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Re: COVID-19: CMS Instruction to not use the CR Modifier & DR Condition Code After Public Health Emergency

Dear Medical Directors:

AAHomecare is the national association representing durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) suppliers, manufacturers, and other stakeholders in the homecare/home medical equipment (HME) community. Our members are proud to be part of the continuum of care that assures Medicare beneficiaries receive cost effective, safe and reliable home care products and services.

We are writing regarding the recent CMS and DME MAC announcements about discontinuing use of the CR modifier once the COVID-19 Public Health Emergency (PHE) ends. For the last three years, DMEPOS suppliers have appended the CR modifier to claims impacted by the PHE. The CR modifier is used to indicate a claim for a patient impacted by a disaster. The Noridian and CGS MACs published a notice on discontinuing the use of the CR modifier after the end of the COVID-19 PHE and this notice was reiterated by CMS in the March Medicare Learning Network (MLN). The announcement states: *"The end of the COVID-19 public health emergency (PHE) is expected to occur on May 11, 2023. Since the CR modifier and DR condition code should only be reported during a PHE when a formal waiver is in place, plan to discontinue using them for claims with dates of service on or after May 12, 2023."*

The DMEPOS industry is disconcerted by the policy directive to remove the CR modifier post-PHE and is concerned that it will negatively impact millions of Medicare beneficiaries who were set up during the PHE or were serviced during the PHE. Therefore, we urge CMS to continue the use of the CR modifier for patients who were impacted by the waivers in place during the PHE. When a supplier appends the CR modifier, the claims processing system overrides certain requirements to allow the claim to be paid. Many

Local Coverage Determinations and Policy Articles require the use of the KX modifier or CG modifier for the Continuous Glucose Monitor (CGM) policy, which indicates the requirements specified in the medical policy have been met. However, for the patients who were set up during the PHE or were impacted by the waivers during the PHE with claims containing the CR modifier, the supplier cannot continue to submit claims only with the KX or CG because the supplier does not have all the necessary documentation specified in the policy i.e. home assessment, beneficiary or designee signed proof of delivery or medical records supporting clinical indications were met. In these situations, without the CR modifier these claims will be denied. Therefore, the CR modifier needs to continue to be used after May 11, 2023, for dates of service after the PHE.

The *Consolidated Appropriations Act, 2023*, extended many telehealth flexibilities through December 31, 2024, such as:

- People with Medicare can access telehealth services in any geographic area in the United States, rather than only those in rural areas.
- People with Medicare can stay in their homes for telehealth visits that Medicare pays for rather than traveling to a health care facility.
- Certain telehealth visits can be delivered audio-only (such as a telephone) if someone is unable to use both audio and video, such as a smartphone or computer.

For Power Mobility Devices (PMDs), the face-to-face encounter with the ordering practitioner is mandated by Medicare statute at section 1834(a)(1)(E)(iv) of the Social Security Act, as codified in 42 CFR § 410.38. The regulation already permits the use of telehealth in accordance with Medicare guidelines. CMS has extended flexibilities to permit a broader use of telehealth services, locations, provider types and technologies during the COVID-19 PHE. During the PHE, suppliers are instructed to append the CR modifier when telehealth, under the PHE flexibility, is used to meet the statutory face-to-face requirement. Since the *Consolidation Appropriations Act, 2023*, extends the Telehealth flexibilities beyond the PHE, in the absence of further billing guidance, it would appear the CR modifier would still be appropriate beyond May 11, 2023.

Since the Continuous Glucose Monitor policy was revised to allow Medicare-approved telehealth to meet the initial evaluation and the subsequent six (6) months follow up visit for adherence, it is paramount suppliers be allowed to append the CR modifier since the flexibilities are legislatively temporary and not permanently approved and adopted by Medicare. The laws governing telehealth have not changed, so if the treating practitioner follows those original rules, there would be no need for the CR modifier. However, if any of the flexibility is utilized, the CR modifier and COVID-19 narrative would be appropriate.

The bottom line is that for DMEPOS, suppliers must continue to use the CR modifier. AAHomecare recommends CMS revise their current instructions for the DMEPOS industry to allow the CR modifier for on-going rental and supply claims where the medical records were impacted by the PHE waivers.

The discontinuation of the CR modifier for DME is unprecedented and is contrary to the policy when the CR modifier has been used in previous disasters. Suppliers have never discontinued the use of the CR modifier in natural disasters when the disaster has been declared over. The CR modifier is an indication to all contractors that the beneficiary and the medical records have been impacted by a disaster/PHE.

Below is guidance provided on the CGS' website which reflects CMS' longstanding CR policy. The guidance states that the CR is mandatory for all claims applicable to the waiver and will always bill replacement due to natural disaster for the entire rental (all claims).

Medicare will pay for the replacement of equipment which the beneficiary owns or is purchasing, is oxygen equipment, or is a capped rental item – when the equipment/item is lost, destroyed, irreparably damaged, or otherwise rendered unusable due to circumstances relating to an emergency declared by the President. This includes inexpensive or routinely purchased items, customized items, and other prosthetic and orthotic devices.

In accordance with CR6451, use of the "CR" modifier is mandatory on claims for items and services for which Medicare payment is conditioned on the presence of a "formal waiver" including, but not necessarily limited to, waivers granted under either Section 1135 or Section 1812(f) of the Act.

[...]

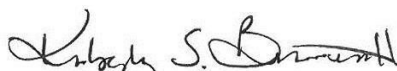
If the supplier is aware that the item is a replacement, the supplier should annotate the claim with the RA modifier in addition to CR modifier and any other applicable modifiers.

Suppliers must include a narrative on the claim explaining the reason why the equipment must be replaced and are reminded to maintain documentation indicating that the DMEPOS was lost, destroyed, irreparably damaged or otherwise rendered unusable as a result of the hurricane.

Due to the issues highlighted above, we strongly request the DME MACs work with CMS to ensure the CR modifier can be used when appropriate for beneficiaries impacted by the COVID-19 PHE.

AAHomecare appreciates your consideration of our request. If you have any questions or would like further information, please contact me at kimb@aahomecare.org.

Sincerely,



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cc: Connie Leonard, Center for Program Integrity at CMS