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Marketing Rules Reminders for DME Suppliers Including Contract Suppliers under the Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program

Note: This article is impacted by the Medicare Improvements for Patients and Providers Act of 2008, which was enacted on July 15, 2008. That legislation delays the implementation of the DMEPOS competitive bidding program until 2009 and makes other changes to the program.

Provider Types Affected

Medicare Durable Medical Equipment Suppliers

Overview

- All of the existing rules and regulations marketing DMEPOS to beneficiaries under the fee-for-service program also apply to DMEPOS suppliers under competitive bidding.
- There is no difference for contract versus non-contract suppliers when it comes to these marketing rules.
- The Medicare program does not have specific rules or guidelines that provide guidance as to what a provider is allowed to do in marketing its items and services to the public.
- The Medicare program does not try to interfere with the internal administration or processes that a DMEPOS supplier will use to run its business. However, there are a few certain prohibitions that do apply to the DMEPOS suppliers.

Marketing Prohibitions

When enrolling in the Medicare program, DMEPOS supplier agree to abide by the 21 DMEPOS standards that are noted in our regulations at 42 C.F.R. §424.57.

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The area of marketing prohibition is addressed as one of the standards that must be met. Failure to comply with this standard may also result in the supplier's Medicare number being revoked.

Use of HHS or CMS Logos

- All of the existing rules and regulations regarding supplier marketing to beneficiaries under the Medicare fee-for-service program apply under the Medicare DMEPOS competitive bidding program. For example, suppliers are prohibited from misusing symbols, emblems or names in reference to CMS or Medicare. (See section 1140(a) of the Social Security Act at http://www.socialsecurity.gov/OP_Home/ssact/title11/1140.htm on the internet.) The use of such logos, names or words in its advertisements which may convey to the public (or may be reasonably interpreted by a consumer) the false impression that its items or services are approved, endorsed or authorized by the agency are prohibited. However, in limited situations, a DMEPOS supplier may be authorized to promote these prohibited logos, names or endorsements only if they have obtained a specific and written authorization from the agency. Such permission is only granted by CMS' Public Affairs Office. If a DMEPOS supplier is found to misrepresent and produce such logos, names or words in its advertisements through various means (newspapers, magazines, television, mailings, internet websites etc.) and has not been authorized to use such logos or a manner that misrepresents, the supplier may be subject to sanctions imposed by the Office of Inspector General. (The sanction is a civil monetary penalty (depending on the type of conveyance, such penalty may not exceed \$5,000 to \$25,000) for each and every violation identified.)

Unsolicited Telephone Contacts to Medicare Beneficiaries

- Under section 1834(a)(17) of the Social Security Act, DMEPOS suppliers are prohibited from making unsolicited telephone contacts, sometimes referred to as "cold calling" to Medicare beneficiaries. (See the section of the Act at http://www.socialsecurity.gov/OP_Home/ssact/title18/1834.htm on the internet.) There are however, three exceptions where a supplier may contact our beneficiaries by telephone.
- These exceptions are:
 1. the beneficiary has given written permission to the supplier to contact them by telephone about furnishing a DMEPOS item;
 2. the supplier has furnished a covered DMEPOS item and the supplier is contacting the beneficiary only regarding the furnishing of the item; or
 3. if the supplier has furnished a covered item to the beneficiary during the past 15 months of the telephone contact, the supplier may contact the beneficiary about other items that they are able to provide to the beneficiary if needed.

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If a supplier unsolicited contact does not fall into one of these exceptions, neither CMS nor the beneficiary is obligated to pay the supplier for items. Furthermore, if the supplier knowingly contacts beneficiaries in violation of Medicare rules on unsolicited contacts to Medicare beneficiaries, and to the extent such behavior establishes a pattern of conduct, CMS may consider excluding the supplier from the program.

CMS Monitoring of DMEPOS Marketing Under the Competitive Bidding Program

CMS will be actively encouraging the monitoring of non-compliance with the marketing prohibitions noted above. CMS will promote the awareness of these prohibitions through calls with the DMEPOS supplier communities, through the beneficiary and supplier outreach activities of our Competitive Bid Implementation Contractor (CBIC) Ombudsman and various other activities being coordinated from the CMS Regional Offices. CMS will suggest the public report potential violations to their respective CBIC Ombudsman, to 1-800-MEDICARE, or to the OIG Hotline. If reported to the CBIC Ombudsman, the Ombudsman will be directed to forward the potential violation to the CMS Program Integrity contact. If reported to 1-800-MEDICARE, they will forward the information to the DME MAC or DME Program Safeguard Contractor (PSC), who in turn will forward the information to the Program Integrity contact. Furthermore, CMS Regional Offices (ROs) will proactively do environmental scanning of the marketed materials. Where RO staff identifies potential marketing violations as described above, they will forward the information to the CMS Program Integrity contact.

Once referred to the CMS Program Integrity contact, the information will be reviewed and where appropriate, will be further developed for possible sanctions either by CMS or the OIG.

If anyone has knowledge of a potential marketing violation by a DMEPOS supplier, they may call and report the violation at 1-800-Medicare or 1-800-HHS-TIPS. Additionally, persons receiving any written materials which are in violation of marketing rules should be prepared to make the material available to CMS.

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