

Part B Insider (Multispecialty) Coding Alert

DURABLE MEDICAL EQUIPMENT Suppliers Blast OIG For 'Unworkable' Fraud Alert

Feds show lack of understanding in interpretation, industry says.

Suppliers may have to change the way they do business if the feds stick by a new interpretation of telemarketing fraud for durable medical equipment.

In a special fraud alert published in the Jan. 14 Federal Register, the OIG warns suppliers that they should not contact a Medicare beneficiary by phone based solely on a physician's verbal or written order for durable medical equipment.

New twist: Suppliers can initially contact beneficiaries via phone only with express written consent, the OIG reminds suppliers in the alert that is based on an original 2003 alert. But the new part is the OIG's interpretation of consent: "A physician's preliminary written or verbal order is not a substitute for the requisite written consent of a Medicare beneficiary," the OIG insists. Industry trade groups were immediately up in arms over the new interpretation. "The new policy announced in the fraud alert leaves virtually every Medicare-enrolled DME provider open to liability for false claims," says the American Association for Homecare in a release. "Requiring DME providers to have a beneficiary's written authorization before contacting the beneficiary to deliver DME ordered by his physician is ... impractical and unworkable."

The alert "will cause DME suppliers to break the law every time they call a patient to arrange for delivery of physician ordered DME services," stresses the National Association of Independent Medical Equipment Suppliers in a message to members.

"It seems clear that [CMS] and the OIG have no clue how the providers serving patients actually do business," notes NAIMES' **Wayne Stanfield**. The federal watchdog's interpretation is "overly strict."

How it works: Most DME items furnished in patients' homes result from a written or verbal order communicated initially by the physician to the DME provider, who then contacts the beneficiary to arrange for delivery of the item, AAHomecare explains.

The law "was targeting a specific abusive marketing practice that was prevalent at the time, and which Congress believed increased Medicare spending for medically unnecessary medical equipment," the trade group says. In contrast, Medicare policy recognizes and permits providers to dispense DME in response to a physician's verbal order for the item.

Plus: The new alert also reminds suppliers that they cannot hire an outside marketing firm to conduct prohibited telemarketing to beneficiaries.

Note: The special fraud alert is at <http://oig.hhs.gov/fraud/fraudalerts.asp> -- scroll down to the Jan. 13 entry.