



February 6, 2015

Marilyn B. Tavenner, Administrator
Centers for Medicare and Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Room 445-G
Washington, DC 20201

Dear Administrator Tavenner:

On behalf of the National Athletic Trainers' Association (NATA), I am writing regarding the End Stage Renal Disease (ESRD) Prospective Payment System (PPS), Quality Incentive Program (QIP), and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Final Rule, 79 FR 66247-66248 (November 6, 2014). Specifically, NATA is providing feedback on the definition of "specialized training" under the minimal self-adjustment section of the final rule and the Joint Durable Medical Equipment Medicare Administrative Contractor (DME MAC) Publication released on March 27, 2014.

NATA is a professional organization serving more than 40,000 certified athletic trainers, students of athletic training, and other health care professionals. The organization's mission is to enhance the quality of health care provided by certified athletic trainers and to advance the athletic training profession. On July 11, 2014, the Centers for Medicare and Medicaid Services (CMS) published its proposed rule to clarify the definition of minimal self-adjustment for orthotics (42 C.F.R. §414.402) as part of the notice of proposed rulemaking. Specifically, CMS proposed to update the definition of minimal self-adjustment and define "individual with specialized training" as a physician, a treating practitioner, an occupational therapist, or a physical therapist. As the leading organization representing athletic trainers, NATA had serious concerns that the proposed definition of "individual with specialized training" would exclude athletic trainers from performing services for which they are qualified and have extensive experience, and provided comments to CMS on September 2, 2014. The ESRD PPS, QIP, and DMEPOS final rule was published in the *Federal Register* on November 6, 2014 and stated CMS would not finalize changes to the minimal self-adjustment definition to specify certain individuals with specialized training with regard to the definition of off-the-shelf orthotics.

Because CMS declined to finalize any changes to the definition of minimal self-adjustment proposed in the draft rule, suppliers, providers, and beneficiaries have been relying on the Joint DME MAC policy article on off-the-shelf orthotics, released on March 27, 2014. The joint publication states that furnishing custom fit orthotics "requires the expertise of a certified orthotist or an individual who has equivalent specialized training in the provision of orthotics *such as a physician, treating practitioner, an occupational therapist, or a physical therapist in compliance with all applicable Federal and State licensure and regulatory requirements.*" It is evident that the Joint DME MAC Publication list of individuals with specialized training who may provide custom fit orthotics is not exhaustive. However, on January 22, 2015, Noridian Administrative Services, the Jurisdiction D DME MAC (Noridian) conducted a supplier training program that implies the CMS draft rule published on July 11, 2014 has been adopted. Specifically, the training program presentation¹ states the following:

Question: Who is qualified to perform the "substantial modifications" required of the custom-fitted, pre-fabricated orthoses?

¹ https://www.noridianmedicare.com/dme/train/presentations/orthotics_and_prosthetics.pdf



Answer: A certified orthotist or someone with equivalent training.
– Physician, treating practitioner, occupational therapist or physical therapist.

By delineating “someone with equivalent training” as a physician, treating practitioner, occupational therapist, or physical therapist, Noridian is specifying the list of professionals with training equivalent to a certified orthotist is limited to *four* types of professionals. However, in its final rule, CMS clearly stated it is not finalizing any changes to the definition of minimal self-adjustment to identify certain individuals with specialized training with regard to off-the-shelf orthotics under the Competitive Bidding Program. Noridian’s training presentation is not only deceptive, but it is also a flagrant disregard of current CMS policy.

NATA is extremely concerned that Noridian’s supplier training presentation, a public record, will lead to confusion among suppliers, health care professionals, and beneficiaries. We request that CMS issue guidance to each of the DME MACs and specify that while physicians, treating practitioners, occupational therapists, or physical therapists are examples of individuals with specialized training who may provide custom fit orthotics, this is *not* a complete list of qualified individuals, and CMS has not defined the types of professionals who may provide custom fit orthotics. NATA also requests that any guidance issued by CMS be made public to ensure suppliers, providers, and beneficiaries have a comprehensive understanding of the current standards for providing custom-fit orthotics.

Thank you for considering our request. We look forward to continuing to share information with you and working together to ensure Medicare payment policy facilitates the provision of quality care. Please feel free to contact Amy Callender, NATA’s director of government affairs, at 972.532.8853 or amyc@nata.org should you have any questions or if we can be of any assistance in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jim Thornton', is written over a faint, illegible background.

Jim Thornton, MS, ATC, CES
President

cc: Joel Kaiser, Director, Division of DMEPOS Policy, CMS
Michael Keane, Director, Division of DMEPOS Competitive Bidding, CMS
Michelle Peterman, Division of DMEPOS Policy, CMS