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Rolling Back the Clock on DMEPOS Supplier Standards

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For those DMEPOS suppliers struggling to comply with the new and revised supplier standards that became effective September 27, 2010, CMS offers some relief. CMS acknowledged that certain changes to these new rules were needed to provide clarity and to account for “the realities that certain suppliers confront as they attempt to provide quality care and maintain access for beneficiaries.” CMS published proposed regulations, “[Medicare Program; Revisions to the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies \(DMEPOS\) Suppliers Safeguards \[PDF\]](#)” on April 4, 2011, that would further modify a few of the September 27th rules:

- **Direct Solicitation:** CMS noted the criticism that the current definition of “direct solicitation” is overly broad and has proposed to revert back to the prohibitions on telephone solicitation that were in effect prior to the September 27th changes, rather than enforce the new rules. In the interim period until this regulation is finalized, CMS has instructed its contractors to require compliance to the prior telephone solicitation restrictions.
- **Contractual Arrangement Issues:** Many DMEPOS suppliers found the language in the exception related to contracting for licensed services very confusing. Prior to the publication of this proposed rule, the National Supplier Clearinghouse posted an FAQ to add some clarity. In light of the continued confusion, CMS identified a need to clarify its position by affirmatively confirming that “it is permissible for suppliers to contract for licensed services in the absence of an express State prohibition.”
- **Local Zoning Requirements:** Although DMEPOS suppliers have been and will continue to be required to comply with local zoning rules, CMS acknowledged that policing such matters is best left to the states.

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Therefore, CMS proposed to remove the reference to compliance with local zoning requirements from the supplier standards.

- *State Licensing Requirement Exception:* Two standards were clarified under this heading:
 - Under the current rules, licensed orthotics and prosthetics personnel providing custom fabricated items are exempt from the minimum practice location square footage requirement (200 square feet). CMS proposes to add that the exemption exists for unlicensed personnel providing these items if doing so in a state that does not require licensure.
 - Under the current rules, certain “licensed nonphysician practitioners” are exempt from the minimum hours of operation (30-hour per week). The proposed regulation simply clarifies that the exempted nonphysician practitioners are physical and occupational therapists.

Ober|Kaler's Comments

Comments to the proposed rules must be submitted by June 3, 2011. Although it is evident that the proposed rules were prompted by comments already received from the supplier community, it is important to let CMS know that there is support for these changes. For more information about the September 27, 2010 regulation changes refer to our prior Payment Matters article, [“DMEPOS Suppliers Beware – Operational Changes May Be Required to Avoid Revocation.”](#)

Donna Senft is author of the blog [MedicareforGeeks.com](#), which provides information relating to the requirements and new initiatives with respect to PECOS (Provider Enrollment, Chain, and Ownership System), the national electronic database for recording and retaining data on Medicare-enrolled providers and suppliers.