MHA
MISSOURI HOSPITAL ASSOCIATION

Herb B. Kuhn
President and Chief Executive Officer
P.O. Box 60 • Jefferson City, MO 65102-0060
Phone: 573/893-3700 • Fax: 573/893-2809
www.mhanet.com

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Cheryl L. Ray, D.O., MBA, FACN
Lead Contractor Medical Director Medicare
Vice President Medicare Clinical
WPS Government Health Administrators
1717 W. Broadway
P.O. Box 1787
Madison, WI 53701

Dear Dr. Ray:

On behalf of our 122 acute care and critical access hospital members, the Missouri Hospital Association submits concerns related to the introduction and implementation of the local coverage determination for polysomnography and other sleep studies (L36839). This policy appeared in its final form with a notice period start date of January 1, 2017, and implementation date of February 16, 2017. L36839 contained a significant revision from the previous LCD (34535), creating a separate section for sleep center or laboratory credentials and changing the option of accepting The Joint Commission accreditation to specifying TJC sleep-specific credentials under the TJC Ambulatory Care standards.

MHA is requesting that Wisconsin Physician Services postpone the effective date of L36839 to give providers an opportunity to obtain the specified accreditation because the required notice period of 45 days was inadequate. MHA is aware that TJC now will accredit a hospital using their ambulatory care sleep standards if the hospital requests a "tailored" survey as part of the hospital accreditation survey. This option may work for hospitals expecting TJC surveys in the coming months. Conversation with the Accreditation Commission for Health Care has indicated that the timeline from application to accreditation typically is three to six months. If the purpose of WPS' LCD for polysomnography is to ensure that minimum standards of care are available to Medicare beneficiaries and not to deny access, thereby reducing utilization and decreasing costs, a postponement of the effective date of L36839 of six to nine months should not be an unreasonable request.

MHA also is concerned about the inadequate notice and lack of provider education provided before implementing this significant change in policy. WPS is obligated to notify providers by hardcopy mailing or emails containing the title and web address of draft LCDs. WPS considers the posting of new, revised or retired LCDs in its eNews communication as sufficient to meet its obligations to providers. However, the eNews feature only is available to those who have subscribed to this service. WPS continues to urge providers to sign up for the eNews service, however, these communications are sent through the eNews subscription, failing to reach any providers not subscribed. MHA has begun to educate our members regarding their need to subscribe to this service.

Based on a search of the WPS website, MHA only found four communications related to the drafting and finalization of LCD L36839.

- October 2016 Policy/Article Update, published September 23, 2016
- October 2016 Draft LCD Open Meeting Notice, published October 6, 2016
- "We Want Your Comments," published October 10, 2016
- January 2017 Policy/Article Update, published December 27, 2016

MHA has seen no evidence of provider education offered related to the implementation of L36839. In response to an email query regarding education, WPS replied, "And finally your question on education to providers. This was addressed on the call that providers are responsible for knowing Medicare rules and policies. Providers and facilities which are submitting claims to Medicare for reimbursement are responsible for knowing Medicare's rules and regulations. Please refer to the Medicare Enrollment Application CMS-855I, Section 15: Certification Statement, pages 25 & 26 #4 and; Medicare Enrollment Application CMS-855B, Section 15: Certification Statement, pages 31 & 32 #3." We would ask WPS how this complies with Section 13.9 of the Medicare Program Integrity Manual, which states, "Contractors shall educate the provider community on new or significantly revised LCDs (e.g., training sessions, speaking at society meetings or writing articles in the society's newsletter)."

In a recent conference call, WPS claimed that the requirement for facility accreditation has been in place since 2012. Reviewing past LCDs (L31082) and (L34535) and their associated revisions, MHA cannot find specific sleep center accreditation requirements before Revision 5 of L34535 effective July 16, 2016. The following language was added by Revision 5: *All centers billing sleep studies must maintain proper certification/accreditation documentation as defined above, which include: Accreditation of sleep centers to include-AASM, or Joint Commission.* Any references to sleep facility accreditation before Revision 5 of L34535 are related to **Section F. Physician requirements** and appear to pertain to options for physician credentialing, as multiple options are presented and separated by the conjunction *OR* and the options are preceded with the following statement: *The physician performing the service must meet* ***one*** *of the following.* (Emphasis added.) Further complicating matters is a revision made effective October 1, 2016, which added the Accreditation Commission for Health Care to **Section F.**, resulting in this final language: *be an active staff member of an accredited sleep center or laboratory. The sleep facility accreditation must be from the American Academy of Sleep Medicine (AASM), inpatient or outpatient, or the Joint Commission (formerly the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or Accreditation Commission for Health Care (ACHC) accreditation for Ambulatory care sleep centers.*

WPS has stated that the inclusion of accreditation standards in the local coverage determination for polysomnography are in some degree a response to recent OIG investigations of fraudulent practices. However, obtaining accreditation status is no guarantee of appropriate billing practices. A September 2016 report by the OIG focused on the Sleep Health Center of Fort Myers, Florida. Sleep Health Center is listed as an accredited organization by the American Academy of Sleep Medicine. The OIG stated errors occurred primarily because Sleep Health did not have adequate controls to ensure that it properly documented polysomnography services billed to Medicare. That issue apparently was not addressed by accreditation.

The OIG's report of October 2013, titled "Questionable Billing for Polysomnography Services" contained several recommendations for CMS. They were: Implementation of claims processing edits or improvement of existing edits to prevent inappropriate payments, consider using measures of

questionable billing from the study to identify providers for further investigation and taking appropriate action regarding providers that exhibit patterns of questionable billing. CMS concurred with all of OIG's recommendations. Requiring hospitals to obtain accreditation was not one of OIG's recommendations. The OIG found that claims not meeting Medicare requirements fell into three main areas; inappropriate diagnosis code, same-day duplicate claims or invalid NPI. It is doubtful that accreditation from any organization would have prevented these types of errors. MHA suggests that in addition to the OIG's recommendations, WPS could focus on clinical indications and medical necessity rather than accreditation status as a marker for compliance.

It is MHA's opinion that enforcement of WPS' LCD L36839 will do much to harm Medicare beneficiaries' access to necessary care and little to educate providers on proper billing practices related to polysomnography services. The change between the retired LCD L34535 and the new LCD L36839 is significant. Providers were inadequately notified of this significant change in policy and no education has been provided by WPS. The Medicare beneficiaries of Missouri deserve better than to be turned away from medically necessary diagnosis and treatment because of unfounded changes to coverage policy.

If you have any questions, please contact me at hkuhn@mhanet.com or 573/893-3700, ext. 1332, or Jim Mikes at jmikes@mhanet.com or 573/893-3700, ext. 1393.

Sincerely,

Herb B. Kuhn
President and CEO

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c Nanette Foster Reilly