CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-04 Medicare Claims Processing	Centers for Medicare & Medicaid Services (CMS)
Transmittal 1148	**Date: JANUARY 5, 2007**
	Change Request 5468

Subject: Tax Relief and Health Care Act of 2006 Changes to Independent Laboratory Billing for the Technical Component (TC) of Physician Pathology Services

I. SUMMARY OF CHANGES: In previously issued instructions (Change Request 5210, Transmittal 1046, issued on September 1, 2006), the Centers for Medicare and Medicaid Services notified independent laboratories that they may no longer bill the carrier for the technical component (TC) of a physician pathology service provided to a patient of a covered hospital after December 31, 2006, when the Medicare Modernization Act (MMA) Section 732 provision sunsets. This transmittal instructs the carriers to conduct provider education activities to notify independent laboratories that those that are eligible to bill for these services under the MMA 732 provision may continue to bill the carrier for these services through December 31, 2007, in accordance with Section 104 of the Tax Relief and Health Care Act of 2006. It also instructs the carriers not to implement the business requirements of CR 5347 with respect to actions for physician pathology services. (See CR 5347, Transmittal 1098, issued on November 2, 2006

New / Revised Material
Effective Date: January 1, 2007
Implementation Date: February 5, 2007

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.*

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

III. FUNDING:
No additional funding will be provided by CMS; Contractor activities are to be carried out within their FY 2007 operating budgets.

IV. ATTACHMENTS:

Business Requirements

Manual Instruction

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

Attachment - Business Requirements

Pub. 100-04	Transmittal: 1148	Date: January 5, 2007	Change Request 5468

SUBJECT (Change Request Title): Tax Relief and Health Care Act of 2006 Changes to Independent Laboratory Billing for the Technical Component (TC) of Physician Pathology Services

Effective Date: January 1, 2007

Implementation Date: February 5, 2007

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, 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 twice 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. In this case, 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), administrative extensions of these provisions, and provisions established under Section 732 of the Medicare Modernization Act (MMA), 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. (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.)

In previously issued instructions, the Centers for Medicare and Medicaid Services notified independent laboratories that they may no longer bill the carrier for these services after December 31, 2006 when the Medicare Modernization Act (MMA) Section 732 provision sunsets and the final regulations, at 42 CFR § 415.130, included in the 1999 final physician fee schedule regulations, take effect. (See CR 5210, Transmittal 1046, issued on September 1, 2006.) However, Section 104 of the Tax Relief and Health Care Act of 2006 provides a one-year extension to the provision of Section 732 of the Medicare Modernization Act (MMA) that allows the carrier to continue to pay independent laboratories under the Medicare Physician Fee Schedule

(MPFS) for the technical component (TC) of physician pathology services furnished to patients of a covered hospital. Therefore, independent laboratories which qualify to bill for these services may continue to bill the carrier for TC of physician pathology services furnished to patients of a covered hospital during calendar year 2007.

This change request (CR) instructs the carriers to conduct provider education activities to notify independent laboratories that those that qualify to bill under the Tax Relief and Health Care Act of 2006 Section 104 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 December 31, 2007. 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 1098, issued on November 2, 2006.)

B. Policy:

In accordance with Section 104 of the Tax Relief and Health Care Act of 2006, independent laboratories that qualify to bill for the TC of a physician pathology service furnished to a patient of a covered hospital may continue to bill the carrier for these services through December 31, 2007. 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**	**Responsibility (place an "X" in each applicable column)**										
		A/B MAC	DME MAC	FI	CARRIER	DMERC	RHHI	Shared-System Maintainers				OTHER
								FISS	MCS	VMS	CWF	
5468.1	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 1098, issued on November 2, 2006.)	X			X							

III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility (place an "X" in each applicable column)										
		A/B MAC	DME MAC	FI	CARRIER	DMERC	RHHI	Shared-System Maintainers				OTHER
								FISS	MCS	VMS	CWF	
5468.2	A provider education article related to this instruction will be available at http://www.cms.hhs.gov/MLNMattersArticles/ 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 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.	X			X							
5468.3	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 December 31, 2007, in accordance with the Tax Relief and Health Care Act of 2006 Section 104 provision.	X			X							
5468.3.1	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:

X-Ref Requirement Number	Recommendations or other supporting information:
5468.1	Implement in accordance with CR 5347, Transmittal 1098, issued on November 2, 2006.

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), Susan Webster 410-786-3384 (carrier operations)

Post-Implementation Contact(s): Appropriate Regional Office

VI. FUNDING

A. ***For TITLE XVIII Contractors*****, use only one of the following statements:**
No additional funding will be provided by CMS; contractor activities are to be carried out within their FY 2007 operating budgets.

B. ***For Medicare Administrative Contractors (MAC)*****, use only one of the following statements:**

The contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the Statement of Work (SOW). The contractor is not obligated to incur costs in excess of the amounts specified 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. 1148, Issued: 01-05-07, Effective: 01-01-07, Implementation: 02-05-07)

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 Section 104 of the Tax Relief and Health Care Act of 2006, allow the carrier to continue to pay for this service through December 31, 2007.*

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/Tax Relief and Health Care Act of 2006 Section 104*, 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 December 31, 2007*.

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 January 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 OPPS 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.