Program Memorandum
Intermediaries/Carriers

Department of Health & Human Services (DHHS)
Centers for Medicare & Medicaid Services (CMS)

Transmittal AB-02-177 **Date: DECEMBER 20, 2002**

This Program Memorandum re-issues Program Memorandum AB-01-47, Change Request 1499, dated March 22, 2001. The only change is the discard date; all other material remains the same.

CHANGE REQUEST 1499

SUBJECT: Independent Laboratory Billing for the Technical Component (TC) of Physician Pathology Services to Hospital Patients

In the final physician fee schedule regulation published in the **Federal Register** on November 2, 1999, CMS stated that it would implement a policy to pay only hospitals for the TC of physician pathology services furnished to hospital inpatients. Prior to this proposal, any independent laboratory could bill the carrier under the physician fee schedule for the TC of physician pathology to a hospital inpatient.

The regulation provided that, for services furnished on or after January, 1, 2001, the carriers would no longer pay claims to the independent laboratory under the physician fee schedule for the TC of physician pathology services for hospital inpatients. Similar treatment was provided under the outpatient prospective payment system for the TC of physician pathology services to hospital outpatients. (The TC of physician pathology services includes the TC of cytopathology and surgical pathology physician services as described in the Medicare Carriers Manual, §15020 B. and C.) This change was to take effect for services furnished on or after January 1, 2001. The delay was intended to allow independent laboratories and hospitals sufficient time to negotiate arrangements.

However, §542 of the Benefits Improvement and Protection Act of 2000 (BIPA) provides that the Medicare carrier can continue to pay for the TC of physician pathology services when an independent laboratory furnishes this service to an inpatient or outpatient of a covered hospital. This provision applies to TC services furnished during the 2-year period beginning on January 1, 2001.

For this provision, covered hospital means a hospital that had an arrangement with an independent laboratory that was in effect as of July 22, 1999, under which a laboratory furnished the TC of physician pathology services to fee-for-service Medicare beneficiaries who were hospital inpatients or outpatients and submitted claims for payment for the TC to a carrier. The TC could have been submitted separately or combined with the professional component and reported as a combined service.

The term "fee-for-service Medicare beneficiary" means an individual who:

1. Is entitled to benefits under Part A or enrolled under Part B of title XVIII or both; and
2. Is not enrolled in any of the following:
    a. A Medicare + Choice plan under Part C of such title;
    b. A plan offered by an eligible organization under §1876 of the Act;
    c. A program of all-inclusive care for the elderly under §1894 of the Act; or
    d. A social health maintenance organization demonstration project established under §4108(b) of the Omnibus Budget Reconciliation Act of 1987.

We have included the following examples to illustrate the application of the statutory provision to arrangements between hospitals and independent laboratories.

In implementing §542, the carriers should consider as independent laboratories those entities that it has previously recognized and paid as independent laboratories.

An independent laboratory that has acquired another independent laboratory that had an arrangement on July 22, 1999, with a covered hospital, can bill the TC of physician pathology services for that hospital's inpatients and outpatients under the physician fee schedule.

Example 1: Prior to July 22, 1999, independent laboratory A had an arrangement with a hospital in which this laboratory billed the carrier for the TC of physician pathology services. In July 2000, independent laboratory B acquires independent laboratory A. Independent laboratory bills the carrier for the TC of physician pathology services for this hospital's patients in 2001 and 2002.

If a hospital is a covered hospital, any independent laboratory that furnishes the TC of physician pathology services to that hospital's inpatients or outpatients can bill the carrier for these services furnished in 2001 and 2002.

Example 2: As of July 22, 1999, the hospital had an arrangement with an independent laboratory, laboratory A, under which that laboratory billed the carrier for the TC of physician pathology service to hospital inpatients or outpatients. In 2001, the hospital enters into an arrangement with a different independent laboratory, laboratory B, under which laboratory B wishes to bill its carrier for the TC of physician pathology services to hospital inpatients or outpatients. Because the hospital is a "covered hospital," independent laboratory B can bill the carrier for the TC of physician pathology services to hospital inpatients or outpatients.

If the arrangement between the independent laboratory and the covered hospital limited the provision of TC physician pathology services to certain situations or at particular times, then the independent laboratory can bill the carrier only for these limited services.

An independent laboratory that furnishes the TC of physician pathology services to inpatients or outpatients of a hospital that is not a covered hospital may not bill the carrier for TC of physician pathology services furnished in 2001 or 2002.

Carriers should notify independent laboratories of this BIPA provision in their next regularly scheduled bulletin and also place this bulletin on their Internet Web site.

An independent laboratory that has an arrangement with a covered hospital should forward a copy of this agreement or other documentation to its carrier to confirm that an arrangement was in effect between the hospital and the independent laboratory as of July 22, 1999. This documentation should be furnished for each covered hospital the independent laboratory services. If the laboratory did not have an arrangement with the covered hospital as of July 22, 1999, but has subsequently entered into an arrangement, then it should obtain a copy of the arrangement between the predecessor laboratory and the covered hospital and furnish this to the carrier. Until further notice, maintain a hard copy of this documentation for postpayment reviews.

You will be advised in a subsequent Program Memorandum (PM) of additional claims processing requirements.

The hospital cannot bill under the outpatient prospective system for the TC of physician pathology services if the independent laboratory that services that hospital outpatients is receiving payment from its carrier under the physician fee schedule.

The effective date of this PM is January 1, 2001.

The implementation date for this PM is April 1, 2001.

These instructions should be implemented within your current operating budget.

This PM may be discarded after December 31, 2003.

If you have any questions about the payment policy, contact Jim Menas on (410) 786-4507.

If you have any questions about claims processing, contact Ronalda Leneau on (410) 786-6147 or Dolores Crujeiras on (410) 786-7169.