

## Life Sciences and Health Care Client Service Group

To: Our Clients and Friends

February 18, 2010

## Consignment Closets Compliance Standards Delayed

For the past year, the Department of Health and Human Services, Centers for Medicare and Medicaid Services (“CMS”) has been considering new restrictions on consignment closet arrangements. A consignment closet is an arrangement where a supplier of durable medical equipment, prosthetics, orthotics, and supplies (“DMEPOS”) maintains inventory at a physician’s or other health care professional’s office. The physician distributes the inventory to patients as needed, and the DMEPOS supplier bills Medicare for the inventory distributed.

CMS previously issued compliance standards which would have restricted consignment closet arrangements. Under these standards, CMS would have allowed a consignment closet only under the following conditions:

- Ownership of the DMEPOS inventory is transferred to the physician at the time it is provided to the patient;
- The physician bills for the DMEPOS using its own DMEPOS billing number;
- Services related to the DMEPOS (like fittings) are provided by the physician or employees of the physician, and not the DMEPOS supplier; and
- Patients with questions may only contact the physician and not the DMEPOS supplier.

CMS initially planned to implement these standards on September 8, 2009. Last September, CMS extended the implementation date to March 1, 2010. CMS recently rescinded the March 1st implementation date and withdrew the compliance standards. Currently, it is unclear what restrictions CMS plans to put on consignment closet arrangements and when, if ever, such restrictions will go into effect.

Although CMS hasn’t said what the new rules will be or when they will be effective, it’s clear that CMS is concerned with existing business practices. DMEPOS suppliers should keep an eye out for further action by CMS and be ready to respond.

For further information, contact Bryan Cave LLP’s [Life Sciences and Health Care Client Service Group](#).