



## Alerts

### New Durable Medical Equipment, Prosthetics, Orthotics and Supplier Standards May Require Operational Changes

**September 21, 2010**

*Health Care Alert*

On August 27, 2010, the Centers for Medicare & Medicaid Services (CMS) published a final rule titled, "Medicare Program; Establishing Additional Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Supplier Enrollment Safeguards" in the Federal Register (*75 Fed. Reg. 52629*). The final rule becomes effective September 27, 2010.

That final rule introduces several new enrollment standards, and clarifies and expands on the existing enrollment requirements that DMEPOS suppliers must meet to establish and maintain billing privileges in the Medicare program. Many of the new requirements may require DMEPOS suppliers to review and revise their operations and/or policies and procedures to ensure compliance. Following is a summary of the new requirements that DMEPOS suppliers must follow:

- DMEPOS suppliers must be licensed to provide licensed services and cannot contract with an individual or an entity to provide the services.
- DMEPOS suppliers must maintain ordering and referring documentation (including written orders from a physician or eligible professional) for a period of seven years from the date of services.
- DMEPOS suppliers are prohibited from sharing a practice location with certain other Medicare providers and suppliers, except for physicians and non-physician suppliers only supplying DMEPOS items to current patients, and Part A providers that have DMEPOS enrollment under the same ownership.
- Except for physicians, licensed non-physician practitioners furnishing services to their own patient(s) as part of their professional service, or DMEPOS suppliers working with custom made orthotics and prosthetics, DMEPOS suppliers must remain open to the public for at least 30 hours per week.
- DMEPOS suppliers are required to notify the National Supplier Clearinghouse (NSC) of an adverse legal action, change of location or change of ownership (including authorized and delegated officials) within 30 days. Failure to notify the NSC of such changes will result in overpayments from the date of the reportable event.
- DMEPOS suppliers must obtain oxygen from a state-licensed oxygen supplier (applicable only to those suppliers in states that require oxygen

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licensure).

In addition, the rule:

- Revises supplier standard 9 to limit the use of cell phones, beeper numbers and pagers as a primary business telephone number. Also, the exclusive use of answering machines and answering services as the primary telephone number by a DMEPOS supplier during posted business hours is prohibited.
- Revises supplier standard 7 to ensure that the DMEPOS supplier maintains a physical facility at an appropriate site, which must meet the following requirements:
  - Except for state-licensed orthotic and prosthetic personnel providing custom fabricated orthotics or prosthetics in private practice, the site must maintain a practice location that is at least 200 square feet.
  - The site must be in a location that is accessible to the public, Medicare beneficiaries, CMS, the NSC and its agents. The location must not be in a gated community or other area where access is restricted.
  - The site must be accessible and staffed during posted hours of operation.
  - The site must maintain a permanent visible sign in plain view and post hours of operation.
  - The site must be in a location that contains space for storing business records, including the supplier's delivery, maintenance and beneficiary communication records.
- Revises supplier standard 11 to expand the prohibition on a DMEPOS supplier's telephone solicitation of a Medicare beneficiary to include in-person contacts, e-mails, instant messaging, and internet coercive advertising.
- Allows CMS and the NSC to conduct routine, unscheduled site visits during the supplier's posted hours of operation.

DMEPOS suppliers which do not meet the new requirements may have their Medicare provider numbers revoked. In addition, failure to comply with the rules could result in an overpayment, which could result in a false claim if not repaid in a timely fashion. To minimize their potential risks for failing to meet these new standards, DMEPOS suppliers should evaluate and update their existing operating practices, policies and procedures in response to the Final Regulations as well as the additional interpretive guidance included in the preamble to the Final Regulations.

For further information, please contact [Michael A. Dowell](#) or your regular [Hinshaw attorney](#).

*This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.*

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## **Hinshaw & Culbertson LLP is Pleased to Announce its 2010 Health Care Conference**

Wednesday, November 10, 2010  
9:00 a.m. to 4:00 p.m.

Hilton Lisle/Naperville  
3003 Corporate West Drive  
Lisle, Illinois

Now in its sixth year, the Conference will offer both plenary and breakout sessions. Join Senior Management, Board Members and In-House Counsel of Hospitals and Health Systems as our presenters examine and analyze current issues and strategies affecting the health care industry.

### **Plenary Sessions**

- Perspectives on Health Care Reform



- Round Three: Anti-Fraud Statutes Within Health Care Reform

#### **Breakout Sessions**

- RAC & MIC – Effectively Managing Audits and Appeals
- Managed Care Contracting After Health Care Reform
- Tax Exemption After Health Care Reform and Provena
- Provider-Based Status and the Physician Supervision Requirements of 2010
- Social Media Concerns for the Employer
- The Impact of Health Care Reform on Physicians, Group Practices and Hospital/Physician Arrangements

Hinshaw is an accredited CLE provider in Illinois. Illinois attorneys can earn 4.25 general CLE credit hours for attending the conference.

There will be a \$95 non-refundable fee to attend this conference.