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In this Issue

Another Step Designed to Reign in Unscrupulous DMEPOS Suppliers

Provisions in the Paper-based Manual Omitted from Internet-only Manuals May Still Be Good Policy

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Another Step Designed to Reign in Unscrupulous DMEPOS Suppliers

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On January 25, 2008, CMS published a proposed rule to clarify and add to the current supplier standards for durable medical equipment, prosthetic, and orthotics supplies (“DMEPOS”) suppliers. Although acknowledging other measures to prevent fraud and abuse related to the provision of Medicare covered DMEPOS items (such as the competitive bidding program, increased funding for site visits to ensure compliance, the proposed rule to require the posting of a surety bond), CMS views the proposed revisions and additions to the supplier standards as the mechanism to arm CMS with the “needed authority to deny or revoke billing privileges to those DMEPOS suppliers that pose a significant risk to the program.”

Clarification to Existing Supplier Standards: Listed below are the current supplier standards (italicized) and CMS’ proposed clarifications.

- *Supplier Standard 1: Operates its business and furnishes Medicare-covered items in compliance with all applicable Federal and State licensure and regulatory requirements.*
 - Exceptions to state licensure will only occur if the state provides for such exceptions.
 - State licensure requirements cannot be satisfied by contracting with a licensed individual or entity to provide the services.
- *Supplier Standard 7: Maintains a physical facility on an appropriate site. The physical facility must contain space for storing business records.*
 - An “appropriate site” must have visible signage with posted hours of operation and must be accessible to Medicare beneficiaries and CMS during those hours of operation. Advance notice for any change in hours of operation would be required.

CMS noted that it would continue to allow “closed door” DMEPOS suppliers, e.g., a pharmacy supplier that only services residents of a nursing facility. CMS clarified, however, that closed door suppliers would need to adhere to the

- John F. Lessner “appropriate site” standards.
- Robert E. Mazer ○ CMS is soliciting comments regarding whether there should be a minimum square footage requirement for a DMEPOS supplier.
- Christine M. Morse ○ DMEPOS suppliers must maintain business records for seven years following the payment for the claim.
- Laurence B. Russell
- Ray M. Shepard ● *Supplier Standard 8: Permits CMS, or its agents to conduct on-site inspections to ascertain supplier compliance with the requirements of this section. The supplier location must be accessible during posted business hours to beneficiaries and to CMS, and must maintain a visible sign and posted hours of operation.*
- Susan A. Turner ○ In the event that a site is not accessible to an inspector during the posted hours of operation, billing privileges could be denied (for an initial enrollment) or revoked (for an existing supplier).
- Associates**
- Kristin C. Cilento
- Joshua J. Freemire ● *Supplier Standard 9: Maintains a primary business telephone listed under the name of the business locally or toll-free for beneficiaries. The exclusive use of a beeper number, answering service, pager, facsimile machine, car phone or answering machine can not be used as the primary business telephone.*
- Donna J. Senft ○ Forwarding calls from the primary business telephone to a cellular phone or a beeper/pager is prohibited.
- Emily H. Wein ● *Supplier Standard 10: Has a comprehensive liability insurance policy in the amount of at least \$300,000 that covers both the supplier’s place of business and all customers and employees of the supplier.*
- Codifies the current enrollment policy that the National Supplier Clearinghouse (“NSC”), the Medicare enrollment contractor, must be named as an additional insured on the policy.
- Failure to maintain insurance would result in revocation of billing privileges from the date that the policy lapsed.
- *Supplier Standard 11: Must agree not to contact a beneficiary by telephone when supplying a Medicare-covered item unless one of the delineated exceptions applies.*
- Suppliers could not directly solicit customers, including through the use of the in-person contacts, telephone, computer e-mail, instant messaging, or coercive Internet advertising on sites unrelated to the DMEPOS products.
- *Supplier Standard 12: Supplier must be responsible for the delivery of Medicare-covered items to beneficiaries and maintain proof of delivery.*
- The supplier is solely responsible for maintaining proof of the delivery of Medicare covered items, furnishing the beneficiary with information regarding how to contact the supplier by telephone, and providing instructions on how to safely use such items.
- This standard would not preclude a supplier from contracting with another business to provide for the delivery of the DMEPOS items.

Additional New Supplier Standards: The following bulleted items would become new supplier standards.

- When oxygen is supplied the oxygen must be obtained from a state-licensed business, unless the state does not provide for such licensure.

- Documentation containing ordering and referring information, including the NPI number of the practitioner placing the order, will need to be maintained for seven years.
- Suppliers are not permitted to share a practice location with any other Medicare supplier, including physicians and nonphysician practitioners. In the commentary regarding this new standard, CMS implies that the prohibition against sharing a practice location also prohibits the commingling of operations, staff, and inventory. CMS is seeking comments regarding exceptions for physicians and nonphysician practitioners that choose to also enroll as DMEPOS suppliers.
- DMEPOS suppliers must be open to the public a minimum of 30 hours per week, with an exception for suppliers working with custom-made or fitted orthotics and prosthetics. Initially, CMS considered setting the standard at 40 hours per week, but relaxed it to 30 hours.
- Initial or continued enrollment would be denied for DMEPOS suppliers with a federal or state tax delinquency.

Lastly, CMS expressed concern about DMEPOS suppliers that fail to report certain adverse actions. Under the proposed rules, any claim submitted after the date of the adverse legal action would be considered to be an overpayment if the adverse legal action was not reported in accordance with the enrollment rules.

Ober|Kaler's Comments: While CMS claims that the standards contained within the proposed rule simply codify procedural policies that DMEPOS suppliers should already be adhering to, many of these clarified and new standards appear to go beyond existing policies. If these proposed changes become effective, current operations of enrolled suppliers could be significantly affected. Comments to the proposed rule, available on the CMS website at <http://a257.g.akamaitech.net/7/257/2422/25jan20081800/edocket.access.gpo.gov/2008/pdf/E8-1346.pdf>, are due on March 25, 2008.

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