



February 3, 2010

Kimberly L. Brandt  
Director, Program Integrity Group  
Office of Financial Management  
Centers for Medicare and Medicaid Services  
7500 Security Blvd, Mail Stop C3-02-16  
Baltimore, MD 21224-1850

**Re: DME MAC Medicare Part B Overpayment Recovery Demand Letters**

Dear Ms. Brandt:

The National Association of Chain Drug Stores (NACDS), the National Alliance of State Pharmacy Associations (NASPA) and the National Community Pharmacists Association (NCPA) are writing to request that the Centers for Medicare and Medicaid Services (CMS) instruct Durable Medical Equipment Medicare Administrative Contractors (DME MACs) to cease recovery efforts of previously paid claims where pharmacies submitted the claims to DME MACs without knowledge of the beneficiaries' enrollment in Medicare Advantage (MA) plans. We urge CMS to instruct DME MACs to seek reconciliation directly with the MA plan or another appropriate payor, without requiring pharmacies to return any reimbursement for services provided and billed in good faith.

NACDS represents 154 traditional drug stores, supermarkets, and mass merchants with pharmacies – from regional chains with four stores to national companies. Chains operate 37,000 pharmacies, and employ more than 2.5 million employees, including 118,000 full-time pharmacists. They fill more than 2.5 billion prescriptions annually.

NASPA promotes leadership, sharing, learning, and policy exchange among state pharmacy associations and pharmacy leaders nationwide, and provides education and advocacy to support pharmacists, patients, and communities working together to improve public health. NASPA was founded in 1927 as the National Council of State Pharmacy Association Executives (NCSPAEE).

NCPA represents the interests of pharmacist owners, managers, and employees of nearly 23,000 independent community pharmacies and their patients. These independents employ nearly 65,000 licensed pharmacists and represent an \$88 billion marketplace.

Several pharmacies have recently received letters from DME MAC Jurisdiction B demanding return of overpayment because the claims, which date back to 2006, were for patients that were enrolled in MA plans. In these cases, pharmacies had no way to know that the patient was enrolled in an MA plan and relied on the information provided to them by the beneficiaries to

submit the claim to the DME MAC. In addition, some of these overpayment demands are for the middle of a prescription cycle where the patient obtained the service while they had Part B coverage, but became an MA patient prior to exhausting the supply received during their Part B coverage. As you can imagine, there is no way that a pharmacy would know that a patient will switch to an MA plan during the middle of a prescription cycle. On the other hand, CMS and/or its contractors have access to up-to-date coverage information that pharmacies are often not informed about by the patient.

In addition, once a prescription has been billed to the party identified by the beneficiary as being responsible, pharmacies have no way to demand reimbursement from the patient or any other plan. Under Medicare Part B, pharmacies do not receive a real-time adjudication of the claim, leaving them without any ability to correct an error in a timely fashion. The DME MACs were in the best position to verify coverage prior to issuing payments for claims that are subject to these recovery efforts. Some of these claims have been identified as overpayments three or even four years after the date of service, even though the filing deadline for an individual MA plan may be as short as 90 days. It may be impossible for the pharmacy to contact the patient to obtain coverage information, or to file a claim with the correct entity. This is especially difficult when the DME MAC typically merely identified that “it was determined that the charge was covered by Hospice, Managed Care or Home Health Agency” in the recoupment letter to the pharmacy.

We request CMS to instruct all DME MACs to cease these collection efforts and, instead, to seek reconciliation directly with appropriate MA plans, without requiring pharmacies to return any reimbursement for services provided and billed in good faith. As affected pharmacies provided care to Medicare beneficiaries without any knowledge of their enrollment in an MA plan or their intention to switch to an MA plan, demanding refunds of such claims is unfair and will cause significant economic hardships. CMS and/or its contractors have the data available to seek reconciliation with the patient’s MA plan without placing the burden back on the pharmacy.

We stand with you to provide the best care to our nation’s seniors and look forward to a speedy resolution of this issue. If we can be of any assistance, please contact Julie Khani (jkhani@nacds.org or 703-837-4259) at NACDS, Rebecca Snead (rsnead@nasp.us or 804-285-4431) at NASPA, or John Coster (john.coster@ncpanet.org or 703-683-8200) at NCPA.

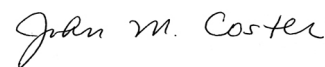
Sincerely,



Julie H. Khani  
Vice President  
Public Policy  
NACDS



Rebecca P. Snead  
Executive Vice President & CEO  
NASPA



John M. Coster, Ph.D., R.Ph.  
Senior Vice President  
Government Affairs  
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cc: Cynthia Moreno