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Threats to the Certified Orthotic Fitter Scope of Practice: A Chronology of Events

12/18/13: CMS publishes information on codes that will be “split” into separate codes: a new set to be billed for off-the-shelf applications and the old codes to be billed for prefabricated/custom-fitted applications of the same braces. The change is effective 1/1/14, as detailed in this MLN: www.bocusa.org/MLNcodes.

3/27/14: DME MACs publish a Policy Article regarding the split orthotic codes, “clarifying” that CMS will reimburse fitting and dispensing prefabricated, custom-fitted orthotics only by those with “specialized training.” Off-the-shelf orthotics may be fit by anyone and specialized training is not required.

7/2/14: CMS publishes proposed rules about a wide range of topics, including a definition of “an individual with specialized training.” Public comments are invited. Our primary concern with the proposed rule is found in this excerpt, wherein COFs are not included among those listed who may fit and dispense prefabricated, custom-fitted orthotics:

*“Specifically, we proposed to update the definition of minimal self-adjustment in §414.402 to recognize as an individual with specialized training: a physician defined in section 1861(r) of the Act, a treating practitioner defined at section 1861(aa)(5) (**physician assistant, nurse practitioner, or clinical nurse specialist**), an **occupational therapist** defined at 42 CFR 484.4, or **physical therapist** defined at 42 CFR 484.4, who is in compliance with all applicable Federal and State licensure and regulatory requirements.” (From page 66248, emphasis added. **Note:** While not stated in this excerpt, it was previously clarified that “individuals with specialized training” includes **certified orthotists**.)*

8/14/14: Before the conclusion of the public comment period established for CMS to hear from stakeholders, DMEPOS Quality Standards are updated to include language paralleling the proposed rule regarding an individual with specialized training. Effective date of changes is listed as June 2014.

8/21/14: The Alliance member organizations agree that:

- *Unaccredited, unlicensed/non-certified, non-clinical staff and personnel in the health professional’s practice should not be permitted to provide such services.*
- *“Unless the state’s licensure statute provides otherwise, those licensed or certified healthcare professionals who regularly engage and/or assist in the care and treatment of patients with conditions requiring orthotic treatment (including certified orthotic fitters) that truly act under the supervision of a physician (or other individual who has specialized training) should be permitted to continue providing such services with respect to custom-fitted orthoses.”*

- CMS should allow the deemed accreditation organizations (like BOC) to continue to maintain our requirements related to approval of who can bill for Orthotics: off-the-shelf (OR03) and Orthotics: prefabricated (OR02).

BOC, both individually and as part of the O&P Alliance, submits comments reflecting these positions to CMS in response to the proposed rule. (The complete Alliance comment may be viewed here: www.bocusa.org/alliancecomments) We also ask you to comment on the proposed rule and the response to our request is impressive.

9/2/14: Public comment period on proposed rules closes.

10/31/14: CMS publishes final rule, stating, “At this time, we have decided not to finalize any changes to the definition of minimal self-adjustment in §414.402 to recognize as an individual with specialized training. We may address this provision in future rulemaking.”

1/15/15: BOC reaches out to the DME MACs through the DAC-D Question and Answer process with the DMERCS to ask why the policy was changed prior to the end of comment period, and when CMS had essentially put a hold on the proposed rule.

1/29/15: The response via phone call with the DME MACs is that the Quality Standards and the LCDs and related policy articles are based on existing regulatory language that does not list COFs as one of the individuals with specialized training who could dispense and bill custom-fitted prefabricated orthotics (OR02).

2/18/15: CMS issues “Frequently Asked Questions on Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) 2015 Medicare Payment Final Rules (CMS-1614-F).” The final question and answer is as follows:

Definition of Minimal Self-Adjustment of Orthotics under Competitive Bidding

1Q. CMS proposed a revision to the definition of “minimal self-adjustment” at 42 CFR 414.402 of the Federal regulations, specifically to expand on the part of the definition related to individuals who have specialized training that enables them to furnish orthotics beyond those that require minimal self-adjustment (e.g., custom fitted orthotics). This proposed revision was not finalized. Does this mean that the guidance regarding which individuals have specialized training that enables them to furnish custom fitted orthotics is not valid?

1A. No. The guidance regarding which individuals have specialized training that enables them to furnish custom fitted orthotics remains in effect. Although the regulation was not updated to reflect this guidance, it remains in effect under the Durable Medical Equipment Medicare Administrative Contractor (DME MAC) articles discussing when orthotics can be considered custom fitted and coded using HCPCS codes specific to custom fitted orthotics. The DME MACs have discretion to define what constitutes custom fitting for accurate coding and payment of claims. It also remains in effect under Appendix C of the DMEPOS Quality Standards related to specialized training necessary for furnishing custom fitted orthotics.

4/8/15: It appears that CMS may reject claims from COFs who bill for custom-fitted prefabricated orthotics, but we have not heard of any specific instances where this has occurred. We would like to know if any of you are having claims denied on the basis of a COF



not being an “individual with specialized training.” If this has happened to you, please contact BOC’s Regulatory & Legislative Analyst, Zack Chait, at zack.chait@bocusa.org.