



OFFICE OF INSPECTOR GENERAL

SPECIAL FRAUD ALERT

PHYSICIAN LIABILITY FOR CERTIFICATIONS IN THE PROVISION OF MEDICAL EQUIPMENT AND SUPPLIES AND HOME HEALTH SERVICES

January 1999

The Office of Inspector General (OIG) was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, waste, and abuse in the Department's programs and to promote efficiency and economy in departmental operations. The OIG carries out this mission through a nationwide program of audits, inspections, and investigations.

To reduce fraud and abuse in the Federal health care programs, including Medicare and Medicaid, the OIG actively investigates fraudulent schemes that obtain money from these programs and, when appropriate, issues Special Fraud Alerts that identify segments of the health care industry that are particularly vulnerable to abuse. Copies of all OIG Special Fraud Alerts are available on the internet at:

<https://www.hhs.gov/progorg/oig/frdalrt/index.htm>

We are issuing this Fraud Alert because physicians may not appreciate the legal and programmatic significance of certifications they make in connection with the ordering of certain items and services for their Medicare patients. While the OIG believes that the actual incidence of physicians' intentionally submitting false or misleading certifications of medical necessity for durable medical equipment or home health care is relatively infrequent, physician laxity in reviewing and completing these certifications contributes to fraudulent and abusive practices by unscrupulous suppliers and home health providers. We urge physicians and their staff to report any suspicious activity in connection with the solicitation or completion of certifications to the OIG.

Physicians should also be aware that they are subject to substantial criminal, civil, and administrative penalties if they sign a certification knowing that the information relating to medical necessity is false, or with reckless disregard as to the truth of the information being submitted. While a physician's signature on a false or misleading certification made through mistake, simple negligence, or inadvertence will not result in personal liability, the physician may unwittingly be facilitating the perpetration of fraud on Medicare by suppliers or providers. Accordingly, we urge all physicians to review and familiarize themselves with the information in this Fraud Alert. **If a physician has any questions as to the application of these requirements to specific facts, the physician should contact the appropriate Medicare Fiscal Intermediary or Carrier.**

THE IMPORTANCE OF PHYSICIAN CERTIFICATION FOR MEDICARE

The Medicare program only pays for health care services that are medically necessary. In determining what services are medically necessary, Medicare primarily relies on the professional judgment of the beneficiary's treating physician, since he or she knows the patient's history and makes critical decisions, such as admitting the patient to the hospital; ordering tests, drugs, and treatments; and determining the length of treatment. In other words, the physician has a key role in determining both the medical need for, and utilization of, many health care services, including those furnished and billed by other providers and suppliers.

Congress has conditioned payment for many Medicare items and services on a certification signed by a physician attesting that the item or service is medically necessary. For example, physicians are routinely required to certify to the

medical necessity for any service for which they submit bills to the Medicare program.

Physicians also are involved in attesting to medical necessity when ordering services or supplies that must be billed and provided by an independent supplier or provider. Medicare requires physicians to certify to the medical necessity for many of these items and services through prescriptions, orders, or, in certain specific circumstances, Certificates of Medical Necessity (CMNs). These documentation requirements substantiate that the physician has reviewed the patient's condition and has determined that services or supplies are medically necessary.

Two areas where the documentation of medical necessity by physician certification plays a key role are (i) home health services and (ii) durable medical equipment (DME). Through various OIG audits, we have discovered that physicians sometimes fail to discharge their responsibility to assess their patients' conditions and need for home health care. Similarly, the OIG has found numerous examples of physicians who have ordered DME or signed CMNs for DME without reviewing the medical necessity for the item or even knowing the patient.

PHYSICIAN CERTIFICATION FOR HOME HEALTH SERVICES

Medicare will pay a Medicare-certified home health agency for home health care provided under a physician's plan of care to a patient confined to the home. Covered services may include skilled nursing services, home health aide services, physical and occupational therapy and speech language pathology, medical social services, medical supplies (other than drugs and biologicals), and DME.

As a condition for payment, Medicare requires a patient's treating physician to certify initially and recertify at least every 62 days (2 months) that:

- the patient is confined to the home;
- the individual needs or needed (i) intermittent skilled nursing care; (ii) speech or physical therapy or speech-language pathology services; or (iii) occupational therapy or a continued need for occupational therapy (payment for occupational therapy will be made only upon an initial certification that includes care under (i) or (ii) or a recertification where the initial certification included care under (i) or (ii));
- a plan of care has been established and periodically reviewed by the physician; and
- the services are (were) furnished while the patient is (was) under the care of a physician.

The physician must order the home health services, either orally or in writing, prior to the services being furnished. The physician certification must be obtained at the time the plan of treatment is established or as soon thereafter as possible. The physician certification must be signed and dated prior to the submission of the claim to Medicare. If a physician has any questions as to the application of these requirements to specific facts, the physician should contact the appropriate Medicare Fiscal Intermediary or Carrier.

PHYSICIAN ORDERS AND CERTIFICATES OF MEDICAL NECESSITY FOR DURABLE MEDICAL EQUIPMENT, PROSTHETICS, ORTHOTICS, AND SUPPLIES FOR HOME USE

DME is equipment that can withstand repeated use, is primarily used for a medical purpose, and is not generally used in the absence of illness or injury. Examples include hospital beds, wheelchairs, and oxygen delivery systems. Medicare will cover medical supplies that are necessary for the effective use of DME, as well as surgical dressings, catheters, and ostomy bags. However, Medicare will only cover DME and supplies that have been ordered or prescribed by a physician. The order or prescription must be personally signed and dated by the patient's treating physician.

DME suppliers that submit bills to Medicare are required to maintain the physician's original written order or prescription in their files. The order or prescription must include:

- o the beneficiary's name and full address;
- o the physician's signature;

- o the date the physician signed the prescription or order;
- o a description of the items needed;
- o the start date of the order (if appropriate); and
- o the diagnosis (if required by Medicare program policies) and a realistic estimate of the total length of time the equipment will be needed (in months or years).

For certain items or supplies, including supplies provided on a periodic basis and drugs, additional information may be required. For supplies provided on a periodic basis, appropriate information on the quantity used, the frequency of change, and the duration of need should be included. If drugs are included in the order, the dosage, frequency of administration, and, if applicable, the duration of infusion and concentration should be included.

Medicare further requires claims for payment for certain kinds of DME to be accompanied by a CMN signed by a treating physician (unless the DME is prescribed as part of a plan of care for home health services). When a CMN is required, the provider or supplier must keep the CMN containing the treating physician's original signature and date on file.

Generally, a CMN has four sections:

- Section A contains general information on the patient, supplier, and physician. **Section A may be completed by the supplier.**
- Section B contains the medical necessity justification for DME. This cannot be filled out by the supplier. **Section B must be completed by the physician, a non-physician clinician involved in the care of the patient, or a physician employee.** If the physician did not personally complete section B, the name of the person who did complete section B and his or her title and employer must be specified.
- Section C contains a description of the equipment and its cost. **Section C is completed by the supplier.**
- Section D is the treating physician's attestation and signature, which certifies that the physician has reviewed sections A, B, and C of the CMN and that the information in section B is true, accurate, and complete. **Section D must be signed by the treating physician.** Signature stamps and date stamps are not acceptable.

By signing the CMN, the physician represents that:

- o he or she is the patient's treating physician and the information regarding the physician's address and unique physician identification number (UPIN) is correct;
- o the entire CMN, including the sections filled out by the supplier, was completed **prior** to the physician's signature; and
- o the information in section B relating to medical necessity is true, accurate, and complete to the best of the physician's knowledge.

IMPROPER PHYSICIAN CERTIFICATIONS FOSTER FRAUD

Unscrupulous suppliers and providers may steer physicians into signing or authorizing improper certifications of medical necessity. In some instances, the certification forms or statements are completed by DME suppliers or home health agencies and presented to the physician, who then signs the forms without verifying the actual need for the items or services. In many cases, the physician may obtain no personal benefit when signing these unverified orders and is only accommodating the supplier or provider. While a physician's signature on a false or misleading certification made through mistake, simple negligence, or inadvertence will not result in personal liability, the physician may unwittingly be facilitating the perpetration of fraud on Medicare by suppliers or providers. When the physician knows the information is false or acts with reckless disregard as to the truth of the statement, such physician risks criminal, civil,

and administrative penalties.

Sometimes, a physician may receive compensation in exchange for his or her signature. Compensation can take the form of cash payments, free goods, or any other thing of value. Such cases may trigger additional criminal and civil penalties under the anti-kickback statute.

The following are examples of inappropriate certifications uncovered by the OIG in the course of its investigations of fraud in the provision of home health services and medical equipment and supplies:

- A physician knowingly signs a number of forms provided by a home health agency that falsely represent that skilled nursing services are medically necessary in order to qualify the patient for home health services.
- A physician certifies that a patient is confined to the home and qualifies for home health services, even though the patient tells the physician that her only restrictions are due to arthritis in her hands, and she has no restrictions on her routine activities, such as grocery shopping.
- At the prompting of a DME supplier, a physician signs a stack of blank CMNs for transcutaneous electrical nerve stimulators (TENS) units. The CMNs are later completed with false information in support of fraudulent claims for the equipment. The false information purports to show that the physician ordered and certified to the medical necessity for the TENS units for which the supplier has submitted claims.
- A physician signs CMNs for respiratory medical equipment falsely representing that the equipment was medically necessary.
- A physician signs CMNs for wheelchairs and hospital beds without seeing the patients, then falsifies his medical charts to indicate that he treated them.
- A physician accepts anywhere from \$50 to \$400 from a DME supplier for each prescription he signs for oxygen concentrators and nebulizers.

POTENTIAL CONSEQUENCES FOR UNLAWFUL ACTS

A physician is not personally liable for erroneous claims due to mistakes, inadvertence, or simple negligence. However, knowingly signing a false or misleading certification or signing with reckless disregard for the truth can lead to serious criminal, civil, and administrative penalties including:

- criminal prosecution;
- fines as high as \$10,000 per false claim plus treble damages; or
- administrative sanctions including: exclusion from participation in Federal health care programs, withholding or recovery of payments, and loss of license or disciplinary actions by state regulatory agencies.

Physicians may violate these laws when, for example:

- they sign a certification as a "courtesy" to a patient, service provider, or DME supplier when they have not first made a determination of medical necessity;
- they knowingly or recklessly sign a false or misleading certification that causes a false claim to be submitted to a Federal health care program; or
- they receive any financial benefit for signing the certification (including free or reduced rent, patient referrals, supplies, equipment, or free labor).

Even if they do not receive any financial or other benefit from providers or suppliers, physicians may be liable for making false or misleading certifications.

WHAT TO DO IF YOU HAVE INFORMATION ABOUT FRAUD AND ABUSE AGAINST MEDICARE OR MEDICAID PROGRAMS

If you have information about physicians, home health agencies, or medical equipment and supply companies engaging in any of the activities described above, contact any of the regional offices of the Office of Investigations of the Office of Inspector General, U.S. Department of Health and Human Services, at the following locations:

Field Offices	States Served	Telephone
Boston	MA, VT ,NH, ME, RI, CT	617-565-2664
New York	NY, NJ, PR, VI	212-264-1691
Philadelphia	PA, MD, DE, WV, VA, DC	215-861-4586
Atlanta	GA, KY, NC, SC, FL, TN, AL, MS	404-562-7603
Chicago	IL, MN, WI, MI, IN, OH, IA, MO	312-353-2740
Dallas	TX, NM, OK, AR, LA, CO, UT, WY, MT, ND, SD, NE, KS	214-767-8406
Los Angeles	AZ, NV, So. CA	714-246-8302
San Francisco	No. CA, AK, HI, OR, ID, WA	415-437-7961