



**American Orthotic &
Prosthetic Association**

AOPA in Advance

Breaking News for O&P Professionals

October 14, 2010

SPECIAL EDITION

O&P News

AOPA High Priority Tracking CMS' Proposed Rule Implementing Anti-Fraud Provisions of the Health Care Reform Law That Would Have Significant Impact on O&P Patient Care Facilities

On September 23, the Centers for Medicare and Medicaid Services issued proposed regulations intended to implement new anti-fraud provisions of the Patient Protection and Affordable Care Act (the health care reform law enacted earlier this year). These proposed regulations have an important potential impact on orthotic & prosthetic providers, particularly because they would assign all DMEPOS providers to one of three risk categories.

DMEPOS providers/companies that are **publicly traded** on the NYSE or NASDAQ would be considered **limited risk**.

Currently enrolled (revalidating) DMEPOS Medicare providers would be recognized as **moderate risk**. (Applicable date for most currently enrolled providers would be March 23, 2012, although an earlier date of March 23, 2011 would apply for those currently enrolled providers whose revalidation cycle results in revalidation between March 23, 2011 and March 23, 2012).

Newly enrolling suppliers and providers of DMEPOS will be assigned to the **high risk** category. (Applicable date would be March 23, 2011.)

So, all AOPA patient care facility members would be subject to assignment to one of these three risk categories, and the most extensive aspects of the rules would potentially apply to newly enrolling O&P patient care facility providers.

Comments on the proposed rule must be submitted by **November 16, 2010**. CMS expects to have these **new rules take effect on or after March 23, 2011**. Be assured that AOPA will be preparing and submitting comments to CMS on this important proposal. We believe there are several aspects of the proposal which would be excessively burdensome to O&P providers, and most especially our small business entities. CMS has neither provided the data nor made the convincing case that its proposed changes will deliver results to justify the extent the rules would intrude on normal patient care and business practices.

AOPA's outside counsel, at Alston & Bird, which recently was fortunate enough to add to its team working on your behalf, Ms. Kim Brandt, former Director of Program Integrity at CMS, has prepared a

very comprehensive summary of these regulations. We have taken that memo, highlighted the portions that are of greatest significance to O&P care providers.

[Click here to access and read the Alston & Bird summary memo.](#)

Here are a few of the key proposals of which you should be aware and which will doubtless be prompting comments from AOPA:

- CMS could suspend payments to a provider where a "credible allegation of fraud exists." What that means is less than clear. For example, could one competitor make an allegation that another competitor was defrauding CMS, and would that alone trigger a suspension of payments? Suspensions are targeted to 180 days-for many companies--eliminating Medicare payments for that long would threaten their very existence.
- The regs would give CMS the ability to impose a temporary moratorium on potentially high risk providers and suppliers with no rights of judicial review of the agency's decision
- As noted above, all providers and suppliers would be placed in one of three risk levels (i.e., limited, moderate and high), based on an assessment of their overall risk of fraud, waste and abuse. It is proposed that ALL newly enrolling DMEPOS providers and suppliers would go into the high risk category, and currently enrolled DMEPOS providers generally would go in the moderate risk category. There would be an exception to these placements for companies that are publicly traded on the NYSE or NASDAQ, which would be assigned to the lowest, limited risk group. Providers in the moderate risk category would be subject to multiple controls, including license verifications and unscheduled site visits; newly enrolling DMEPOS providers would be subject to criminal background checks and fingerprinting in order to begin to receive Medicare payments. AOPA will strongly object to this risk assignment provision, among other reasons, because: (1) orthotics and prosthetics is not part of DME, and has significantly lower fraud and abuse risks; (2) there has not been sufficient consideration of the impact of number of years in business, or accreditation/certification status as factors that diminish risk.
- All providers (excluding physicians and certain non-physician providers) would be assessed a \$500 annual fee to fund screening and program integrity costs at CMS. Medicare contractors would not begin processing the paperwork to support continued eligibility to receive payments "until the enrollment application fee is received and credited to the United States Treasury."

Clearly, this is a very critical and onerous proposed rule. We encourage all members to review the full memo from Alston & Bird, and to submit your own comments on this proposal. Comments can be sent by two means, but the Department of Health and Human Services requires that you **must choose only one way**, and not both ways, to send comments. Comments may be [submitted electronically to this Web site](#) by clicking on the "Submit a comment" button and following the instructions provided by the [Web site](#). Or comments may be submitted via regular mail and must be sent to the following address:

(In order to be considered, comments must received by CMS no later than 5 p.m. EST, November 16, 2010.)

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-6028-P
P.O. Box 8020
Baltimore, MD 21244-8020

Of special note, be certain that any comment submitted references file code CMS-6028-P.

Be assured that AOPA, both on its own behalf, as well as in concert with other members of the O&P Alliance, will be fighting diligently to try to persuade the agency to reduce the excesses of this proposal. We will urge a more realistic approach that cracks down on fraudulent providers, without either considering every provider to be a crook, or adding huge regulatory burdens that could put honest, legitimate, hard-working O&P providers out of business.

Questions? Contact Steven Rybicki at srybicki@AOPAnet.org or (571) 431-0835.

Send Us Your News!

The next **AOPA in Advance** will arrive in your inbox on October 19. So if you have a new employee or a new office, tell us! Share your news with the over 15,000 readers of the *O&P Almanac* and **AOPA In Advance** newsletter. Contact Steven Rybicki at srybicki@AOPAnet.org.

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