



Alert

Life Sciences and Health Care Client Service Group

To: Our Clients and Friends

September 16, 2010

CMS Issues Regulations Changing the DMEPOS Supplier Standards

On August 27, 2010, the Centers for Medicare and Medicaid Services (“CMS”) published final regulations in the Federal Register that impose new standards on suppliers of durable medical equipment, prosthetics, orthotics and suppliers (“DMEPOS”). Most of the requirements contained in the new regulations will take effect on September 27, 2010.

Among other things, the new regulations require the following:

Licensure. A DMEPOS supplier must be licensed to provide any services that require state licensure and cannot contract with an individual or entity to provide the licensed services unless the state licensure law permits contracting for licensed services. In addition, the supplier must employ the licensed professional on a full-time or part-time basis unless the state licensure law permits contracting for such services. Comments in the preamble indicate that if a supplier’s billing privileges are revoked for this reason, all provider numbers associated with the same tax identification number will also be revoked.

Space Requirement. Except for suppliers that are state-licensed orthotic and prosthetic personnel providing, custom fabricated orthotics or prosthetics in a private practice, DMEPOS suppliers must maintain a practice location that is at least 200 square feet. This effectiveness of this requirement will be phased in as follows: (i) for a new DMEPOS supplier, it will be effective September 27, 2010, (ii) for an existing DMEPOS supplier with a lease that expires between September 27, 2010 and September 27, 2013 it will be effective the first day after the termination of an expiring lease, and (iii) for an existing DMEPOS supplier with a lease that expires on or after September 27, 2013, it will be effective September 27, 2013.

Beneficiary Contacts. DMEPOS suppliers had previously had restrictions on when they could call Medicare beneficiaries without the beneficiary’s consent. The restrictions remain in place, but the types of prohibited contact have been expanded to include telephone, computer, e-mail, instant messaging or in-person contact to a Medicare beneficiary.

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Access and Signage. There are additional requirements applicable to a DMEPOS supplier's physical facility. Specifically, it must be in a location that is accessible to the public, Medicare beneficiaries, CMS, the National Supplier Clearinghouse and its agents; it must be accessible and staffed during posted hours of operation; and it must maintain a permanent visible sign in plain view and post hours of operation. If the business is located within a large building or complex, the sign must be visible at the main entrance of the building, although the hours can be posted at the entrance of the supplier.

Telephone Number. DMEPOS suppliers must maintain a primary business telephone that is operating at the enrolled location and listed under the name of the business locally or toll-free. Such telephone number cannot be a cellular phone, pager or beeper. Calls cannot be exclusively forwarded to cellular phones, beepers or pagers. Answering machines and answering services cannot be used exclusively as the primary business telephone during the posted operating hours.

Shared Practice Location. DMEPOS suppliers cannot share a practice location with any other enrolled Medicare supplier or provider. This restriction is broader than the former limit that two DMEPOS suppliers could not be enrolled at the same location. Now, a DMEPOS supplier cannot be enrolled at the same physical location as any other type of Medicare enrolled supplier or provider. There are a few exceptions: (i) physicians, non-physician practitioners, physical therapists and occupational therapists may furnish DMEPOS items to their own patients, and (ii) most Medicare Part A providers (hospitals, nursing homes, etc.) may co-locate with and own an enrolled DMEPOS supplier.

Hours of Operation. DMEPOS suppliers must be open to the public a minimum of thirty (30) hours per week, with limited exceptions.

A copy of the final rule is posted on the *Federal Register* site at:

<http://edocket.access.gpo.gov/2010/pdf/2010-21354.pdf>.

We would be pleased to discuss the impact of this matter on your organization. Feel free to contact any member of the Bryan Cave [Life Sciences and Health Care](#) team.