DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, MD 21244-1850

CMCS Informational Bulletin

DATE: January 4, 2019

FROM: Mary C. Mayhew, Deputy Administrator and Director
Center for Medicaid and CHIP Services

Demetrios L. Kouzoukas, Principal Deputy Administrator and Director
Center for Medicare

Tim Engelhardt, Director
Medicare-Medicaid Coordination Office

SUBJECT: Strategies to Support Dually Eligible Individuals' Access to Durable Medical Equipment, Prosthetics, Orthotics, and Supplies

The purpose of this Informational Bulletin is to provide another strategy for states to better support timely access to durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) for people dually eligible for Medicaid and Medicare. Both Medicare and Medicaid cover DMEPOS, which can be essential to dually eligible individuals' mobility, health status, independence in the community, and overall quality of life. This Informational Bulletin provides an additional strategy to those included in the Informational Bulletin released in January 2017 in which we described several strategies to increase access to DMEPOS for dually eligible individuals.[1]

Background

Medicare and Medicaid differ in their coverage of DMEPOS:

- Medicare limits coverage to DME that can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful in the absence of illness or injury, is appropriate for use in the home, and effective with respect to items classified as DME after January 1, 2012, has an expected life of at least 3 years. Additionally, there are items that Medicare does not cover because they are explicitly excluded by statute or they do not meet Medicare's medical necessity requirements.
- Medicaid provides coverage for DMEPOS under two separate benefit categories: (1) Durable Medical Equipment and Supplies, which are called medical supplies, equipment and appliances in Medicaid, are covered under the mandatory home health benefit; (2) prosthetics are covered separately under the optional prosthetics benefit. Medicaid has a broader definition of medical supplies, equipment and appliances and may cover DMEPOS that Medicare does not, including certain specialized equipment that promotes independent living outside the home.

[1] https://www.medicaid.gov/federal-policy-guidance/downloads/cib011317.pdf

Medicare is primary payer for DMEPOS covered by both programs:

- Medicaid pays secondary to most other legally liable payers, including Medicare. Section 1902(a)(25) of the Social Security Act requires each state, under its State Medicaid Plan, to take all reasonable measures to ensure that other payers pay to the limit of their legal liability before any Medicaid payment is available. However, this does not mean that states must always obtain a Medicare denial before covering a DMEPOS item, such as situations in which a DMEPOS item is not covered by Medicare. For those DMEPOS items not expressly excluded by Medicare, state Medicaid agencies should follow CMS Coordination of Benefits Third Party Liability claims processing cost avoidance requirements.[2]
- Medicare generally only processes claims after the equipment is delivered. If a state requires a Medicare denial for an item before covering a DMEPOS item, it can lead to potential access issues for dually eligible individuals. When suppliers lack assurance regarding how Medicare or Medicaid will cover DMEPOS at the time it is furnished– and dually eligible individuals (the majority of whom have incomes under 100 percent of the federal poverty level) generally cannot afford to pay out-of-pocket up front – the suppliers may be reluctant to furnish needed DMEPOS.

Denials Not Required for DMEPOS that Medicare Does Not Cover

In the January 2017 Informational Bulletin, we explained that states can use non-affirmed Medicare prior authorization requests as evidence of Medicare non-coverage and do not need to go on to seek an actual claim denial for the item. We are building on that guidance by clarifying a second strategy states may adopt to better wrap around Medicare DMEPOS coverage for dually eligible individuals. Specifically, in this Informational Bulletin, we are providing guidance that states need not obtain a Medicare denial for DMEPOS that Medicare routinely denies as non-covered under the Medicare DME benefit (e.g., incontinence supplies). Below are some specific procedures states may adopt and resources that are available.

Medicare Non-Covered Lists

Medicaid agencies commonly cover DME that Medicare does not. States may consider creating a list of DME items that are not covered by Medicare to expedite Medicaid coverage and payment for dually eligible individuals. States can develop such a "Medicare Non-Covered Items" list and use it to immediately process claims for an item they know that Medicare will not cover; they would not need to require proof of Medicare denial. This approach, thoughtfully implemented, allows states to minimize burden by removing the step of having to obtain a Medicare denial of a DME claim while still fulfilling their statutory requirement to remain the payer of last resort. It also streamlines the administrative process and promotes timely beneficiary access to needed items and repairs. States that develop a "Medicare Non-Covered Items" list should also encourage their Medicaid managed care organizations to adopt the same list if they are responsible for covering DME for dually eligible individuals.

Creating a Medicare Non-Covered List of DME

[2] See 42 CFR 433.139(b)(1).

The DME Medicare Administrative Contractors post up-to-date lists of items that they will currently deny as non-covered. We encourage states to utilize these lists as the basis for their "Medicare Non-Covered Items" lists.
Medicare has four "jurisdictions" for MACs. Please use the bullets below to identify the jurisdiction in which your state is located, and then use the link for MAC list posted for that jurisdiction.

- For Jurisdiction A (CT, DE, MA, ME, MD, NH, NJ, NY, PA, RI, VT, Washington D.C.) and Jurisdiction D (AK, Am. Samoa, AZ, CA, Guam, HI, ID, IA, KS, MO, MT, NE, NV, ND, N. Mariana Is., OR, SD, UT, WA, WY)

  https://med.noridianmedicare.com/web/jddme/topics/noncovered-items

- For Jurisdiction B (IL, IN, KY, MI, MN, OH, WI) and Jurisdiction C (AL, AR, CO, FL, GA, LA, MS, NM, NC, OK, PR, SC, TN, TX, USVI, VA, WV)

  https://cgsmedicare.com/jc/pubs/news/2016/1216/cope1605.html

Please see Appendix 1 for additional resources to help states keep these lists updated. These include resources on updates on items that are not covered under the Medicare DMEPOS benefit with reasons for denial as well as instructions on how to sign up for listservs to be notified when these non-covered lists are updated.

More Information
For more information please contact Sharon Donovan (Sharon.Donovan1@cms.hhs.gov) in the Medicare-Medicaid Coordination Office or Cathy Sturgill (Cathy.Sturgill@cms.hhs.gov) in the Center for Medicaid and CHIP Services.

APPENDIX 1

Getting Updates via Listservs

Medicare revises its policies from time to time, so we recommend that state Medicaid Agencies keep abreast of coverage issues by subscribing to the DME MAC listservs. To receive ongoing policy updates and keep your list up-to-date, identify the "jurisdiction" in which your state is located (see section above called "Creating a Medicare Non-Covered List of DME"), and then sign up for the appropriate DME MAC listserv:

DME MAC Listserv for Jurisdictions A and D

https://naslists.noridian.com/list/subscribe.html?mContainer=2&mOwner=G30392x2n39372t36

DME MAC Listserv for Jurisdictions B and C:

https://cgsmedicare.com/medicare_dynamic/ls/001.asp

Additional Resources

The resources below discuss in more detail some of the DMEPOS that Medicare covers and some of the items that are not covered. States may use these resources to obtain additional context for Medicare policy.

- **CMS Internet Only Manual Publication 100-3, Medicare National Coverage Determinations Manual, Chapter 1, Part 4, Section 280.1** (https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/ncd103c1_Part4.pdf) provides a list of some items that are covered, and some items that are not covered, with the reason for denial. It should be noted that Section 280.1 does not address all items of DMEPOS that may be covered under the Medicare program; in the absence of a National Coverage Determination (NCD), coverage determinations may be made by Medicare claims contractors and are subject to appeal in the claims review process.
- **Items and Services That Are Not Covered Under the Medicare Program** (https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/Items-and-Services-Not-Covered-Under-Medicare-Booklet-ICN906765.pdf)