

## **Good News for Rehabilitation Physicians**

by

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For physicians practicing rehabilitative medicine, recent regulations and program memoranda issued by CMS and the Department of Health and Human Services Office of the Inspector General (OIG) contain much of interest. Physicians who specialize in hyperbaric oxygen (HBO) therapy or who are considering adding HBO therapy to their practice and physicians who are interested in the investment potential of comprehensive outpatient rehabilitation facilities (CORFs) in particular will find these issuances worthy of close attention. Although the word from these agencies is not overwhelmingly positive from a physician's point of view, there is, nevertheless, much in these issuances to provide a positive outlook for the rehabilitation physician's future.

### **Reimbursement for Outpatient Hyperbaric Services**

HBO therapy is a modality in which the entire body is exposed to oxygen under increased atmospheric pressure. It is generally used to treat wounds in diabetes and other patients that have not responded to standard wound therapy. Because investment in HBO therapy equipments is very significant—the HBO therapy chamber is essentially the same as the equipment used to prevent deep sea divers from experiencing “the bends,”—the ability of physicians investing in such equipment to receive Medicare reimbursement is critical.

As recently as last year, however, several Medicare fiscal intermediaries and carriers had taken the position that Medicare would cover HBO therapy only in the hospital setting. These intermediaries and carriers had issued local medical review policies which contained a requirement that administration of the therapy be personally supervised by “a physician credentialed by the hospital in which the therapy is administered.”

On December 27, 2002, however, CMS issued Program Memorandum AB-02-183, which became effective on April 1, 2003. This Program Memorandum explicitly states that there are no special supervision or credentialing restrictions on HBO therapy:

“This PM also clarifies that CMS has concluded that special supervision and credentialing requirements should not be imposed on physicians who

perform HBO therapy. You may not impose a higher level of supervision than direct supervision as is required for all “incident to” therapies. CMS encourages physicians who perform HBO therapy to obtain adequate training in the use of HBO therapy and in advanced cardiac life support.”

The conclusion that PM AB-02-183 opens the door to Medicare reimbursement for HBO therapy in an office or clinic setting is affirmed by CMS’ publication, on April 1, 2003, of National Coverage Determination: Hyperbaric Oxygen Therapy, Publication No. 6. This National Coverage Determination states that it applies to both “Doctor Office Visits” and “Outpatient Hospital Services.”

Unfortunately, however, CMS has not yet seen fit to allow reimbursement for overhead when the HBO therapy is administered outside the hospital. PM AB-02-183 sets forth the following HCPCS coding instructions for hyperbaric therapy:

#### “HCPCS Coding

- 99183 – Physician attendance and supervision of hyperbaric oxygen therapy, per session.
- C1300 – Hyperbaric oxygen under pressure, full body chamber, per 30 minute interval.

**NOTE:** Code C1300 is not available for use other than in a hospital outpatient department.”

Thus, no separate code for the technical component of hyperbaric therapy may be used outside of the hospital setting. Furthermore no reimbursement for the technical component of HBO therapy is as yet available under the Medicare Physician Fee Schedule.<sup>1</sup> Medicare determines payments for medical services under the Physician Fee Schedule by assigning a Relative Value Unit (RVU) to each applicable CPT or HCPCS code. For non-hospital settings, such as physician offices or clinics, the technical component of most services is reimbursed by assigning a “Non-Facility PE (Practice Expense)” RVU to the procedural code.

For HBO therapy HCPCS Code 99183, however, the Non-Facility PE RVU in the current Physician Fee Schedule is listed as “NA,”<sup>2</sup> which under the regulation “means that the service is generally not provided outside of hospitals and we do not have information upon which to determine a price. In most cases, these are major surgical services.”<sup>3</sup> Thus, CMS is essentially taking the position that they will not reimburse overhead for HBO therapy because they are not sure what that overhead should cost. If rehabilitation physicians make concerted efforts to

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<sup>1</sup> See Program Memorandum No. AB-00-8 (March 2000).

<sup>2</sup> 67 Fed. Reg. 80159 (December 31, 2002).

<sup>3</sup> 67 Fed. Reg. 80043 (December 31, 2002).

educate CMS as to the reasonable costs of providing HBO therapy, this position may change.

### **Physician Ownership of CORFs**

CORFs—Comprehensive Outpatient Rehabilitation Facilities—are defined by CMS regulations as nonresidential facilities that are “established and operated exclusively for the purpose of providing diagnostic, therapeutic, and restorative services to outpatients for the rehabilitation of injured, disabled, or sick persons by or under the supervision of a physician. In essence, the term “CORF” is simply a federal designation that allows services to be billed to Medicare, essentially making the CORF Medicare certification a means of reimbursement for services provided in these facilities. Aside from a general directions that the CORF must provide a comprehensive rehabilitation program that includes, at a minimum, physicians’ services, physical therapy services, and social or psychological services, the CORF designation does not define services. Instead, Medicare CORF certification allows for multidisciplinary services to be reimbursed by Medicare, including nursing, social services, respiratory therapy, and drugs/biologicals, in addition to the traditional services of physical therapy, occupational therapy, speech-language pathology, and psychology.<sup>4</sup>

While there is no law that prohibits a physician from owning a CORF, the physician self-referral law, also known as the Stark Act,<sup>5</sup> makes it illegal for a physician to refer patients to a CORF that he or she owns. As discussed in the next section, however, even without direct referrals, CORFs may still provide an attractive investment opportunity for physicians.

The Stark Act, which provides for civil penalties of up to \$100,000 for violation of its terms,<sup>6</sup> states that, if a physician (or the physician’s immediate family member) has a “financial relationship” with a healthcare entity, then the physician may not make a referral to the entity “for the furnishing of designated health services” for which Medicare may otherwise pay, and the entity may not bill any third-party payor for the prohibited referral.<sup>7</sup> The Stark Act defines “financial relationship” in sweeping enough terms to prohibit virtually any kind of ownership interest, including shares in corporations, limited partnerships, limited liability companies, trusts, or other common investment vehicles.<sup>8</sup>

The Stark Act defines the “designated health services” for which referral is prohibited as:

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<sup>4</sup> See Cherilyn G. Murer, J.D., C.R.A., *CORF Ideas*, Rehab Economics (January/February 2003).

<sup>5</sup> Social Security Act § 1877, 42 U.S.C. § 1395nn.

<sup>6</sup> 42 U.S.C. § 1395nn(g).

<sup>7</sup> 42 U.S.C. § 1395nn(a)(1).

<sup>8</sup> 42 U.S.C. § 1395nn(a)(2).

- “(A) Clinical laboratory services.
- (B) Physical therapy services.
- (C) Occupational therapy services.
- (D) Radiology services, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services.
- (E) Radiation therapy services and supplies.
- (F) Durable medical equipment and supplies.
- (G) Parenteral and enteral nutrients, equipment, and supplies.
- (H) Prosthetics, orthotics, and prosthetic devices and supplies.
- (I) Home health services.
- (J) Outpatient prescription drugs.
- (K) Inpatient and outpatient hospital services.”<sup>9</sup>

Because physical therapy services are among the services that are required in a Medicare certified CORF program, the Stark Act effectively makes referral of a patient by a physician-owner to his or her CORF illegal.

### **CORFs as an Investment Opportunity for Physicians**

The inability to make direct referrals notwithstanding, CORFs provide the same attractive investment opportunity for physicians that they do for other entrepreneurs. The key financial advantages for the individual CORF owner result from the greater efficiency of the CORF format, as opposed to higher cost rehabilitation venues, such as hospitals. Because CORF facilities are designed and staffed to provide only outpatient rehabilitation services, they are generally a significantly lower cost provider of medical services than a hospital, and, therefore, are in a much better position to make a profit under the Physician Fee Schedule than an outpatient department is under the Outpatient Prospective Payment System.

For the physician investor, the CORF may also serve as an enhancement to other investments, especially real estate. For physicians and physician practices that own professional buildings, locating a CORF side-by-side with their existing practice in the same building or group of buildings provides an opportunity to own two profit centers on the same property, enhancing the value of both investments.

Moreover, the presence of a physician as owner of the CORF should serve to attract referrals to the CORF from other physician practices. For physicians referring their patients to outpatient rehabilitation services, one of the prime considerations is that they be able to trust the quality of the services that their patients will receive. A respected member of the physician community as the CORF owner will serve to guarantee the trustworthiness of the services offered in the CORF and serve to ensure that physicians making referrals to the CORF are comfortable with their decision.

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<sup>9</sup> 42 U.S.C. § 1395nn(h)(6).

## **Conclusion**

Recent regulatory developments provide good news for rehabilitation physicians. Although current Medicare reimbursement methodology does not allow for reimbursement of the technical component of HBO therapy outside of a hospital setting, Medicare reimbursement for the professional component of hyperbaric oxygen therapy in a non-hospital setting is now established, and as CMS gains more experience with HBO therapy in these venues, reimbursement for the technical component should follow. Physicians who practice HBO therapy would be well advised to make organized efforts to educate CMS on the costs and benefits of providing HBO therapy in clinic and office settings. Finally, although referral by physicians of their own patients to CORFs in which they have an ownership interest is generally prohibited, CORFs, nevertheless, remain an attractive investment opportunity for physicians.

### About the Author:

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