

Medicare and Designated Health Services

Complicated issues raised often require a healthcare attorney.

BY PAUL KESSELMAN, DPM

As more practitioners become part of a multi-specialty group (MSG), super group (SG), or become hospital-based employed physicians (HBEP), the issue(s) of Medicare enrollment and the provision of Designated Health Services (DHS) has become more complicated. This month's column can provide some guidance regarding these issues.

Medicare Enrollment

When changing any tax identifying information, name, address, etc., both your local Medicare enrollment and the DMEPOS enrollment must be notified. Depending on the nature of the change(s), either a comprehensive change in the enrollment form will be required or some minor modifications may be made. Though a small change such as an address may still require an entire 855S application to be submitted, wholesale changes from the current application won't be required. Any changes to the 855S for supplier application (e.g., address) no doubt will trigger a routine inspection by the NSC audit unit.

Many super groups and multi-specialty groups having complex enrollment issues are far eclipsing those of an address change. Even minor changes can spell disaster if not handled appropriately. Providing inaccurate or inconsistent information on the enrollment forms will jeopardize your income for months.

This is one area where expert consultants in the area of Medicare

enrollment are well worth any incurred fees. Fortunately, most SG, MSG and HBEP entities have easy access to knowledgeable employees who can offer this type of assistance. Those in smaller or solo practice should seek those knowledgeable in enrollment matters as their fees are a good investment and hedge against jeopardizing lost or delayed income resulting from faulty enrollment applications.

Provision of Designated Health Services

The actual provision of most DHS as an ancillary service by the

active value units (RVU), increasing the difficulties for a group to develop appropriate formulas for properly sharing revenue among its owner and associate physicians.

Billing DME in a Multi-Specialty or Super Group

The provision of DME services directly by the podiatrist owner or associate and billing under the group tax ID may be addressed on the NSC 855S form. There is nothing inappropriate if a podiatrist or associate directly provides the DME to a patient and bills under the group tax ID and NPI numbers.

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physician is usually in accordance with numerous Federal statutes. The issue of splitting or sharing revenue resulting from the provision of DHS (e.g., DME, radiology, pathology, or other diagnostic testing) is often the issue facing larger groups. Allocating how that revenue can be properly divided based on which provider performed or referred the service within the group is often the legal challenge facing larger group practices. DME in particular has its own challenge because there are no associated rel-

There are also no issues with a non-professional W2 employee providing the DME to the patient under the direction of the physician if not limited under state law. If the state where you are practicing requires state licensure to provide DME, then the W2 employee must have licensure to provide that service. For example, New Jersey and Texas are two states having O&P licensure requirements. In those (and other states) a non-professional non-licensed employee is precluded from

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dispensing certain DME items such as CAM Walkers and AFOs.

How the revenue is shared and distributed within the group, particularly when the DHS are provided by a non-professional employee, or professional employee other than the prescribing entity, creates an even larger issue. A common problematic scenario results when your W2 employee provides the DHS to the patient (e.g., dispenses DME), the fees generated are billed by the group, and the prescribed entity receives a percentage of the generated revenue.

The same scenario potentially can occur within a two (or more) physician practice where one physician prescribes and the other dispenses. The problem arises if the prescribing podiatrist and dispensing podiatrist then split the generated revenue on a percentage basis.

Determining how revenue is shared within these last two scenarios requires special expertise of a healthcare attorney well-versed in these matters.

Hospital-Based Employed Physicians (HBEP)

Another common scenario often occurs when a podiatric physician who was in solo practice sells the practice to a hospital and becomes a W2 employee of the hospital.

Either prior to signing the contract or soon thereafter, the hospital compliance office informs the podiatric physician(s) they can no longer provide DME (or other DHS) services directly to their patients. They may also be informed that revenue generated in their solo practice(s) from DME (or other DHS) services may not be used as a

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basis for determination of their salary. The doctor(s) are informed that rationale for this decision is related to the preclusion of providing DHS, similar to those issues previously noted.

Resolution of DHS in SG MSP or Hospital-Based Employed Physician

Many doctors in SGs, MSGs, or HBEPs have found their incomes or negotiated salaries significantly reduced due to the aforementioned compliance issues, precluding the provision of certain DHS. This article cannot offer specific solutions for all providers as every circumstance is unique.

Many physicians have found that their hospital employers are simply not willing to participate in these discussions, simply because it is not worth the associated expenses and many involved risks. Given the current complexity regarding the provision of DHS, this is unfortunately understandable. As a result, many hospital-employed physicians are forced to refer (or precluded from introducing) DHS into their practices with a potential impact on income and/or salaries.

For those working in a MSG or SP, it is of paramount importance for physicians to seek out the specialized expertise of healthcare attorneys well-versed in these matters of revenue sharing of DHS. These professionals can assist those who find themselves in this position with a methodology by which to properly comply with the DHS regulations. This preserves income, an appropriate method by which to negotiate salaries, and the continued ability to provide a well-diversified base of services. **PM**



Dr. Kesselman is in private practice in NY. He is certified by the ABPS and is 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.