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CMS Proposes New Standards for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies

On January 25, 2008, the Centers for Medicare & Medicaid Services (CMS) issued *proposed* regulations that suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) would have to meet to participate in the Medicare program. CMS will be accepting comments on the proposed regulations until March 25, 2008. The proposed regulations include clarifications of and revisions to the existing DMEPOS supplier standards set forth in 42 C.F.R. § 424.57 as well as additional new standards.

According to CMS, the proposed changes are intended to ensure that only legitimate suppliers furnish DMEPOS to Medicare beneficiaries. The issuance of these proposed regulations is yet another step in the efforts of CMS to focus on perceived fraud and abuse in this industry sector. Prior steps include last summer's proposal to require surety bonds of up to \$65,000 for all suppliers of DMEPOS. Last summer also saw the kick-off of two-year demonstration projects in Florida and Southern California targeting government identified fraudulent business practices of DMEPOS suppliers that required, among other things, reenrollment to maintain billing privileges.

Proposed Clarifications and Revisions to Existing DMEPOS Supplier Standards

The following summarizes some of the more significant proposed changes to the existing supplier standards:

- In states that require a **specific license to furnish certain items or services**, the proposed rule would require DMEPOS suppliers themselves to be licensed to provide the items or services and would prohibit suppliers from contracting with individuals or entities to provide the licensed services.

- The proposed rule would require that DMEPOS suppliers not only maintain a **physical facility on an “appropriate site”** that includes space for storing business records, but also **maintain business records for seven years** after a claim has been paid. The proposed rule also clarifies the definition of “appropriate site” to include locations with specific features delineated in the rule. CMS is soliciting comments on whether it should establish a minimum square footage requirement under the definition of “appropriate site.”
- The current standard requires suppliers to maintain a primary business telephone listed under the name of the business. The proposed rule would revise this standard to **exclude the use of cell phones, beepers, and pagers as a method of receiving calls on a primary business telephone**. DMEPOS suppliers also would be prohibited from forwarding calls from the primary business telephone to a cellular phone, beeper, or pager.
- The current standard that requires the supplier to have a **comprehensive liability insurance policy** in the amount of at least \$300,000 that covers the supplier’s place of business and all customers and employees would be revised to specify that the insurance must be in the amount of at least \$300,000 per incident. Self-insurance could be used as long as CMS or the National Supplier Clearinghouse (NSC) can verify the policy and its coverage provisions with an independent underwriter. The revised standard also would require the supplier to list the NSC as a certificate holder on the policy and to notify the NSC in writing within 30 days of a policy change or cancellation. In addition, a prospective DMEPOS supplier would have to obtain the liability coverage before submitting a Medicare enrollment application.
- The proposed rule would **prohibit suppliers from directly soliciting patients**, including a prohibition on telephone, computer e-mail or instant messaging, coercive response

Internet advertising on sites unrelated to DMEPOS products, or in-person contacts.

- The proposed rule clarifies the **responsibilities of the supplier for delivering Medicare-covered items** to beneficiaries, instructing beneficiaries on use of the items, and maintaining documentation related to delivery and instruction.

Proposed New DMEPOS Supplier Standards

The following summarizes some of the more significant proposed new supplier standards:

- One proposed new standard would specify that the DMEPOS supplier must obtain oxygen from a state-licensed oxygen supplier, except in states that do not license oxygen suppliers.
- Another proposed new standard would require a supplier to maintain ordering and referring documentation, including the National Provider Identifier, received from a physician or applicable practitioner for seven years after the claim has been paid.
- A proposed new standard would prohibit suppliers from sharing a practice location with any other Medicare supplier, including a physician/physician group or another DMEPOS supplier. The proposed standard is based on CMS’ belief that allowing DMEPOS suppliers to commingle practice locations, operations, staff, inventory, and other aspects of a supplier’s operations is a significant risk to the Medicare program, and that allowing a DMEPOS supplier to commingle its practice location with another DMEPOS supplier limits the ability of CMS and the NSC to ensure that each DMEPOS supplier meets all of the supplier standards. CMS acknowledges that physicians and other licensed practitioners may obtain their own DMEPOS supplier numbers and furnish DMEPOS from their office, and is therefore soliciting comments on whether it should establish an exception to this space-sharing proposal for physicians and nonphysician practitioners.

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- Another proposed new standard would require suppliers to remain open to the public at least 30 hours per week, except for those DMEPOS suppliers who are working with custom-made or fitted orthotics and prosthetics.
- An additional new standard would prohibit a supplier or prospective supplier from having a federal or state tax delinquency.
- The new standards also would include a provision that would allow CMS, the NSC, or the Medicare contractor to assess and collect an overpayment from the time of a reportable event and to revoke the supplier's billing privileges if an adverse legal action or felony conviction precludes participation in or payment from Medicare.