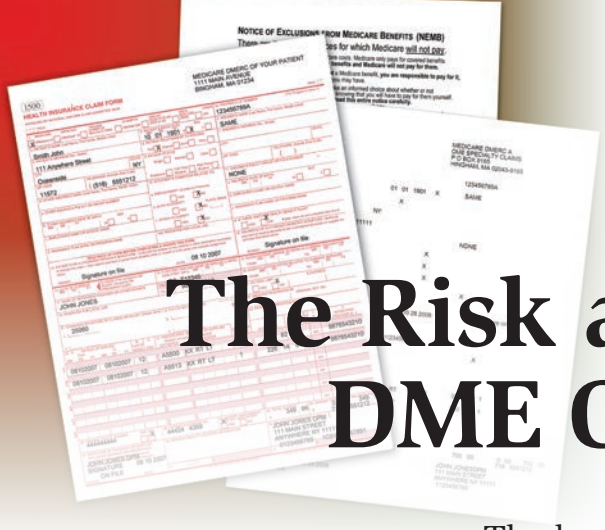

# The Risk and Rewards of DME Outsourcing

The key is to follow state and federal regulations.

BY PAUL KESSELMAN, DPM

"Three Charged in $180 Million Healthcare Fraud and Money Laundering Scheme", "Operation Brace Nets $Billions in fraudulent claims of back, knee and other braces," "Department of Justice (DOJ) Reports $2.6B in recoupment from Healthcare Providers related to False Claims Act (FCA)." These are just a few of the headlines from Department of Justice (DOJ) press releases regarding healthcare (most of it DME) fraud. These headlines have created fear among many medical practitioners, leaving many seeking an alternative method to leave the DME billing space to others, while still garnering DME income. How this can be done properly (accomplished without attracting the wrong kind of attention) is the subject of this month's column.

One recent trip to the orthopedist for a family member's injuries left me befuddled as to why this practice left more money on the table for extremity fracture bracing than they generated for their medical/surgical care. An inquiry with an office manager left me with the impression that their administration felt it was just too much trouble to bill for DME. Later discussions left me with the impression that their multi-office, 10-plus doctor multiple subspecialty orthopedic practice was overly concerned about the attention DME billing might otherwise draw. They are not alone as many other medical colleagues, due to fear of audits and other investigations, have abandoned DME altogether, providing prescriptions to be filled by other medical practitioners. Others seeking to hold onto some revenue continue to dispense DME but the billing is outsourced to another company with a financial arrangement between the parties. The latter at least allows for the practice to indirectly continue to generate some DME-related income. However, this latter method may be troubling depending on the relationship between the parties.

*Scenario One:* A medical practice fearful of DME audits accepts DME soft goods (e.g., AFO for immobilization) from a large orthopedic manufacturer. In return, the medical practice is urged to order only that medical manufacturer's implants and screws when performing surgery. In fact, the medical practice goes so far as to inform the hospital and/or surgery center (the latter of which it is a part owner in) to only order screws, plates, implants from said manufacturer for its surgical patients.

*Scenario Two:* A medical practice fearful of DME audits accepts DME soft goods (e.g., AFO for immobilization) from a large vendor. The vendor offers to do all the billing for the medical practice as an outside DME provider. In return, the practice is promised a percentage of the revenue generated. The doctor documents medical necessity for the DME, writes a prescription for the device, and has the patient sign a receipt of delivery.

*Scenario Three:* A medical practice fearful of DME audits accepts DME soft goods (e.g., AFO for immobilization) from a large orthopedic vendor. The vendor offers to do all the billing for the medical practice as an outside DME provider. In return, the practice is promised a fixed fee each month for the storage space of the DME. The doctor documents medical necessity for the DME, writes a prescription for the device, and has the patient sign a receipt of delivery.

In all three of these cases, the DME vendor (or manufacturer) provides lunches, outings for the practice and its employees, and even all-expense-paid trips for the medical providers. Are any of these three scenarios legal? The response you pro-

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*Outsourcing (from page 53)*

vide will hopefully be no for the first two of the three scenarios; the third scenario may be legal. Each of these three scenarios will now be explored to discover the correct approach for your practice should you decide to leave the provision or its billing to others, yet still wish to indirectly generate some practice income.

*Scenario One:* This scenario is contrary to Stark and anti-inducement clauses, the latter of which applies to all (even cash paying) patients. There have been several instances of this happening, where manufacturers essentially give away the DME goods for free. This is in return for knowing that the practice has been "induced" or influenced to purchase (indirectly or directly) other more expensive medical products. This is certainly an infraction of many Federal regulations.

*Scenario Two:* The practice dispenses the DME and provides the patient's demographics including insurance information. The practice has the patient sign all the required National Supplier Clearinghouse documentation. Furthermore, the practice complies with all the DME MAC LCD requirements. However, because the practice is being paid a percentage of the revenue generated by the DME vendor and not a fixed amount, scenario two is also a violation of numerous Federal regulations.

*Scenario Three:* The practice now agrees to only be paid a fixed amount from the DME vendor. The practice supplies the DME to the patient providing and generating all the same documents as in scenario two. The practice receives a $2500 a month rental payment from the vendor for storing and dispensing the DME. The storage closet is less than 10% of the medical practice's square footage.

Of course, any quid pro quo, such as throwing lavish parties or sending doctors and office staff on vacations are contrary to numerous Federal regulations. The last of the three scenarios, as written, is of course contrary to Federal Stark and Stark Anti-kickback Regulations. However, it is the easiest scenario to modify, so as to conform to the required Federal regulations.

The proper way to make scenario three legitimate is to establish the percentage of your storage space as compared to your total office space and inform the DME vendor that is the percentage which can be used as a basis for your compensation for storing their DME devices.

As an example: Assume your office is a thousand square feet and the storage closet, totally dedicated to the DME vendor's products, amounts to 100 square feet. In this scenario, the DME vendor can only legitimately rent that closet by the month for approximately 10% of the rental payments. The rationale for this figure has to do with the remaining fixed overhead for your office, including utilities, taxes, insurance, etc. which may also contribute to your fixed overhead as it relates to your office space.

Advise the DME vendor that this fixed basis cannot fluctuate based on the amount of DME you dispense nor on the amount the vendor receives from patients or third-party payers. Additionally, if the closet space is also used for non-DME materials, or materials for which are not billable items by another DME vendor, then you must subtract that amount as a basis for determining the percentage of storage space. This will require your practice to recalculate the fixed percentage of the closet space dedicated solely for a specific vendor's DME. As one can see, this can get extremely complicated and it may also fluctuate from time to time. This fluctuation is largely dependent on what DME and non-DME products are being stored, how much DME you are storing related to the storage space, and whether your practice is doing business with multiple DME vendors. Certainly, keeping track of this can also be quite complicated.

To summarize, outsourcing DME may be right for your practice. Further inquiries with a healthcare attorney and your accountant are warranted if you outsource your DME billing internally or externally. This is especially true if you are writing prescriptions to a vendor with whom you have some formal relationship. This is to assure your agreements have complied with all required Federal/State regulations. **PM**

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**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.