

PUBLICATION

CMS Sets Stringent Standards for DMEPOS Consignment Closets

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On August 7, 2009 The Centers for Medicare & Medicaid Services issued Transmittal 297 which adds a new section to the *Medicare Program Integrity Manual*, Chapter 10 Section 21.8. The section sets forth specific additional compliance standards for suppliers of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) which maintain inventory at a practice location, such as physicians, non-physician practitioners or other health care professionals, not owned by the DMEPOS supplier. The arrangement is prohibited unless certain conditions are met and verified by the National Supplier Clearinghouse Medicare Administrative Contractor (NSC-MAC). The change becomes effective September 8, 2009.

When a consignment closet or stock and bill arrangement exists, the title to DMEPOS must be transferred and performance of services, all billing, fitting and issues regarding the DMEPOS must be handled by the physician practice or non-physician practitioner at the time the DMEPOS is furnished to the beneficiary. Therefore, the DMEPOS supplier cannot benefit from the relationship. The beneficiary must be advised to look to the physician or non-physician practitioner and not the supplier of the DMEPOS with the consignment closet at the location.

The NSC-MAC must verify that no more than one enrolled DMEPOS supplier is enrolled or located at the practice location and there must be a separate entrance and physical post office address for the practice location.

It should be noted that these arrangements have long been considered suspect by the U.S. Department of Health and Human Services, Office of Inspector General (OIG).¹ This change may also impact previous comfort taken from OIG Advisory Opinions since the OIG opined only as to fraud and abuse implications and not as to compliance with CMS supplier standards. Lastly, a physician is still limited in what DMEPOS can be provided under the Stark law.

A DMEPOS supplier, physician, non-physician practitioner or other health care professional is responsible for complying with these changes and should seek legal counsel to make any necessary changes to existing relationships.

¹ See original Compliance Guidance for DMEPOS Industry. 64 Fed. Reg. 36374 fn.64 (July 6, 1999).