

American Academy of Ophthalmology, American Association of Orthopaedic Surgeons  
American Medical Association, American Occupational Therapy Association  
American Optometric Association, American Physical Therapy Association  
American Podiatric Medical Association, and Medical Group Management Association

## **DMEPOS Provisions in the Medicare Improvements for Patients and Providers Act of 2008 (P.L. 110-275)**

**1) The Request: CMS should be required to follow the provisions and intent of Public Law No. 110-275 (H.R. 6331).**

- The Secretary of HHS (hereinafter “the Secretary”), should immediately halt DMEPOS accreditation requirements for physicians and licensed health care professionals.
- The Secretary should exercise the newly expanded authority to exempt physicians and licensed health care professionals from the quality standards and accreditation requirements based on the licensing, accreditation, and other high quality requirements physicians and licensed health professionals must currently meet.

**2) The MIPPA instructs CMS to halt application of DMEPOS quality standards and accreditation requirements to physicians and licensed health care professionals.**

Section 154(b) of the MIPPA, effective June 30, 2008, states that the quality standards and accreditation requirements for DMEPOS suppliers, found in Section 1834(a)(20) of the Social Security Act, “shall not apply” to physicians and licensed health care professionals who supply DMEPOS, “unless the Secretary determines that the standards being applied are designed specifically to be applied to such professionals and persons.” The Secretary has not yet made that determination. However, since March 1, 2008, the Centers for Medicare & Medicaid Services (CMS) have applied, and continue to apply, these quality standards and accreditation requirements to physicians and licensed health care professionals who submit new enrollment applications, including those who merely add another location to their practice. Moreover, the quality standards and accreditation requirements in question are designed for commercial DMEPOS suppliers that provide DMEPOS on a retail and/or prescription basis, rather than physicians and licensed health care professionals, who supply DMEPOS only to their patients for the purposes of patient convenience and safety.

**3) The Secretary has the authority to exempt physicians and licensed health care professionals from DMEPOS accreditation and quality standards.**

Section 154(b) of the MIPPA, also states that the Secretary “may exempt” physicians and licensed health care professionals from the quality standards and accreditation requirements for DMEPOS suppliers, “if the Secretary determines that licensing, accreditation, or other mandatory quality requirements apply to such professionals and persons with respect to the furnishing of such items and services.”

The Secretary should exercise this authority to exempt physicians and licensed health care professionals from the DMEPOS quality standards and accreditation requirements because physicians and licensed health care professionals already must meet established state law and licensure requirements, as well as compulsory Medicare Part B professional credentialing and training processes.

**4) Failure of the Secretary to exempt physicians and licensed health care professionals from the DMEPOS accreditation requirement will limit patient access to care.**

If physicians and licensed health care professionals are not exempted from the existing DMEPOS accreditation requirements aimed largely at commercial suppliers, they will be all but prohibited from supplying vital DMEPOS to their patients. Physicians and licensed health care professionals provide DMEPOS to their patients to address specific medical conditions (e.g., fractures, wounds, surgical follow-up [including vision correction following cataract surgery], sprains, strains, etc.) at the time of service based upon the uniqueness of patients' presenting medical conditions.

By fitting/dispensing DMEPOS at the time of service, physicians and licensed health care professionals ensure that injuries, post surgical conditions, and/or wounds are properly stabilized, protected, and treated in an efficient, appropriate, and timely manner. In addition, many patients suffer from limited mobility, making repeated trips to outside suppliers very difficult. Eliminating physicians' and licensed health care professionals' ability to provide these services will severely limit Medicare beneficiaries' access to high quality care.

**5) Physicians and licensed health care professionals do not cause the problems that DMEPOS accreditation was designed to address.**

Congress and CMS created the accreditation requirement for DMEPOS suppliers to address over-utilization and fraud. While we strongly support reasonable efforts to address these problems, there is no data that physicians and licensed health care professionals are the source of these issues. Congress realized as much when it enacted the MIPPA, allowing the Secretary to exempt physicians and licensed health care professionals from these burdensome requirements.

August 11, 2008

# H. R. 6331

## Sec. 154. DELAY IN AND REFORM OF MEDICARE DMEPOS COMPETITIVE BIDDING ACQUISITION PROGRAM

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### (b) QUALITY STANDARDS.—

#### (1) APPLICATION OF ACCREDITATION REQUIREMENT.—

(A) IN GENERAL.—Section 1834(a)(20) of the Social Security Act (42 U.S.C. 1395m(a)(20)) is amended—

(i) in subparagraph (E), by inserting “including subparagraph (F),” after “under this paragraph,”; and

(ii) by adding at the end the following new subparagraph:

“(F) APPLICATION OF ACCREDITATION REQUIREMENT.— In implementing quality standards under this paragraph—

“(i) subject to clause (ii), the Secretary shall require suppliers furnishing items and services described in subparagraph (D) on or after October 1, 2009, directly or as a subcontractor for another entity, to have submitted to the Secretary evidence of accreditation by an accreditation organization designated under subparagraph (B) as meeting applicable quality standards; and

“(ii) in applying such standards and the accreditation requirement of clause (i) with respect to eligible professionals (as defined in section 1848(k)(3)(B)), and including such other persons, such as orthotists and prosthetists, as specified by the Secretary, furnishing such items and services—

“(I) such standards and accreditation requirement shall not apply to such professionals and persons unless the Secretary determines that the standards being applied are designed specifically to be applied to such professionals and persons; and

“(II) the Secretary may exempt such professionals and persons from such standards and requirement if the Secretary determines that licensing, accreditation, or other mandatory quality requirements apply to such professionals and persons with respect to the furnishing of such items and services.”

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(e) EFFECTIVE DATE.—The amendments made by this section shall take effect as of June 30, 2008