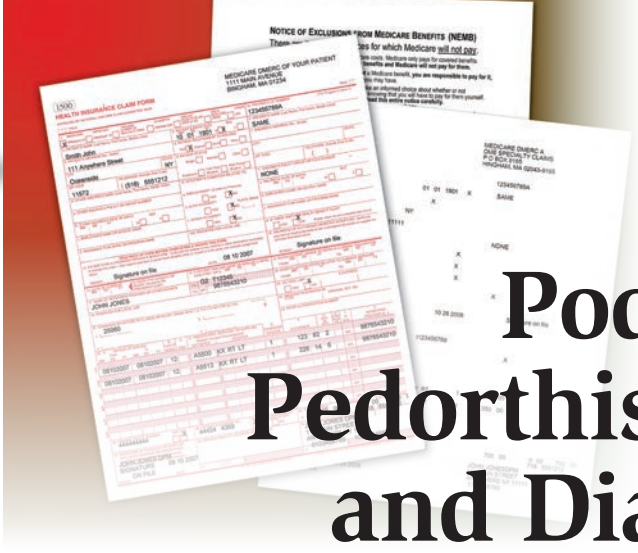

Podiatrists, Pedorthists, Orthotists, and Diabetic Shoes

The current state of affairs for therapeutic shoes is a mess.

BY PAUL KESSELMAN, DPM

This month's *DME for DPMs* is inspired by a recent question forwarded to the author by the editor and some follow-up comments on *PM News* made by others.

Q: *"I have been following the topic of therapeutic shoes for some time and have elected NOT to provide shoes for my patients due to the potential for fraud if my records do not have the appropriate information—especially the PCP notes with all that they are required to state for compliance.*

As a result, I have been referring my patients to several local O&P facilities and the patients seem to have no problem obtaining shoes and inserts. Are the orthotists and pedorthists required to obtain the SAME information, or are they exempt, or do they have another means of providing footwear for this population? If they do not, what is their liability, if any?"

A: The most pressing part of this question requiring a response is the issue of fraud. In searching the legal dictionaries for a definition, a most practical one defines fraud as: "A false representation of a matter of fact—whether by words or by conduct, by false or misleading allegations, or by concealment." If one were to actually fabricate documentation which was false, that would certainly be fraudulent. If one were to repeatedly submit claims without the proper documentation, yet still use the KX modifier, attesting to having the required documentation, that too might be construed as either an abusive or fraudulent billing pattern.

The fact that a supplier failed an audit simply because of a clerical error (inappropriate date, illegible signature, etc.), or was missing one or more documents on some occasions, would likely not rise to the level where the supplier would be accused of a fraudulent billing pattern. A prescribing physician who fabricates records in order to purposefully deceive a third-party payer into believing the patient met the medical necessity requirements (when they in fact did not) could also be accused of fraud.

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The more pertinent question to answer here is whether Medicare has separate standards of liability for different suppliers. The short answer is "no." Every DMEPOS supplier must adhere to the same standards of conduct. Now for the rest of the story: As a (podiatric) physician, you have an opportunity to take on two distinct but separate roles, each of which has different functions and responsibilities. Your options are to act as both the prescribing physician and DMEPOS supplier, or just the prescribing physician.

In your capacity as the prescribing physician, you are prescribing a DMEPOS item, in this case a therapeutic shoe for a patient with diabetes. In order to prescribe any treatment regimen, you take a medical history, perform a physical examination, and document the presence of any one or more of six qualifying foot conditions required by the Therapeutic Shoe LCD. The examination would also document the medical necessity for therapeutic shoes (e.g., off-loading the high peak pressure areas which would enhance wound healing). This examination would be conducted in a similar fashion to your normal work flow when examining and diagnosing patients for any number of conditions on a daily basis. That is, you review and document the patient's history, examine, diagnose, and prescribe a treatment course, whether it is pharmaceutical, physical therapy, surgery, DME, etc.

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The supplier's role is far more complicated yet distinctly separate from that of the prescribing physician. The supplier is functioning much like a pharmacist. The DME supplier must obtain a separate prescription and/or detailed written order for the DMEPOS being prescribed (this is not required for therapeutic shoes if the physician is also the supplier). However, the prescription or detailed written order must be contained in the body of your medical records.

Since that first step is already performed by you as the prescribing physician, there remain several other key steps which all suppliers of therapeutic shoes are required to obtain:

1) A signed certification statement from the physician managing the DM (MD or DO only), dated no more than 90 days prior to the date the shoes are to be dispensed;

2) A copy of the progress records from the MD/DO treating the DM which documents the diagnosis and treatment. This can be dated no more than six months prior to the date the shoes are to be dispensed (This may or may not have a foot examination component);

3) If the physician managing the DM does not conduct the foot examination, the supplier must obtain the records from the prescribing physician (other MD/DO or DPM) and forward them to the MD/DO managing the DM. The physician managing the DM must then initial (and date) their agreement with the findings of the prescribing physician, and this must be forwarded to the supplier.

4) The supplier must then conduct and document their own foot assessment in order to determine which shoe is appropriate (a fitting encounter to assess style, size, and width). The supplier must also document the patient encounter when the shoes are dispensed. Furthermore, the supplier must comply with all the regulations of the National Supplier Clearinghouse (NSC) including but not limited to appropriate timelines, legibility of signatures, current supplier standards, compliant protocol, etc.

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There may be many methods by which to comply with Medicare's LCD regulations concerning the above documentation requirements cited above. One example of a very effective examination tool was developed by Visual Footcare technologies (http://www.visualfootcare.com/).

To summarize the above: All suppliers must abide by the same rules. Pedorthists, orthotists, podiatrists, commercial suppliers, and any other supplier who dispenses shoes, must abide by the requirements of the LCD. There are no exceptions!

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PFA

The orthotic and prosthetic (O&P) market has been hit by the same difficulties as podiatric suppliers. The Pedorthic Footcare Association (PFA) which represents pedorthists has reported that many of their members have abandoned the therapeutic shoe program. Pedorthists primarily sell shoes in the retail environment in shoe stores. For many, their main source of revenue remains retail sales and not third party reimbursement. This segment of pedorthists has not really seen a significant economic impact. For other pedorthists who relied greatly on third-party reimbursement, this has caused a great economic impact, with some closing and others having to furlough staff.

AOPA

The American Orthotic & Prosthetic Association (AOPA), which represents orthotists and prosthetists, has also reported some abandonment of the program by its members. AOPA members also provide patients with all types of orthotics and prosthetic devices, some of which cost tens of thousands of dollars. Orthotists and prosthetic companies are used to the rigors involved in obtaining all the required paperwork. Most have workflow systems in place which preclude them from ordering or dispensing any item until every "i" and "t" are dotted and crossed.

Most surgeons who perform amputations are well versed and familiar with the required materials needed by the O&P suppliers. Additionally, there are only two parties involved, the prescribing physician and the supplier.

Therapeutic Shoes

For therapeutic shoes, the highest burden and absurd requirements are for an MD/DO to attest, co-sign, and initial or agree with the examination of another practitioner. You can be sure that if this were a requirement for prosthetics, there would be huge protests from AOPA members.

Think about how fast you would be to sign off on other physicians' records—physicians who were not specialists in the treatment of the feet?

In the podiatry community, many podiatrists have surely abandoned the program, while many continue

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to persevere. Those who abandon it have cited the hassles and costs of obtaining all the paperwork and their fear of being (or having been) audited and the potential costs of appeals. Consider this: if you provide 100 pairs of shoes, are paid on 90 and fail the other 10 pre-payment audits, you are still batting 90% on your claims. Medicare, of course, will claim that you failed 100% of your audits. Both claim victory and in both cases, the patient wins!

Presently, there has been no connection to pre-payment audit failures and an increase in post-payment audits on other claims not previously audited. This may be due to a lack of financial resources by the carrier, or the fact that most audits are overturned on appeal.

Downturn in Dispensing and Prescribing Shoes

The statistics clearly illustrate a downturn in the number of podiatrists both dispensing and prescribing shoes to the extent that several companies which sponsored podiatrists have left the market or have merged with other companies. That certainly will impact the suppliers' cost and selection of shoes available to purchase, and may even reduce the number of sponsored CME activities.

The economic impact on patients who also have given up on the program and are now self-paying is largely unknown. So too are the numbers of patients who chose not to fill a prescription outside of the podiatric practice and suffer a catastrophic ulceration, infection, or injury leading to a limb loss.

Unfortunately, therapeutic shoes are not the only DMEPOS where pre-payment audit rejections are running so abysmally high. However, there are a few parallels which require several physicians (that is, both a managing physician of a systemic illness and a prescribing physician). One example is with VEAD (vacuum assist erection devices).

Under this policy, Medicare requires both a prescribing physician capable of making the appropriate diagnosis of impotence and also be familiar with its treatment. However, the supplier must also have the required documentation from the physician who is managing a systemic cause of impotence. The physicians involved here are often not within the same specialty (e.g. urology and internal medicine/endocrinology). However, the supplier under this policy need only obtain the separate medical records of the physicians, a prescription and a "Detailed Written Order" (DWO) from the prescribing physician. No agreement on one another's work or attestations is required. Despite the differences between this policy and the therapeutic shoe policy, there are still significantly high rates of nonpayment in the mid to upper 50% range.

In essence, the current state of affairs for therapeutic shoes is a mess. This is compounded by the fact that all DME claims upon appeal to the ALJ are lumped into the same waiting list as for other non-DMEPOS claims requiring the attention of an ALJ. The appeals system is certainly broken and is in desperate need of repair. While repairs to the ALJ appeals process may soon be forthcoming, the DMEPOS carriers also need to be required to have a higher degree of accountability. There needs to be a stop to the rubber stamp rejections, which are often without merit.

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DME Audits

No supplier who provides therapeutic shoes (or other DMEPOS) is immune to audits, and all who provide therapeutic shoes must fully understand the risks they are taking.

Despite these risks, many podiatric, pedorthic, orthotic, and prosthetic practices continue to dispense shoes to their patients. Most DMEPOS claims are processed without a hitch and are not subject to pre- or post-payment audits. When podiatric suppliers are subjected to a DMEPOS audit for therapeutic shoes, the statistics show that most are settled favorably for the podiatrist. **PM**

Dr. Kesselman is in private practice in NYC. He is certified by the ABPS and is a Fellow of the American Professional Wound Care Association and a founder of the Academy of Physicians in Wound Healing. He is also a member of the Medicare Provider Communications Advisory Committee for several Regional DME MACs (DMERCs). He is a noted expert on durable medical equipment (DME) for the podiatric profession, and an expert panelist for Codingline.com. He is a medical advisor and consultant to many medical manufacturers.