
PROGRAM MEMORANDUM CARRIERS

Department of Health
and Human Services

Health Care Financing
Administration

Transmittal No. B-00-24

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This Program Memorandum re-issues Program Memorandum B-99-23, Change Request 866 dated May 1999; the only change is the discard date, all other material remains the same.

CHANGE REQUEST 866

SUBJECT: Issues Involving Certificates of Medical Necessity (CMN) and Cover Letters for CMNs

The purpose of this Program Memorandum is to provide guidance and instruction to the Durable Medical Equipment Regional Carriers (DMERCs) on issues involving Certificates of Medical Necessity (CMNs) and physician orders.

I. Covers Letters for CMNs

Cover letters can be used by a supplier as a method of communication between the supplier and the physician. It is not HCFA's intent to restrict necessary communication between the supplier and the physician. The cover letter is a form that is not required by HCFA nor regulated by HCFA. The DMERCs should not take adverse action against suppliers that solely involve cover letters.

The DMERCs should publish an article in their bulletins asking suppliers to remind physicians of their responsibility in completing and signing the CMN. It is the physician's responsibility to determine both the medical need for, and the utilization of, all health care services. The physician should ensure that information relating to the beneficiary's condition is correct. The DMERCs should encourage suppliers to include language in their cover letters to remind physicians of their responsibilities.

II. DMERCs' Authority to Assess an Overpayment and/or Civil Monetary Penalty (CMP) When Invalid CMNs Are Identified.

Section 1862(a)(1) of the Social Security Act (the Act) prohibits Medicare payment for services that are not reasonable and necessary. Section 1833(e) of the Act requires that Medicare be furnished by providers and suppliers "such information as may be necessary in order to determine the amounts due. . ." These sections provide support that a failure to have a valid CMN on file or to submit a valid CMN to the DMERC makes the underlying claim improper because Medicare does not have sufficient information to determine whether the claim is reasonable and necessary. A valid CMN is one in which the treating physician has attested to and signed supporting the medical need for the item, and the appropriate individuals have completed the medical portion of the CMN. When the DMERCs identify a claim for which a CMN is not valid, they may deny the claim and/or initiate overpayment action.

If a DMERC identifies a supplier that has a pattern of improperly completing the CMN, the DMERC may choose to develop a potential CMP case against the supplier. The authority for such action is found in §1834(j)(2)(A)(iii) of the Act which states that "any supplier of medical equipment and supplies who knowingly and willfully distributes a CMN in violation of clause (I) or fails to provide the information required under clause (ii) is subject to a civil money penalty in an amount not to exceed \$1,000 for each such certificate of medical necessity so distributed. The provisions of §1128A of the Act (other than subsections (a) and (b) shall apply to civil money penalties under this subparagraph in the same manner as they apply to a penalty or proceeding under §1128(A)(a)) of the Act.

III. Faxed CMNs and Physician Orders

The following is an outline of the documentation requirements that all DMERCs should follow. Claims that do not meet these documentation requirements will be denied and/or an overpayment will be assessed.

Orders and Certificates of Medical Necessity

- o A written order must be sufficiently detailed and include: (1) the patient's name; (2) description of the item (the description can be either a narrative or a brand name/model number); (3) physician's signature; and (4) all options or additional features which will be separately billed or which will require an upgraded code.
- o The date on the written order or the CMN should be the date that the physician has signed the written order and/or CMN.
- o A supplier must have a verbal, faxed, or original order in their records before they provide any item of durable medical equipment, prosthetics, orthotics and supplies to a beneficiary.
- o For items that are dispensed based on a verbal order, the written order must clearly specify the start date of the order. If the written order is for supplies that will be provided on a periodic basis, the written order should include appropriate information on the quantity used, frequency of change, and duration of need.
- o A new written order and a new CMN is required when there is a change in equipment.
- o For items that are recurring in nature, a new order and a new CMN is required if the beneficiary changes suppliers.
- o A supplier must have a faxed or original signed order and a faxed or original CMN (when applicable) in their records before they can submit a claim for payment to Medicare.
- o The DMERCs have the authority to request to see the original order or a CMN at any time. If the original order or CMN is not available either at the suppliers or in the patient's medical record maintained by the ordering physician, or that the faxed CMN has been altered, the DMERCs should consider the service not reasonable and necessary and initiate a denial or an overpayment action.
- o According to 42 Code of Federal Regulations 410.38, a supplier is required to obtain a signed order from a physician before delivery of certain types of durable medical equipment. Items that require a written order prior to delivery are decubitus care items, seat lift mechanisms, transcutaneous electric nerve stimulator, and power operated vehicle.
- o If there is any change made to the CMN after the physician has completed section B and signed the CMN, the physician must line through the correction, sign the correction in full, and date the change or the supplier may choose to have the physician complete a new CMN.

This Program Memorandum is effective as of April 26, 1999.

These instructions should be implemented within your current operating budget.

This Program Memorandum may be discarded as of October 30, 2000.

Contact person for this Program Memorandum is John Warren (410) 786-3633.