

Insights

CMS Clarifies Access to Documentation as a Condition of Payment

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Earlier this year, CMS published a Medicare notice titled Clarification of Ordering and Certifying Documentation Maintenance Requirements (Change Request 9112), which clarifies the term "access to documentation" in the Medicare Program Integrity Manual (Pub. 100-08, Chapter 15, Section 15.18).

Under 42 CFR 5424.516(f)(1), which is a condition of payment, a provider or supplier that furnishes covered ordered items of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS), clinical laboratory, imaging services, or covered ordered/certified home health services is required to:

- Maintain documentation for seven (7) years from the date of service; and
- Upon the request of the Centers for Medicare and Medicaid Services or a Medicare contractor, provide access to that documentation.

This maintenance and access requirement also applies to physicians who order/certify home health services and physicians or, when permitted, other eligible professionals who order items of DMEPOS or clinical laboratory or imaging services.

The documentation required to be maintained for seven (7) years from the date of service is "written and electronic documents (including the NPI of the physician who ordered/certified the home health services and the NPI of the physician or, when permitted, other eligible professional who ordered items of DMEPOS or clinical laboratory or imaging services) relating to written orders and certifications and requests for payments for items of DMEPOS and clinical laboratory, imaging, and home health services."

The term "access to documentation" means that the documentation is actually provided or made available in the manner requested by CMS or a Medicare contractor. If copies cannot be provided because the physician or eligible professional did not personally maintain the records or can only be partially provided, then the requirement to maintain this documentation and provide access to it will not have been met and the provider, supplier, physician, or eligible professional may be subject to revocation. CMS states that it recognizes providers and suppliers often rely upon an employer or another entity to maintain these records on their behalf. However, it remains the



responsibility of the individual or entity upon whom/which the request has been made to provide documentation. If the provider fails to respond within thirty (30) calendar days of the contractor's request (i.e., a complete non-response), the contractor shall revoke enrollment using §424.535(a)(10) as the basis and a one (1) year re-enrollment bar shall be imposed.

This notice became effective July 20, 2015. If you have any questions or concerns, please feel free to contact Thomas N. Hutchinson at thutchinson@kdlegal.com or Meghan M. Linvill McNab at mmcnab@kdlegal.com.