky has selected the Anthem Blue Cross Blue Shield Small Group Provider Preferred Option (PPO) plan. The Department states it is following this plan in establishing a 20 visit per year limit on therapy services, and is applying this limit for all Medicaid recipients, not just those included in the expansion group.

While occupational therapy services have not historically been covered by Medicaid, the impact statement does not provide any rationale for their continued exclusion, in light of conforming to the benchmark plan and expanding coverage of occupational therapy to other outpatient settings. Specifically, the Anthem Blue Cross Blue Shield Small Group PPO health certificate does not exclude coverage of occupational therapy services in the hospital outpatient setting! Attached to our comments are the pages from the health certificate for the benchmark plan which clearly list coverage for physical therapy, occupational therapy, and speech therapy. Each has a 20 visit limit, but there is no limitation on the site of service and no exclusion of coverage for occupational therapy services received in a hospital outpatient department, including an outpatient facility off the hospital’s campus but operated as part of the hospital outpatient department. Accordingly, the Department’s proposed ongoing exclusion of occupational therapy contradicts conformance with the Kentucky benchmark plan.

Moreover, the exclusion of occupational therapy services by hospitals is contradictory to the Department’s stated intent of desiring to expand coverage of these services to meet increased demand from additional Medicaid enrollees under the Medicaid expansion. Specifically, the Department for Medicaid Services has proposed a new administrative regulation – 907 KAR 8:010 – Independent occupational therapy service coverage provisions and requirements. This new regulation will allow occupational therapists to become participating Medicaid providers and eligible for payment. The regulatory impact statement accompanying this regulation states that it is needed to assure access to services:

"This administrative regulation is necessary to expand the Medicaid base of occupational therapy service providers in order to meet the demand for care (thus, to ensure recipient access to care). The Department for Medicaid Services (DMS) is anticipating a substantial increase in demand for services as a result of new individuals gaining Medicaid eligibility in 2014."

"This administrative regulation conforms to the content of the authorizing statutes by enabling the Department for Medicaid Services to meet the requirement of ensuring recipient access to care."
The impact statement also states "Medicaid recipients in need of occupational therapy services will benefit from an expanded base of providers for which to receive occupational therapy services."

In light of the Department's expressed desire to expand the base of providers available to Medicaid recipients to receive occupational therapy services, and given that hospital outpatient departments already provide physical and speech therapy that are often part of the therapy service mix along with occupational therapy ordered for patients, there is no rational basis for excluding coverage of occupational therapy provided in a hospital outpatient department and many reasons why such exclusion is deleterious for patients. The regulation should not discriminate in coverage of occupational therapy services among occupational therapists based on where they work (covering them in an independent office and not if the occupational therapist is employed by a hospital). Most importantly, excluding occupational therapy services delivered by hospitals is harmful to patients by precluding them from being able to access these services from their local hospital, which in many rural areas, may be the only or primary provider of these services.

For these many reasons, we request that the language excluding coverage of occupational therapy services be deleted from this regulation.
<table>
<thead>
<tr>
<th>Therapy Services</th>
<th>Copayments / Coinsurance based on setting where Covered Services are received</th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>NOTE:</strong> If different types of Therapy Services are performed during one Physician Home Visit, Office Service, or Outpatient Service, then each different type of Therapy Service performed will be considered a separate Therapy Visit. Each Therapy Visit will count against the applicable Maximum Visits listed below. For example, if both a Physical Therapy Service and a Manipulation Therapy Service are performed during one Physician Home Visit, Office Service, or Outpatient Service, they will count as both one Physical Therapy Visit and one Manipulation Therapy Visit. You will not have to pay a Copayment or Coinsurance for Covered Services, rendered for each date of service, from an Occupational Therapist or Physical Therapist that is greater than the Copayment or Coinsurance you would pay for Covered Services from a Primary Care Physician.</td>
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</tr>
<tr>
<td>Maximum Visits per Benefit Period for:</td>
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<td></td>
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<tr>
<td>Physical Therapy</td>
<td>20 visits when rendered as Physician Home Visits and Office Services or Outpatient Services, combined Network and Non-Network. When rendered in the home, Home Care Services limits apply.</td>
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</tr>
<tr>
<td>Occupational Therapy</td>
<td>20 visits when rendered as Physician Home Visits and Office Services or Outpatient Services, combined Network and Non-Network. When rendered in the home, Home Care Services limits apply.</td>
<td><strong>Not now covered by Medicaid</strong></td>
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<tr>
<td>Speech Therapy</td>
<td>20 visits when rendered as Physician Home Visits and Office Services or Outpatient Services, combined Network and Non-Network. When rendered in the home, Home Care Services limits apply.</td>
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<td>Manipulation Therapy</td>
<td>12 visits combined Network &amp; Non-Network</td>
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<tr>
<td>Cardiac Rehabilitation</td>
<td>36 visits when rendered as Physician Home Visits and Office Services or Outpatient Services, combined Network and Non-Network. When rendered in the home, Home Care Services limits apply.</td>
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Sterilization

Sterilization is a Covered Service.

Telehealth Consultation Services

See the Schedule of Benefits for any applicable Deductible, Coinsurance, Copayment, and Benefit Limitation Information.

Covered Services include a medical or health consultation, for purposes of patient diagnosis or treatment, that requires the use of advanced telecommunications technology, including, but not limited to:

- Compressed digital interactive video, audio, or data transmission;
- Clinical data transmission via computer imaging for teleradiology or telepathology; and
- Other technology that facilitates access to other covered health care services or medical specialty expertise.

Temporomandibular or Craniomandibular Joint Disorder and Craniomandibular Jaw Disorder

Benefits are provided for Medically Necessary temporomandibular (joint connecting the lower jaw to the temporal bone at the side of the head) and craniomandibular (head and neck muscle) joint disorders.

Therapy Services

See the Schedule of Benefits for any applicable Deductible, Coinsurance, Copayment, and Benefit Limitation Information.

When Therapy Services are given as part of Physician Home Visits and Office Services, Inpatient Services, Outpatient Services, or Home Care Services, coverage for these Therapy Services is limited to the following:

Physical Medicine Therapy Services

The expectation must exist that the therapy will result in a practical improvement in the level of functioning within a reasonable period of time.

- Physical therapy including treatment by physical means, hydrotherapy, heat, or similar modalities, physical agents, bio-mechanical and neuro-physiological principles and devices. Such therapy is given to relieve pain, restore function, and to prevent disability following illness, injury, or loss of a body part. Non Covered Services include: maintenance therapy to delay or minimize muscular deterioration in patients suffering from a chronic disease or illness; repetitive exercise to improve movement, maintain strength and increase endurance (including assistance with walking for weak or unstable patients); range of motion and passive exercises that are not related to restoration of a specific loss of function, but are for maintaining a range of motion in paralyzed
extremities; general exercise programs; diathermy, ultrasound and heat treatments for pulmonary conditions; diapulse; work hardening.

- **Speech therapy** for the correction of a speech impairment.

- **Occupational therapy** for the treatment of a physically disabled person by means of constructive activities designed and adapted to promote the restoration of the person's ability to satisfactorily accomplish the ordinary tasks of daily living and those tasks required by the person's particular occupational role. Occupational therapy does not include diversional, recreational, vocational therapies (e.g. hobbies, arts and crafts). Non Covered Services include: supplies (looms, ceramic tiles, leather, utensils); therapy to improve or restore functions that could be expected to improve as the patient resumes normal activities again; general exercises to promote overall fitness and flexibility; therapy to improve motivation; suction therapy for newborns (feeding machines); soft tissue mobilization (visceral manipulation or visceral soft tissue manipulation), augmented soft tissue mobilization, myofascial; adaptations to the home such as rampways, door widening, automobile adaptors, kitchen adaptation and other types of similar equipment.

- **Manipulation Therapy** includes Osteopathic/Chiropractic Manipulation Therapy used for treating problems associated with bones, joints and the back. The two therapies are similar, but chiropractic therapy focuses on the joints of the spine and the nervous system, while osteopathic therapy includes equal emphasis on the joints and surrounding muscles, tendons and ligaments. Manipulations whether performed and billed as the only procedure or manipulations performed in conjunction with an exam and billed as an office visit will be counted toward any maximum for Manipulation Therapy services as specified in the Schedule of Benefits. Manipulation Therapy services rendered in the home as part of Home Care Services are not covered.

**Other Therapy Services**

- **Cardiac rehabilitation** to restore an individual's functional status after a cardiac event. It is a program of medical evaluation, education, supervised exercise training, and psychosocial support. Home programs, on-going conditioning and maintenance are not covered.

- **Chemotherapy** for the treatment of a disease by chemical or biological antineoplastic agents, including the cost of such agents.

- **Dialysis treatments** of an acute or chronic kidney ailment which may include the supportive use of an artificial kidney machine.

- **Radiation therapy** for the treatment of disease by X-ray, radium, or radioactive isotopes. Includes treatment (teletherapy, brachytherapy and intraoperative radiation, photon or high energy particle sources); materials and supplies used in therapy; treatment planning.

- **Inhalation therapy** for the treatment of a condition by the administration of medicines, water vapors, gases, or anesthetics by inhalation. Covered Services include but are not limited to, introduction of dry or moist gases into the lungs; nonpressurized inhalation treatment; intermittent positive pressure breathing treatment, air or oxygen, with or without nebulized medication; continuous positive airway pressure ventilation (CPAP); continuous negative pressure ventilation (CNP); chest percussion; therapeutic use of medical gases or drugs in the form of aerosols, and equipment such as resuscitators, oxygen tents, and incentive spirometers; broncho-pulmonary drainage and breathing exercises.