



*Caring that Feels Right at Home*

November 20, 2009

Charlene Frizzera  
Acting Administrator  
Centers for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Acting Administrator Frizzera:

On behalf of the nation's providers of home medical equipment and services, the American Association for Homecare (AAHomecare) urges the Centers for Medicare and Medicaid Services (CMS) to immediately delay the implementation of new rules surrounding front-end rejection of claims for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) based on ordering/referring physician enrollment in the Provider Enrollment, Chain and Ownership System (PECOS). The Association is deeply concerned with the slow pace of physician enrollment in PECOS. We believe that unless CMS immediately delays the effective date when DMEPOS claims will be rejected because the referring physician is not enrolled with PECOS, patient access to care and disruptions in provider payments will inevitably occur.

As you may be aware, CMS began Phase 1 of its implementation of edits on DMEPOS claims on October 5, 2009, by identifying claims submitted by DMEPOS suppliers that do not contain a Medicare-enrolled ordering/referring physician or other health care practitioner. This created massive confusion in both the physician and supplier community. Despite the fact that more than a month has gone by with the Phase 1 edit in place, suppliers continue to report that up to 60 percent of their claims contain warning messages based on the physician PECOS enrollment requirement. When CMS implements Phase 2 of the edits on January 4, 2010, all DMEPOS services that are billed that list an ordering/referring physician who is not enrolled in the PECOS database will be rejected and the claims will not be paid.

AAHomecare is very troubled that CMS will begin denying claims under Phase 2 in less than 45 days. While we have made considerable educational efforts through weekly newsletters, bulk email messages and teleconferences with the DMEPOS community, the following problems persist:

- DMEPOS suppliers continue to receive large percentages of claims that include warning messages that ordering/referring physicians are not in compliance with the PECOS requirement.

- DMEPOS suppliers are still unable to access a list of physicians enrolled in the PECOS database. DMEPOS suppliers cannot identify ordering/referring physicians who are not yet enrolled in PECOS until this information is publicly available to the supplier community. While we appreciate that CMS intends to release this information in December, that does not leave the supplier community sufficient time to review and update billing systems accordingly prior to the Phase 2 implementation date.
- When DMEPOS suppliers contact the physicians on claims that have been flagged under Phase 1, many physicians are unaware that the PECOS database exists or that the new edits on DMEPOS claims are in place. Because it can take 30 – 45 days for a physician who has not yet begun the PECOS enrollment process to complete it, physicians who have not yet started the enrollment process will not be approved before implementation of Phase 2, and DMEPOS claims will be rejected.
- Physicians have no financial penalty for non-compliance with PECOS whereas DMEPOS suppliers' claims will be rejected if the physician is not enrolled in PECOS. This could potentially disrupt reimbursement for legitimately provided DMEPOS items and services, which could cause patient care disruptions and access problems.

Additionally, AAHomecare questions CMS' authority to implement the PECOS program. According to CMS, the new edits on DMEPOS claims are consistent with the requirement in Section 1833(q) of the Social Security Act, which requires that claims contain the name and unique provider identifier for the ordering/referring physician. DMEPOS suppliers currently include the ordering/referring physician's name and National Provider Identifier (NPI) as required by Sec. 1833(q). This statutory authority is not a requirement that the ordering/referring physician be enrolled in the Medicare program. CMS has defined enrollment to mean that the physician is enrolled in the PECOS database. However, AAHomecare does not believe that requiring DMEPOS claims include an identifier of a physician who is enrolled in the Medicare program (i.e. enrolled in the PECOS database) is consistent with the intent of Sec. 1833(q). This observation is further evidenced by legislative language in current House of Representatives and Senate health insurance reform bills that would require that the ordering/referring physician on home health and DMEPOS claims be ordered by a Medicare participating provider.<sup>1</sup>

Due to the numerous outstanding concerns from DMEPOS suppliers, physician organizations, and other interested parties, AAHomecare requests that CMS:

1. Indefinitely suspend implementation of the Phase 2 of the edits for ordering/referring providers in DMEPOS claims to avoid unnecessary claims denials for legitimate services being provided to Medicare beneficiaries.
2. Delay implementation of the Phase 2 edits and claims rejections for a minimum of six months. Provisions in House and Senate health reform legislations would require physicians who order/refer DMEPOS and home health services to be enrolled in Medicare with a July 1, 2010 implementation date. CMS should follow Congressional intent and delay the Medicare-enrolled physician requirement for DMEPOS services until

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<sup>1</sup> H.R. 3962, the Affordable Health Care for America Act, Sec. 1637, and S. 1796, the America's Healthy Future Act of 2009, Sec. 5005, contain a requirement that physicians who order DMEPOS or home health services be Medicare enrolled physicians or eligible practitioners.

a sufficient period of time after any enactment of a health insurance reform bill that contains the provision referenced above.

3. Develop and publish a corrective action plan that outlines how the Agency intends to have physicians enroll with PECOS.
4. Release the list of physicians enrolled in the PECOS database to the DMEPOS community to allow suppliers to have sufficient time to review, analyze, offer recommendations to CMS, and program their billing systems to accommodate the applicable information accordingly.

It is important to note that AAHomecare has zero tolerance for fraud. We regard Medicare fraud as theft of taxpayer dollars that reduces resources for seniors and people with disabilities who require Medicare services and equipment. Our Association has proposed tough, aggressive anti-fraud measures to step up site inspections, require real-time claim audits, impose tougher penalties, and provide greater resources to federal fraud fighters. AAHomecare is the national trade association that represents suppliers of home medical equipment and services such as oxygen systems, hospital beds, wheelchairs, and diabetic supplies.

We want to continue to work with CMS to find effective ways to stop fraud but do not harm access to medically necessary care or needlessly harm the overwhelming majority of durable medical equipment providers who fully comply with all Medicare laws and regulations as well as state licensure laws and other rules.

We appreciate your consideration of our recommendations and look forward to working with the Agency and other stakeholder organizations to ensure that any Medicare ordering/referring physician enrollment requirements are implemented in an efficient and effective manner that will not negatively impact patients or the providers and suppliers who serve them. Please contact AAHomecare's Walt Gorski at [waltg@aahomecare.org](mailto:waltg@aahomecare.org) or (703)535-1894 or Stacey Harms at [staceyh@aahomecare.org](mailto:staceyh@aahomecare.org) or (703) 535-1893 with any questions.

Sincerely,



Tyler J. Wilson  
President & CEO  
American Association for Homecare