



# DME and the Present Public Health Emergency

Here are questions and answers related to  
the current pandemic.

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The June 2020 issue of *Podiatry Management* contained an article on providing DME during the Public Health Emergency (PHE). Several questions remain for DME suppliers of all types. In a concise question and answer format, this article will attempt to explain how the PHE may or may not have changed the provision of DME, in particular for podiatric physicians.

**1) Q:** *If the MD/DO who is treating the patient's diabetes mellitus (DM) sends me a progress note derived from a telehealth examination, will that note qualify under the provisions of the Therapeutic Shoes for Persons with Diabetes (TSPD) program?*

**A:** The DME MAC medical directors have uniformly stated that documentation from the supervising physician(s) treating the DM qualified (even prior to the PHE) patient as sufficient documentation for the purposes of the TSPD. This of course assumes that the documentation contained in the progress notes sufficiently details the MD/DO treatment of DM and otherwise conforms with the TSPD LCD.

**2) Q:** *If the MD/DO treating the DM signs the Certifying Statement and it is derived based on a Telehealth Examination, will that qualify under the provisions of the TSPD?*

**A:** The answer to this question is exactly the same as in question number one. That is, any information derived from a telehealth examination by the MD/DO potentially will qualify as sufficient documentation as though it were conducted in-person. This again assumes that the documentation itself contains the nec-

cal physician (MD, DO, DPM, etc.) roles, but supplier roles.

**4) Q:** *Can I ship the shoes and inserts to the patient and fit them during a telehealth visit?*

**A:** The answer is NO! The medical/legal and potential liability ram-

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essary information required by the TSPD LCD.

**3) Q:** *Can I prescribe/order shoes during a remote telehealth examination and will that prescription be valid if filled by a supplier (myself, group, or another supplier?)*

**A:** This is where things get a bit dicey. Yes, you can prescribe shoes during a telehealth examination, again assuming the documentation meets the merits of the TSPD policy. That is, if there is documentation that the patient has one of six qualifying conditions and there is the required corroborating documentation from the MD/DO (see questions 1 and 2). However, one must clearly distinguish prescribing from measuring, fitting, impression taking, and dispensing, which are not typi-

fications this creates for ourselves when treating our most vulnerable patients are immense. From the reimbursement perspective, Medicare statutory policy requires in-person examination by the supplier to measure, take impressions (when necessary), heat mold inserts (when needed), and dispense shoes and inserts. While there is a coalition of orthotic and prosthetic providers who are attempting to change this current policy, the PHE declaration and changes with telehealth are regulatory in nature. The requirement of face-to-face examinations by the supplier is rooted in law (statute) and cannot be overridden simply by a regulatory body (CMS).

Additionally, the Quality Standards, adopted by CMS, also require an in-person visit for orthotic

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and prosthetic devices as well as all “A” HCPCS codes covered under the TSPD. In-person examination(s), impression taking, measuring, heating and molding of inserts and dispensing are therefore required for reimbursement of AFOs and therapeutic shoes, the latter of which are technically not considered DME by Medicare. TSPD is a carve-out benefit, statutorily (legally) passed and mandated by Congress. Therefore, any changes to the TSPD requires Congressional action, which in the scheme of the PHE, is not likely going to happen with respect to TSPD anytime soon.

**5) Q:** *My diabetic patient is afraid to venture to the office. I have already measured him for shoes and taken the impression for his custom inserts. Can I mail these to the patient and dispense them during a Telehealth examination and visit?*

**A:** Medicare requires an in-person examination by the supplier for all phases of the TSPD; that is any action(s) taken by the supplier regarding filing the order for inserts on order from an eligible prescriber (MD/DO/DPM, PA/NP, etc.) require an in-person examination by the supplier. These include measuring, impression taking, shoe and insert fitting, and dispensing.

**6) Q:** *Can I receive an AFO from a patient, repair it, and ship it back to the patient and bill for those repairs/parts (L4205, L4210)?*

**A:** If no objective examination was required of the patient, then this can be accomplished by the patient shipping (or your office picking up) the device. If the repairs did not by statute require an objective examination, by an eligible prescriber (e.g. MD, DO, DPM, PA, NP) or the AFO supplier, then the repairs can be billed by the supplier without an in-person examination. For example, if a screw fell out of a device or the soft tissue liner was torn and needed replacement, these typically do not require (by statute) an in-person

examination by the supplier. Thus, these can be billed without an in-person examination.

**7) Q:** *I neither provide shoes nor AFOs. Previous to the PHE, I either had wound care supplies directly shipped to my patients from the vendors, or I shipped them from my office, or these supplies were directly dispensed to my patients at the time of their visit(s). Has the PHE changed any of those methods of dispensing?*

**A:** Surgical dressings not used at the time of the patient’s visit(s) and intended for future use are not significantly adversely impacted by the PHE. Patients may either continue

all healthcare providers. For the orthotic and prosthetic community, in particular, the challenges have been daunting. Statutory requirements for in-person examinations cannot be overridden by new regulatory freedoms which do allow for some telehealth examinations for certain providers where reimbursement is available. Telehealth exams provide challenges from the medical/legal perspective, in particular when treating high-risk insensate patients. It remains questionable as to whether new legislation allowing suppliers to conduct telehealth examinations for fitting, measuring, and dispensing will be enacted.

Even if legislation were to pass allowing for telehealth fitting, sev-

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to receive their wound care supplies for future use in the same manner as prior to the PHE. The only issue which has been relieved during the PHE addresses patients’ reluctance to sign physical documents from either you or the shipper for fear of getting COVID due to physical contact with those documents. At this time, Medicare has issued a waiver to the Written Proof of Delivery (WPOD) requirement.

As has always been the case, the shipper’s tracking number and a printout of the package receipt from the shipper continues to be a suitable substitute if the patient refuses to sign for a package (e.g., if they fear transmission of the COVID-19 from the delivery person). If a patient refuses to sign a WPOD for devices directly dispensed in your office, your chart documentation should contain the reason(s) why no signed WPOD was obtained (e.g. patient refused to sign due to fears of COVID-19). In addition to the A# modifier, your claim form should also include the CR modifier (COVID).

COVID-19 and the resultant PHE have presented challenges to

eral obstacles will always remain. These include the inability to remotely and safely heat mold a diabetic insert, or the shell of an AFO, both of which are commonly required to properly fit patients. Determining the proper length and width of a shoe on an insensate patient are other examples of fitting obstacles requiring in-person examinations of patients. To summarize, for many of our patients, there is simply no substitute for in-person examinations. Telehealth communication will never be a complete replacement for in-person examination and treatment. **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.