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CMS LIMITS CONSIGNMENT CLOSET AND STOCK AND BILL ARRANGEMENTS

On September 1, 2009 the Centers for Medicare & Medicaid Services (“CMS”) issued Change Request 6528 which amends the Medicare Program Integrity Manual, chapter 10, section 21.8.¹ The purpose of the change request is to “define and prohibit certain arrangements” where an enrolled supplier of durable medical equipment, prosthetics, orthotics, and supplies (“DMEPOS supplier”) maintains inventory at a practice location owned by a physician or non-physician practitioner and the billing and furnishing of DMEPOS items is done by the physician or non-physician practitioner.² Such an arrangement is commonly referred to as a consignment closet or a stock and bill arrangement.

The change request instructs the National Supplier Clearinghouse, the Medicare Administrative Contractor for DMEPOS suppliers (“NSC-MAC”), that these arrangements must be in compliance with current standards and further defines specific compliance standards for validation of consignment closets and stock and bill arrangements. CMS notes that “most consignment closet or stock and bill arrangements do not satisfy the DMEPOS supplier standards” set forth at 42 C.F.R. § 424.57. DMEPOS suppliers, physicians, and non-physician practitioners are equally responsible for maintaining compliance with the new provisions.

Under the new requirements, enrolled DMEPOS suppliers may maintain an inventory at a practice location owned by a physician or non-physician practitioner for the purpose of DMEPOS distribution only if the following conditions are met:

- 1) The title to the DMEPOS shall be transferred to the enrolled physician, non-physician practitioner practice at the time the DMEPOS is furnished to the beneficiary;
- 2) The physician or non-physician practitioner shall bill for the DMEPOS supplies and services using their own enrolled DMEPOS billing number;
- 3) All services provided to a Medicare beneficiary concerning fitting or use of the DMEPOS shall be performed by individuals being paid by the physician or non-physician practitioner’s practice, and not by any

1. The Change Request was originally issued in Transmittal Number 297 on August 7, 2009 and was revised on September 8, 2009 to reflect the change in implementation date from September 8, 2009 to March 1, 2010.

2. Note, this Change Request only impacts arrangements with physicians and non-physician practitioners and does not affect arrangements with hospitals and other facilities.

- other DMEPOS supplier; and
- 4) The beneficiary shall be advised that if he or she has a problem or question regarding the DMEPOS, then the beneficiary should contact the physician or non-physician practitioner, and not the DMEPOS supplier who placed the DMEPOS at the physician or non-physician practitioner's practice.

Moreover, only one DMEPOS Supplier can be enrolled and/or located at the same practice location, with each practice location having a separate entrance and separate post office address.

The implementation date of these changes is March 1, 2010. The NSC-MAC customer service personnel have been instructed to respond to direct supplier questions concerning this new policy. It is recommended that DMEPOS suppliers, physicians, and other practitioners examine their existing consignment closet or stock and bill arrangements to ensure compliance with the new standards. Additionally, these arrangements have been the focus of scrutiny by the Office of Inspector General (OIG), thus care should be taken to ensure that such arrangements comply with the Stark Law and the Anti-Kickback Statute.

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