Advocacy News Advocacy Action

Medicare National Coverage Decision

Frequently Asked Questions about Medicare's New Rules Regarding Obesity Surgery and Why the Rules are Causing Some Cancellations.

On February 21, 2006, Medicare, the federal program that provides health coverage for the elderly and disabled, announced and immediately implemented new rules for the coverage of obesity surgery. These FAQ's are based on the new rules as currently implemented.

What do the rules say?

The new rule, adopted after nearly one year of review, states that Medicare will cover open and laparoscopic gastric bypass, laparoscopic adjustable gastric banding (the LAP-BAND SYSTEM) and open and laparoscopic biliopancreatic diversion with duodenal switch **as long as the procedure is performed at a Center of Excellence as designated either by the American Society for Bariatric Surgery (ASBS) or the American College of Surgeons (ACS).**

Who does this apply to?

The new rule applies only to Medicare beneficiaries who are morbidly obese (body mass index (BMI) of 35 or greater) with any obesity-related condition or disease, and the patient has been previously with medical treatment of obesity. There are no age restrictions. Patients who are covered by their employer's health plan are not affected by Medicare's new rule.

Why did Medicare adopt new rules?

Under most circumstances, decisions regarding covered procedures under Medicare are made at the local and regional level. The challenge with obesity surgery coverage under the previous rules was that surgery coverage and the criteria to access surgery varied widely across the country. Under the old local rules, some states had great access to surgery while others had little or no access. At the request of ASBS and others, Medicare went through a national coverage decision process to adopt rules making coverage consistent across the country. In addition, Medicare has become more focused in recent years on quality outcomes for Medicare beneficiaries and it is believed that this directly contributed to the inclusion of the Center of Excellence requirement.

Why has this ruling caused cancellations?

Due to the immediate implementation of the rule, some surgery practices were caught off-guard and have been forced to cancel procedures if they have not yet received designations as a Centers of Excellence. Medicare has informed hospitals that the rules have been implemented immediately and that they will not pay bills associated with the surgery for a Medicare patient unless they are performed at a Center of Excellence.

What are my options if my surgery was cancelled?

1. Find a Center of Excellence and contact them regarding their criteria for surgery. A list of Centers of Excellence can be found at **www.surgicalreview.org** or **www.facs.org/viewing/cqi/bscn/fullapproval.html**. Keep in mind that Medicare is a national program, so you often can travel to another state for your procedure. The Centers for Medicare & Medicaid Services Web site also lists the facilities that are approved Centers of Excellence at **http://www.cms.hhs.gov/MedicareApprovedFacilitie/BSF/list.asp**.
2. Talk to your existing surgery practice to see if they have applied for Center of Excellence status and if they have been advised when their application will be reviewed. With this information, you

can make the decision whether to wait for your existing practice to receive the appropriate Center of Excellence status or choose a new practice which is already designated as a Center of Excellence.

What is required for a hospital to be designated as a Center of Excellence?
To become certified as an ASBS Center of Excellence, the hospital or institution must:

- Perform at least 125 bariatric surgeries per year collectively.
- The surgeon must have performed at least 125 bariatric surgeries by him or herself over a lifetime and perform at least 50 per year.
- The center must also report long-term patient outcomes and have an on-site inspection to verify all data.
- The center must have a dedicated multidisciplinary bariatric team that includes surgeons, nurses, medical consultants, nutritionists, psychologists and exercise physiologists.
- The center must meet a variety of other requirements detailed at **www.surgicalreview.org/r_provisional.html**.

Requirements from the ACS are similar. For information on ACS requirements, visit **www.facs.org**.

Why is Medicare requiring Centers of Excellence status?
For a variety of reasons including:

- A wide variety of data suggests that surgeon experience is an important factor in better outcomes and reducing deaths and complications.
- Data also suggests that comprehensive programs, those with pre-op and post-op care, also report better outcomes.
- The requirement of data collection (outcomes, mortality and complications) under the Centers of Excellence programs provides important information for future rulings.

How many Centers of Excellence are there?
As of March 21, 2006, there are 123 in 33 states.

There isn't a Center of Excellence near my home. What can I do?
You have a couple of options. The first is to be patient. The ASBS and ACS continually certify new surgeons/hospitals.

Your second option is to contact the closest Center of Excellence to you. Medicare is a national program so beneficiaries often have the option to travel out of state to receive medical care.

I thought my hospital was a bariatric surgery Center of Excellence. Why isn't it on the list?
Many commercial insurance companies and others use the Center of Excellence designation. In addition, some centers may have indicated they have applied for Center of Excellence status, but have not received a final review. Medicare specifically required that surgeons/hospitals be designated as a Center of Excellence by either the ASBS or ACS.

Do all Centers of Excellence accept Medicare?
No. You will need to contact the center directly to see if they accept Medicare and/or have any other financial requirements.

I'm a Medicare beneficiary with surgery scheduled soon, but haven't heard from my surgeon. What should I do?
Contact your surgeon's office to see if they are a Center of Excellence. Remember, if you have the surgery and they are not a Center of Excellence, you may be personally liable for the surgery and hospital fees.

Does this ruling affect my private insurance or my state Medicaid coverage?
No. The rules apply only to Medicare beneficiaries. It is hoped that the rules encourage commercial insurers and Medicaid programs to expand their coverage.

I heard media reports a few months ago about Medicare eliminating coverage of obesity surgery for those 65 years of age and older. Will the rules allow me to have surgery?
Yes. There are no age restrictions in the new rules. There is a great deal of confusion on this issue. As part of the process of adopting new rules, Medicare originally proposed limiting surgery to those under the age of 65. This proposed rule was removed from the final decision when the obesity surgery community provided additional data on the safety and effectiveness of obesity surgery in older Americans.

Do all Centers of Excellence accept patients 65 years of age or older?
No. Individual surgeons/hospitals set their own age requirements. You will need to contact the center directly to determine their patient requirements.

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How Obesity is Perceived Impacts the Negative Stigma

Perceptions about the causes of obesity may be partially responsible for this stigma and bias. Assumptions that obesity can be prevented by self-control, that patient non-compliance explains failure at weight-loss, and that obesity is caused by emotional problems, are all examples of attributions that contribute to negative attitudes. Additional research suggests that beliefs about the causality and stability of obesity are also important factors contributing to negative attitudes. For example, studies show that obese individuals are more likely to be stigmatized if their overweight condition is perceived to be caused by controllable factors compared to uncontrollable factors (e.g., overeating versus a thyroid condition), and if obesity is perceived to be personally changeable rather than an irreversible condition.

Taken together, the consequences of being denied jobs, rejected by peers, or treated inappropriately by healthcare professionals because of one's weight can have a serious and negative impact on quality of life. Obese individuals suffer terribly from this, both from direct discrimination and from more subtle forms of bias and stigma that are frequently encountered.

What Can be Done to Eradicate the Problem of Weight Bias?

Given how pervasive and acceptable weight stigma is in our society, transforming societal attitudes and enacting laws that prohibit discrimination based on weight are needed in order to eliminate the problem of stigma toward obese individuals. Although this requires enormous efforts, there are other important steps that can be taken by both patients and their healthcare providers to help improve the daily functioning and well-being of obese individuals.

Strategies to Deal with Weight Stigma

- Educate others about the stigma of obesity to help challenge negative attitudes.
- Obtain social support from others who are struggling with weight stigma, or from friends and family members who are supportive.
- Instead of avoiding enjoyable activities because of negative feelings about your weight, set goals to ease these restrictions and participate more fully in these experiences.
- Rather than feeling inferior, practice positive self-talk strategies that emphasize self-acceptance and positive self-esteem.
- Be vocal about individual needs and positively assert these to appropriate individuals (e.g., requesting larger-sized medical gowns from a healthcare provider).
- Communicate to the perpetrator of bias that his or her comments were inappropriate and hurtful, and that nobody deserves such unkind remarks, regardless of their weight.
- Participate in public groups to protest weight stigmatization. The National Association for the Advancement of Fat Acceptance (NAAFA) is one such advocacy group which promotes size acceptance, fights weight discrimination, and publicly campaigns to challenge stigma.
- Talk to a therapist to help identify effective ways to cope with stigma and to replace self-defeating thoughts or self-blame with healthier ways of coping.

It is important to note that there are many different strategies of coping with weight stigma and some strategies may be more or less effective with different types of stigmatizing situations.

Patients as Advocates

Patients who are struggling with weight stigma can begin to approach this problem by becoming advocates for themselves. This includes identifying situations in which they have been stigmatized because of their weight and deciding how best to handle the situation to achieve positive emotional health to help prevent additional stigma from occurring.

An Important Role for Healthcare Professionals

Healthcare can easily become a negative and shaming experience for obese patients because of weight stigma. Therefore, healthcare professionals have an extremely important role to play in addressing the problem of weight bias. Encouraging patients to share their experiences of stigma and to help them feel less isolated in these experiences is an important first step. Clinicians can also help patients identify ways to effectively cope with stigma, such as using positive "self-talk," obtaining social support from others and participating in activities that they may have restricted due to feelings of shame about their weight.

These tools can help reduce the tendency of obese individuals to internalize negative stereotypes of obesity and blame themselves, both of which can negatively impact emotional well-being.

A second role for healthcare professionals is to address the issue of weight bias within themselves, their medical staff, and colleagues. In order to be effective and empathic with obese patients, this requires honest self-examination of one's own attitudes and weight bias. Education can help increase awareness among healthcare professionals about the pervasiveness and consequences of weight bias and can also encourage providers to adopt a more accurate and empathic understanding of their obese patients.

Finally, healthcare professionals can do a great service to their obese patients by improving the physical and social environment of healthcare settings. This means having bathrooms that are easily negotiated by heavier patients, sturdy armless chairs in waiting rooms, offices with large exam tables, gowns and blood pressure cuffs in appropriate sizes and reading materials for patients that are appropriate and "weight-friendly" (rather than fashion magazines with thin supermodels).

Healthcare professionals can also improve their interpersonal interactions with obese patients by being sensitive to situations of embarrassment for patients, such as weighing patients in a private and sensitive matter, without judgmental commentary. Providers can also help by emphasizing goals of health and fitness behaviors (rather than only the number on the scale) and celebrating positive health behavior changes made by patients.

For more resources on weight bias, including research papers and assessment tools, please visit www.yaleruddinstitute.org.

About the Author:

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