

# Therapeutic Shoe Update

Physician extenders now have new certifying pathways.

BY PAUL KESSELMAN, DPM

As of November 5th, 2020, the four DME MACs issued a joint update to the Therapeutic Shoe Policy, which no doubt is good news for some providers. The long-standing regulatory roadblock precluding physician extenders (NP/PA) to act as the supervising entity for therapeutic shoes under the Therapeutic Shoe Program has apparently been resolved. This new addition to the LCD has apparently circumvented the previous roadblock which the carriers insisted required Congressional action.

Both nurse practitioners (NP) and physician assistants (PA), with certain limitations, are now afforded the ability to certify patients as diabetic with respect to their need for therapeutic shoes/inserts. These two pathways, both with significant limitations, are summarized below.

## **Pathway #1: NP/PA Working Incident to an MD/DO Effective November 5, 2020**

If an NP or PA is working both under the direct supervision of an MD/DO and billing under the NPI of the MD/DO who was/is supervising the DM care, then the NP/PA can perform the examination to demonstrate that the patient is diabetic and needs therapeutic shoes. They may also sign the certification form that the patient requires therapeutic shoes. The exam records of the NP or PA, however, must be agreed to or attested to by the MD/DO by co-signing their agreement with the NP or PA findings in a contemporaneous fashion.

Note that this does not apply to NPs who can practice independently of an MD or DO (with the notable exceptions of Pathway #2 below).

## **Pathway #2: NP Working Independently in a Primary Care Demonstration Project: Effective January 1, 2021**

NPs billing under their own NPI and afforded by their state scope of practice can act as the certifying physician under some extremely limited circumstances.

the Primary Care First Demonstration Project are at press time not available nor is the full registration listing of those NPs participating. The CMS Primary Care First Demonstration Project website should be fully operational by the time this article reaches your desk.

## **Unresolved Questions**

There are other many unresolved questions regarding both these pathways and clarification is pending from CMS.

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The NP must enroll into the Primary Care First Demonstration Project. This project is restricted to certain geographic areas. Only NPs enrolled in this demonstration project and billing under their own NPI may certify the patient as diabetic and document in their charts that the patient requires therapeutic shoes under this pathway. NPs billing under their own NPI not enrolled in the Primary Care First Demonstration Project in or outside of the approved areas will not be eligible to certify patients.

This second pathway does not apply to PAs because they cannot practice independently of an MD/DO.

The full details on how to determine if the NP is participating in

The main sticking point is whether the NP/PA is permitted to co-sign and agree to the findings of eligible prescribers (EP) such as MDs/DOs/PAs/NPs who are not treating the DM, or the findings of the DPM. Can we include the DPM with the MDs, etc.?

This provides a welcome relief for many suppliers who have long sought to allow the NP or PA to sign off on the required paperwork. Certainly, in areas of the country where most of the maintenance care for DM is provided by an NP/PA, this is welcome news.

However, the unintended consequences are that these two new pathways possibly permit physician

*Continued on page 36*

## *Therapeutic Shoe (from page 35)*

extenders to assume a superior position to the MD/DO who is not treating the DM or that of the DPM. That is, the NP/PA will now be called upon to agree and/or attest to the findings of any of the EPs who are examining or treating the foot. In states where DPMs cannot order PAs or NPs to perform services, this is another issue for state boards to immediately address, as it places the physician extender in a more superior role than that of the DPM or equivalent to that of the MD/DO.

The issue of regulatory action by Congress required to allow PAs and NPs to step into the certifying role has apparently been resolved by LCD policy. If this is the case, then the need for regulatory congressional action eliminating the need for oversight (attestation/agreement) by the Certifying Entity over the EP should logically follow.

In a day and age where every healthcare provider needs to answer for their own actions, their old standby traditional roles are no longer the standard of care. It is time for CMS to continue to modernize the TSPD. The certifying entity still has the power to “veto” the prescription if they feel there is no need for benefits under the TSPD. Audits have never proved that abuse exists due to the lack of signatures. Instead, due to the overwhelming

paperwork burden, over 50% of those providing therapeutic shoes have left the program. This includes well-known reputable nation-wide companies which have either out rightly refused or have severely limited their participation in the TSPD.

The need to add these two new pathways to the LCD was obviously to satisfy pressure on CMS, from a variety of medical associations and patient advocacy groups, to resolve a lack of access to care issues. Eliminating the need for the certifying entity to attest to the findings of the EP

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has long been problematic. Allowing each healthcare provider to support their own findings can restore access to care for those beneficiaries eligible for therapeutic shoes. In the opinion of many suppliers, until that is resolved, access to care under the TSPD will remain problematic.

Many rumors have been circulating from vendors and colleagues alike regarding many aspects of these updates. Suffice to say that there is no clear answer to many questions posed to the DME MAC medical directors about these updates. Those remaining questions have been forwarded to CMS.

Auditors at the DME MAC and other CMS agencies have not been fully vetted on these two new pathways. The DME MAC medical directors are unsure of many of the unintended consequences of the policies. Thus, we cannot be assured that the auditors will properly interpret documentation under these two new pathways for some time.

As there are many outstanding questions, it appears that these new pathways, instead of further clarifying and demystifying the policy, may have further muddied the waters. Many are of the opinion to stick with the old LCD requirement until such a time as CMS issues further clarification. This may not be a bad idea until such time that CMS and the DME MAC issue further bulletins to update this issue. **PM**

Source: DME Medicare Policy Update: <https://www.cgsmedicare.com/jc/pubs/news/2020/11/cope19408.html>

Reference to Primary Care First Demonstration Project: <https://innovation.cms.gov/innovation-models/primary-care-first-model-options>



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