



May 22, 2017

Department of Defense Health Affairs
Attn: Karen Guice, M.D., M.P.P.
Acting Assistant Secretary of Defense for Health Affairs
1200 Defense Pentagon
Room 3E1070
Washington, DC 20301-1200

Dr. Guice:

We are writing on behalf of our member suppliers of durable medical equipment (“DME”) prosthetics, orthotics and supplies (collectively “DMEPOS”) who participate under network agreements with TRICARE. As DME network suppliers, AAHomecare suppliers are keenly interested in your plans for implementing § 16007 of the Cures Act.¹

The American Association for Homecare (AAHomecare) is the national association that represents suppliers and manufacturers of DME across the United States. DME products and services are central to ensuring TRICARE meets the challenge of delivering safe, effective and affordable care to TRICARE beneficiaries. As you may know, § 16007 retroactively delays the implementation of Medicare adjusted fee schedules for DMEPOS outside competitive bidding program areas CBAs. These new, adjusted fee schedule rates significantly reduced Medicare reimbursement for DMEPOS outside CBAs from what they were on January 1, 2016.

The adjusted fee schedules and corresponding reductions became effective July 1, 2016. Section 16007 of the Cures Act extended the phase-in period for the adjusted fee schedules through December 31, 2016 so that DMEPOS fee schedule rates reverted to the fee schedule published by CMS on May, 1, 2017. Under § 16007, payment reductions under the adjusted fee schedules apply only to DME claims with dates of service (“DOS”) on or after January 1, 2017. We believe the applicable governing

¹ 21st Century Cures Act (“Cures” Act), PL 114-255, December 13, 2016, 130 Stat 1033

authorities, TRICARE reimbursement manuals, and suppliers' network agreements require you to give effect to § 16007.

1. Requirements of § 16007

As noted, § 16007 requires the Secretary of Health and Human Services (HHS) to retroactively delay the implementation of the adjusted fee schedules in areas outside CBAs. The adjusted fee schedules base reimbursement for DME items on competitive bidding average regional special payment amounts (SPAs) for those items.² Section 16007 directs the Secretary to delay the application of the SPA based adjusted fee schedules to January 1, 2017:

(a) IN GENERAL.—The Secretary of Health and Human Services shall extend the transition period de-19 scribed in clause (i) of section 414.210(g)(9) of title 42, Code of Federal Regulations, from June 30, 2016, to December 31, 2016 (with the full implementation described in clause (ii) of such section applying to items and services d furnished with dates of service on or after January 1, 24 2017).³

It is our understanding that the Centers for Medicare and Medicaid Services (CMS) will implement § 16007 by reprocessing DME claims with DOS between July 1, and December 31, 2016 so that suppliers receive the DMEPOS fee schedule rate effective January 1, 2016. Based on our review of the applicable authorities we request that you do likewise at your earliest opportunity.

2. Application of Medicare DME Fee Schedules Under TRICARE Supplier Network Agreements

As you know, Tricare reimbursement for DMEPOS follows the DME fee schedules pursuant to both statutory and regulatory authority.⁴ The statute authorizing the TRICARE and its implementing regulations peg TRICARE reimbursement for DMEPOS to Medicare DME payment amounts and methodologies. And importantly, TRICARE DMEPOS network agreements do so as well.

TRICARE DME supplier network agreements establish that providers must accept the TRICARE “maximum allowable charge” for DMEPOS services they render to TRICARE

² 42 CFR § 414.210 (g)

³ Extension Of The Transition To New Payment Rates For Durable Medical Equipment Under The Medicare Program, § 16007, Cures Act.

⁴ See 10 USC § 1079; 10 CFR § 199.14.

beneficiaries. The TRICARE reimbursement manual, in turn, defines the maximum allowable charge as the applicable Medicare DMEPOS fee schedule amount.⁵ Supplier network agreements incorporate by reference TRICARE reimbursement manual provisions, including those establishing Medicare DMEPOS fee schedule amounts as payment for services TRICARE suppliers furnish under network agreements.

By retroactively delaying adjusted fee schedule payment cuts under § 16007, Congress mandated that Medicare DME reimbursement revert to the new publicized fee schedule rates in effect on July 1, 2016. As we noted, CMS will comply with this mandate by reprocessing DMEPOS claims with DOS between July 1 and December 31, 2016 and paying those claims according to the fee schedule rates in effect January 1, 2016.

We believe that the statutory and regulatory authorities that govern the TRICARE program, the TRICARE reimbursement manual provisions on reimbursement for DME and TRICARE DME network agreements compel you to do the same. As the Department of Defense contractor in charge of implementing and overseeing a TRICARE network, you must ensure that network suppliers receive accurate reimbursement.

Please contact me in writing at your earliest opportunity with your plans and timeline for implementing § 16007. We also would like to schedule a meeting with you to discuss this important issue in greater detail, especially the process suppliers must follow to receive accurate reimbursement.

Thank you for attention to this important matter.

Sincerely,

Laura L. Williard
Senior Director of Payer Relations, American Association for Homecare
Lauraw@aahomecare.org
336-451-1934

⁵ See *Claims For Durable Equipment (DE) And Durable Medical Equipment, Prosthetics, Orthotics, And Supplies (DMEPOS)*, Chapter 1 § 11.3.14.1, TRICARE Reimbursement Manual 6010.61-M, April 1, 2015, <http://www.health.mil/Military-Health-Topics/Business-Support/Rates-and-Reimbursement/Durable-Medical-Equipment-Prosthetics-Orthotics-and-Supplies> (directing suppliers to go to Health.mil, the official website for the military health system and Defense Health Agency (DHA); *Ibid. Oxygen and Related Supplies*, Chapter 1 § 12, adopting DMEPOS payment methodologies for oxygen and supplies and establishing different cost sharing mechanisms for concentrators; <http://www.health.mil/Military-Health-Topics/Business-Support/Rates-and-Reimbursement/Durable-Medical-Equipment-Prosthetics-Orthotics-and-Supplies> (directing suppliers to the Medicare DMEPOS fee schedules for applicable TRICARE fee schedule amounts).