

<b>CMS Manual System</b>	<b>Department of Health &amp; Human Services (DHHS)</b>
<b>Pub 100-04 Medicare Claims Processing</b>	<b>Centers for Medicare &amp; Medicaid Services (CMS)</b>
<b>Transmittal 1440</b>	<b>Date: FEBRUARY 7, 2008</b>
	<b>Change Request 5943</b>

**Subject: Medicare, Medicaid, and SCHIP Extension Act of 2007 Changes to Independent Laboratory Billing for the Technical Component of Physician Pathology Services**

**I. SUMMARY OF CHANGES:** This Change Request (CR) implements provider education activities to notify the independent laboratories eligible to bill the carrier for these services that they may do so through June 30, 2008, regardless of the beneficiary's hospitalization status, in accordance with Medicare, Medicaid, and SCHIP Extension Act of 2007. It also instructs the carriers not to implement the business requirements of CR 5347 with respect to action for physician pathology services (See CR 5347, Transmittal 1221, issued and April 18, 2007).

**New / Revised Material**

**Effective Date: January 1, 2008**

**Implementation Date: March 7, 2008**

*Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.*

**II. CHANGES IN MANUAL INSTRUCTIONS:** (N/A if manual is not updated)

R=REVISED, N=NEW, D=DELETED-Only One Per Row.

<b>R/N/D</b>	<b>Chapter / Section / Subsection / Title</b>
<b>R</b>	16/80/80.2.1/Technical Component of Physician Pathology Services to Hospital Patients

**III. FUNDING:**

**SECTION A:** For Fiscal Intermediaries and Carriers:

No additional funding will be provided by CMS; Contractor activities are to be carried out within their operating budgets.

**SECTION B:** For Medicare Administrative Contractors (MACs):

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

#### **IV. ATTACHMENTS:**

**Business Requirements**

**Manual Instruction**

*\*Unless otherwise specified, the effective date is the date of service.*

# Attachment - Business Requirements

Pub. 100-04	Transmittal: 1440	Date: February 7, 2008	Change Request: 5943
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**SUBJECT: Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA) Changes to Independent Laboratory Billing for the Technical Component (TC) of Physician Pathology Services**

**Effective Date:** January 1, 2008

**Implementation Date:** March 7, 2008

## **I. GENERAL INFORMATION**

### **A. Background:**

The technical component (TC) of physician pathology services refers to the preparation of the slide, involving tissue or cells that a pathologist will interpret. (In contrast, the pathologist's interpretation of the slide is the professional component (PC) service. If this service is furnished by the hospital pathologist for a hospital patient, it is separately billable. If the independent laboratory's pathologist furnishes the PC service, it is usually billed with the TC service as a combined service.)

In the final physician fee schedule regulation published in the *Federal Register* on November 2, 1999, the Centers of Medicare and Medicaid Services (CMS) stated that it would implement a policy to pay only the hospital for the TC of physician pathology services furnished to hospital patients. Prior to this proposal, any independent laboratory could bill the carrier under the physician fee schedule for the TC of physician pathology services for hospital patients. As pointed out in the final rule, this policy has contributed to the Medicare program paying duplicate payments for the TC service, first through the inpatient prospective payment rate to the hospital where the patient is an inpatient and again to the independent laboratory that bills the carrier, instead of the hospital, for the TC service.

Ordinarily, the provisions in the final physician fee schedule are implemented in the following year. The provision was delayed one year at the request of the industry, to allow independent laboratories and hospitals sufficient time to negotiate arrangements. Additionally, new provisions established under Section 542 of the Benefits Improvement and Protection Act of 2000 (BIPA), Section 732 of the Medicare Modernization Act (MMA), and Section 104 of the Tax Relief and Health Care Act of 2006 (TRHCA) have further delayed the policy change proposed in the regulation. Therefore, during this time, the carriers have continued 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. A covered hospital refers to 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 patients of a hospital and submitted claims for payment for the TC to a carrier. However, Section 104 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA) created a new provision to extend the Section 732 of the MMA provision an additional six (6) months until June 30, 2008.

This change request (CR) instructs the carriers to conduct provider education activities to notify independent laboratories that those that qualify to bill under the Section 104 of the MMSEA provision may continue to bill the carrier for the TC of physician pathology services furnished to patients of a covered hospital, regardless of the beneficiary's hospitalization status (inpatient or outpatient) on the date that the service was performed,

through June 30, 2008. It also instructs the carriers not to implement the business requirements specified in CR 5347 with respect to actions for physician pathology services. (See CR 5347, Transmittal 1221, issued on April 18, 2007.)

**B. Policy:**

In accordance with Section 104 of the MMSEA, independent laboratories that qualify to bill for the TC of a physician pathology service furnished to a patient of a covered hospital are given an extension of an additional six (6) months to continue to bill the carrier for these services through June 30, 2008. The independent laboratories that are eligible to bill for these services under the Section 104 provision may bill for these services regardless of the patient’s hospitalization status at the time that the service is performed.

**II. BUSINESS REQUIREMENTS TABLE**

Use “Shall” to denote a mandatory requirement

Number	Requirement	A / B	D M E	F I	C A R I E R	R H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
5943.1	Carriers/A/B MACs shall not implement CR 5347 business requirements 5347.4-5347.8, 5347.10-5347.14, 5347.16-5347.17, 5347.20-5347.22, or 5347.26 with respect to actions for physician pathology services. All other requirements of CR 5347 remain in effect. (See CR 5347, Transmittal 1221, issued on April 18, 2007.)	X			X						

**III. PROVIDER EDUCATION TABLE**

Number	Requirement	A / B	D M E	F I	C A R I E R	R H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
5943.2	A provider education article related to this instruction will be available at <a href="http://www.cms.hhs.gov/MLNMattersArticles/">http://www.cms.hhs.gov/MLNMattersArticles/</a> shortly after the CR is released. You will receive notification of the article release via the established "MLN Matters" listserv. Contractors shall post this article, or a direct	X			X						

Number	Requirement	A / B  M A C	D M B  M A C	F I  I E R	C A R R I E R	R H R I  I S S	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
	link to this article, on their Web site and include information about it in a listserv message within one week of the availability of the provider education article. In addition, the provider education article shall be included in your next regularly scheduled bulletin. Contractors are free to supplement MLN Matters articles with localized information that would benefit their provider community in billing and administering the Medicare program correctly.										
5943..3	Carriers and A/B MACs shall conduct provider education activities to notify independent laboratories that those that qualify to bill for the TC of physician pathology services furnished to a hospital patient under the MMA Section 732/BIPA 542 provision that they may continue to bill the carrier for these services through June 30, 2008, in accordance with the MMSEA Section 104 provision.	X			X						
5943.3.1	For consistency, carriers and A/B MACs shall use the language contained in the MLN Matters provider education article prepared for this change request for any supplemental provider education materials.	X			X						

#### IV. SUPPORTING INFORMATION

**A. For any recommendations and supporting information associated with listed requirements, use the box below:**

<b>X-Ref Requirement Number</b>	<b>Recommendations or other supporting information:</b>
5943.1	Implement in accordance with CR 5347, Transmittal 1221, issued on April 18, 2007.

**B. For all other recommendations and supporting information, use the space below:** N/A

#### V. CONTACTS

**Pre-Implementation Contact(s):** James Menas 410-786-4507 (payment policy), Wendy Knarr at Wendy.Knarr@cms.hhs.gov (carrier operations)

**Post-Implementation Contact(s):** Appropriate Regional Office

#### VI. FUNDING

**A. For Fiscal Intermediaries and Carriers, use the following statement:**

No additional funding will be provided by CMS; contractor activities are to be carried out within their operating budgets.

**B. For Medicare Administrative Contractors (MAC), use the following statement:**

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

## **80.2.1 - Technical Component (TC) of Physician Pathology Services to Hospital Patients**

*(Rev. 1440; Issued: 02-07-08; Effective: 01-01-08; Implementation: 03-07-08)*

Section 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. Administrative extensions of this provision, and new provisions established under Section 732 of the Medicare Modernization Act (MMA) and *Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA)*, allow the carrier to continue to pay for this service through *June 30, 2008*.

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.

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

In implementing BIPA §542/MMA §732/ *Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA)*, 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 *through June 30, 2008*.

### **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 B 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 its 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 to patients of that hospital.

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. The carrier maintains a hard copy of this documentation for postpayment reviews.

Effective *on or after July 1, 2008*, only the hospital may bill for the TC of a physician pathology service provided to an inpatient or outpatient. In addition, the hospital cannot bill under the OPSS for the TC of physician pathology services if the independent laboratory that services that hospital outpatient is receiving payment from its carrier under the physician fee schedule.