**DEPARTMENT OF HEALTH & HUMAN SERVICES** **Office of Inspector General**

**Washington, D.C. 20201**

September 9, 2010

**TO:** Donald M. Berwick, M.D.
Administrator
Centers for Medicare & Medicaid Services

/Joe J. Green/ for
**FROM:** George M. Reeb
Acting Deputy Inspector General for Audit Services

**SUBJECT:** Review of Jurisdiction D Medicare Payments for Selected Durable Medical Equipment Claims With the KX Modifier for Calendar Year 2007 (A-09-09-00111)

Attached, for your information, is an advance copy of our final report on Jurisdiction D Medicare payments for selected durable medical equipment claims with the KX modifier for calendar year 2007. We will issue this report to Noridian Administrative Services, LLC, the durable medical equipment Medicare administrative contractor for Jurisdiction D, within 5 business days.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact Robert A. Vito, Acting Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or through email at Robert.Vito@oig.hhs.gov or Lori A. Ahlstrand, Regional Inspector General for Audit Services, Region IX, at (415) 437-8360 or through email at Lori.Ahlstrand@oig.hhs.gov. Please refer to report number A-09-09-00111.

Attachment

**DEPARTMENT OF HEALTH & HUMAN SERVICES** **Office of Inspector General**

**Office of Audit Services, Region IX**
**90 – 7th Street, Suite 3-650**
**San Francisco, CA 94103**

September 16, 2010

Report Number: A-09-09-00111

Ms. Emy Stenerson
Vice President of DME Operations
Noridian Administrative Services, LLC
900 42nd Street South
Fargo, ND 58103-2146

Dear Ms. Stenerson:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG), final report entitled *Review of Jurisdiction D Medicare Payments for Selected Durable Medical Equipment Claims With the KX Modifier for Calendar Year 2007*. We will forward a copy of this report to the HHS action official noted on the following page for review and any action deemed necessary.

The HHS action official will make final determination as to actions taken on all matters reported. We request that you respond to this official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at http://oig.hhs.gov.

If you have any questions or comments about this report, please do not hesitate to call me at (415) 437-8360, or contact James Kenny, Audit Manager, at (415) 437-8370, or through email at James.Kenny@oig.hhs.gov. Please refer to report number A-09-09-00111 in all correspondence.

Sincerely,

/Lori A. Ahlstrand/
Regional Inspector General
for Audit Services

Enclosure

**Direct Reply to HHS Action Official:**

Ms. Nanette Foster Reilly
Consortium Administrator
Consortium for Financial Management & Fee for Service Operations
Centers for Medicare & Medicaid Services
601 East 12th Street, Room 235
Kansas City, MO 64106

Department of Health & Human Services

**OFFICE OF INSPECTOR GENERAL**

# REVIEW OF JURISDICTION D MEDICARE PAYMENTS FOR SELECTED DURABLE MEDICAL EQUIPMENT CLAIMS WITH THE KX MODIFIER FOR CALENDAR YEAR 2007

Daniel R. Levinson
Inspector General

September 2010
A-09-09-00111

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http://oig.hhs.gov

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## OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

# EXECUTIVE SUMMARY

## BACKGROUND

Pursuant to sections 1832(a)(1) and 1861(n) of the Social Security Act (the Act), Medicare Part B provides for the coverage of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). As a result of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the Centers for Medicare & Medicaid Services (CMS) contracted with four durable medical equipment Medicare administrative contractors (DME MAC) to process and pay Medicare Part B claims for DMEPOS. These DME MACs replaced the Durable Medical Equipment Regional Carriers. Also, CMS contracts with Palmetto Government Benefits Administrators, LLC, to serve as the National Supplier Clearinghouse. The National Supplier Clearinghouse is responsible for enrolling and reenrolling DMEPOS suppliers.

Under the statutory and policy framework of the Act, the *Medicare National Coverage Determinations Manual* defines DME as equipment that can withstand repeated use, serves a medical purpose, is generally not useful to a person in the absence of illness or injury, and is appropriate for use in a patient's home. For certain DMEPOS, suppliers must use the KX modifier on filed claims. The KX modifier indicates that the claim meets the Medicare coverage criteria and the supplier has the required documentation on file. While suppliers must have a written physician's order and proof of delivery for all DMEPOS, suppliers must have additional documentation on file for items requiring the KX modifier. For example, respiratory assist devices also require documentation that a sleep study was performed before the date on the physician's order.

On January 6, 2006, CMS awarded the DME MAC contract for Jurisdiction D to Noridian Administrative Services, LLC (Noridian). Noridian assumed full responsibility for administering the DME MAC work and began processing DMEPOS claims for Jurisdiction D as of September 30, 2006.

Noridian processed approximately $2 billion in Medicare DMEPOS claims with calendar year 2007 dates of service. This audit focused on $99,661,670 of Medicare paid claims processed by Noridian for therapeutic shoes for diabetics, continuous positive airway pressure systems, respiratory assist devices, and pressure reducing support surfaces (groups 1 and 2) that included the KX modifier.

## OBJECTIVE

Our objective was to determine whether the KX modifier was effective in ensuring that suppliers of DMEPOS who submitted claims to Noridian had the required supporting documentation on file.

## SUMMARY OF FINDINGS

The KX modifier was not effective in ensuring that suppliers of DMEPOS who submitted claims to Noridian had the required supporting documentation on file. Of the 100 sampled items, suppliers had the required documentation on file for 33 items. Suppliers did not have the required documentation on file for the remaining 67 items. As a result, Noridian made unallowable payments totaling $5,941 for 67 of the 100 sampled items. Based on our sample, we estimated that Noridian paid approximately $70 million to suppliers who did not have the required documentation on file to support the DMEPOS items with dates of service in 2007.

The types of missing documentation included:

- physician's order (40 of 100 items),
- use or compliant use followup documentation (28 of 86 applicable items),
- proof of delivery (18 of 100 items), and
- physician's statement (4 of 14 applicable items).

For 18 of the 67 items, suppliers were missing multiple required documents.

Noridian did not detect these errors because Noridian's electronic edits were not effective for determining whether suppliers had the required documentation on file when they used the KX modifier on claims. The edits could only determine whether the required KX modifier was on the claim.

## RECOMMENDATIONS

We recommend that Noridian:

- recover the $5,941 in payments for specific DMEPOS items claimed for which the suppliers did not have the required documentation,
- review other payments for DMEPOS related to our unallowable sample items and recover any additional unallowable payments,
- notify CMS of the suppliers who did not meet the supplier standard for maintaining proof of delivery so that CMS can take appropriate action, and
- develop a corrective action plan to improve the effectiveness of the KX modifier and potentially save an estimated $70 million.

## AUDITEE COMMENTS

In its comments on our draft report, Noridian concurred with our recommendations and acknowledged that the KX modifier is used inappropriately by suppliers. However, Noridian stated that the KX modifier does not indicate that documentation is necessarily located in a supplier's files but only that the supplier can provide the documentation when requested.

Regarding the first, second, and fourth recommendations, Noridian described the actions it intends to take in response to these recommendations. Regarding the third recommendation, Noridian recommended that the Office of Inspector General (OIG) share with CMS information on suppliers who did not meet the supplier standard for maintaining proof of delivery because OIG reviewed the claims and has specific information on the suppliers.

Noridian's comments are included in their entirety as Appendix D.

## OFFICE OF INSPECTOR GENERAL RESPONSE

The Local Coverage Determinations' definition of the KX modifier is: "Specific Required Documentation on File." Adding the KX modifier to the claim indicates that the claim meets Medicare coverage criteria and the supplier has the required documentation in its files. The only documentation we requested when we visited suppliers was documentation required to be in the suppliers' files before they billed Medicare.

We provided Noridian with all the suppliers' documentation for the sampled items, including a reconciliation spreadsheet that summarized the errors. We continue to recommend that Noridian notify CMS of the suppliers who did not meet the supplier standard for maintaining proof of delivery.

## TABLE OF CONTENTS

# INTRODUCTION

## BACKGROUND

The Medicare program, established by Title XVIII of the Social Security Act (the Act) in 1965 provides health insurance coverage to people aged 65 and over, people with disabilities, and people with end-stage renal disease. The Centers for Medicare & Medicaid Services (CMS) administers the Medicare program. Pursuant to sections 1832(a)(1) and 1861(n) of the Act, Medicare Part B provides for the coverage of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS).

As a result of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, CMS contracted with four durable medical equipment Medicare administrative contractors (DME MAC) to process and pay Medicare Part B claims for DMEPOS. These DME MACs replaced the Durable Medical Equipment Regional Carriers. Also, CMS contracts with Palmetto Government Benefits Administrators, LLC, to serve as the National Supplier Clearinghouse. The National Supplier Clearinghouse is responsible for enrolling and reenrolling DMEPOS suppliers. CMS will revoke a supplier's billing privileges if it finds that the supplier does not meet the supplier standards (42 CFR § 424.57(c) and (d)).[1]

### Contracts for Processing Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Claims

On January 6, 2006, CMS awarded the DME MAC contract for Jurisdiction D to Noridian Administrative Services, LLC (Noridian). Noridian assumed full responsibility for administering the DME MAC work and began processing DMEPOS claims for Jurisdiction D as of September 30, 2006. Noridian processes DMEPOS claims for Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Iowa, Kansas, Missouri, Montana, Nebraska, Nevada, North Dakota, Northern Mariana Islands, Oregon, South Dakota, Utah, Washington, and Wyoming.

### KX Modifier Used for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Claims Processing

National Coverage Determinations (NCD) describe the circumstances for Medicare coverage nationwide for specific medical service procedures or devices, including DMEPOS, and generally outline the conditions under which a service or device is considered covered. The *Medicare National Coverage Determinations Manual* (Pub. No. 100-03, chapter 1, section 280.1) defines DMEPOS as equipment that can withstand repeated use, serves a medical purpose, is generally not useful to a person in the absence of illness or injury, and is appropriate for use in a patient's home.

Contractors develop supplier manuals, Local Coverage Determinations (LCD), and Policy Articles for covered DMEPOS items. These materials specify under what clinical circumstances

[1] Federal requirements referenced in this document are the ones that were in effect during our audit period.

the DMEPOS item is considered to be reasonable and necessary. For covered DMEPOS items (including therapeutic shoes for diabetics (therapeutic shoes), continuous positive airway pressure systems (CPAP), respiratory assist devices (RAD), and pressure reducing support surfaces (groups 1 and 2) (PRSS)),[2] the LCDs require that a KX modifier be added to the claims before they can be paid. By adding the KX modifier, the supplier attests that the claim meets the Medicare coverage criteria and that the specific required documentation, which varies based on the DMEPOS item, is on file at the supplier before submitting the claim to the DME MAC. This documentation requirement includes the written physician's order and proof of delivery that are required for all DMEPOS, as well as additional documentation such as a sleep study for a RAD claim.

Through supplier manuals, LCDs, and Internet postings, the contractors instructed the suppliers to use the KX modifier only if the suppliers have the required documentation on file. However, if the KX modifier is not used with claims for DMEPOS that require it, the claims will be denied.

This audit focused on claims paid by Noridian for therapeutic shoes, CPAPs, RADs, and PRSS.

**Documentation Requirements for Selected Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Requiring the KX Modifier**

| Documentation Required To Be on File at Supplier | Required by | Therapeutic Shoes | CPAP | RAD | PRSS |
|---|---|---|---|---|---|
| Physician's Order (written, signed, and dated) | -*Program Integrity Manual* (PIM), Pub. No. 100-08, chapter 5<br>-LCDs | X | X | X | X |
| Proof of Delivery | -42 CFR § 424.57(c)(12)<br>-PIM, chapter 4 | X | X | X | X |
| Statement of Treating/Certifying Physician Before Billing | -The Act, § 1861(s)(12)(A–C)<br>-LCDs and Policy Articles | X | | | X |
| Polysomnography (sleep study) Before Physician's Order | -NCD<br>-LCDs | | X | X | |
| Use or Compliant Use Followup Statement of Physician and/or Beneficiary | -LCDs | | X | X | |

[2] These DMEPOS are included in the Level II Healthcare Common Procedure Coding System, which is a comprehensive, standardized system that classifies similar medical products into categories for efficient claims processing. It is the standardized coding system used for describing, identifying, and preparing claims for DMEPOS.

## OBJECTIVE, SCOPE, AND METHODOLOGY

### Objective

Our objective was to determine whether the KX modifier was effective in ensuring that suppliers of DMEPOS who submitted claims to Noridian had the required supporting documentation on file.

### Scope

Noridian processed approximately $2 billion in Medicare DMEPOS claims in Jurisdiction D with calendar year 2007 dates of service. This audit focused on $99,661,670 of these Medicare paid claims for therapeutic shoes, CPAPs, RADs, and PRSS that included the KX modifier.

We limited our review of internal controls to gaining an understanding of the contractors' processing of selected DMEPOS claims that were submitted with the KX modifier. We did not determine whether the sample items met other Medicare coverage criteria, such as medical necessity.

We performed our audit from August 2009 through April 2010 and conducted fieldwork at suppliers' offices in 11 States.

### Methodology

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;
- interviewed Noridian officials concerning the manual and electronic claims processing procedures for claims for therapeutic shoes, CPAPs, RADs, and PRSS with the KX modifier and edits in the claims processing system to ensure that claims were adjudicated;
- interviewed Noridian officials concerning the education and training specific to the KX modifier that Noridian provided to the suppliers of therapeutic shoes, CPAPs, RADs, and PRSS;
- selected a simple random sample of 100 items from four categories of DMEPOS (Appendix A);
- made unannounced visits to 83 suppliers[3] to obtain their documentation supporting the use of the KX modifier;

[3] Thirteen of the eighty-three suppliers had two items in the sample, and one supplier had three items in the sample. One supplier we visited and two suppliers we did not visit were under investigation, and the items from these suppliers were not considered errors.

- reviewed the suppliers' documentation for the sample items to determine whether it met the documentation requirements for using the KX modifier; and

- requested that Noridian's medical review staff review the documentation provided by the suppliers for the sampled items.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

## FINDINGS AND RECOMMENDATIONS

The KX modifier was not effective in ensuring that suppliers of DMEPOS who submitted claims to Noridian had the required supporting documentation on file. Of the 100 sampled items, suppliers had the required documentation on file for 33 items. Suppliers did not have the required documentation on file for the remaining 67 items. As a result, Noridian made unallowable payments totaling $5,941 for 67 of the 100 sampled items. Based on our sample, we estimated that Noridian paid approximately $70 million to suppliers who did not have the required documentation on file to support the DMEPOS items with dates of service in 2007.

The types of missing documentation included:

- physician's order (40 of 100 items),

- use or compliant use followup documentation (28 of 86 applicable items),

- proof of delivery (18 of 100 items), and

- physician's statement (4 of 14 applicable items).[4]

Additional details on the results of the sampled items are provided in Appendixes B and C.

Noridian did not detect these errors because Noridian's electronic edits were not effective for determining whether suppliers had the required documentation on file when they used the KX modifier on claims. The edits could only determine whether the required KX modifier was on the claim.

[4] For 18 of the 67 sampled items, suppliers were missing multiple required documents.

## MISSING REQUIRED DOCUMENTATION

### Physician's Order

The PIM, chapter 5, sections 5.2.1 and 5.2.2, state that all DMEPOS suppliers are required to keep on file a physician's order. The treating physician must sign and date the order. In addition, section 5.2.3 states that if the supplier does not have a written order signed and dated by the treating physician before billing Medicare, the item will be denied.

For 40 of the 100 items, suppliers did not have a physician's order on file to support billing for the DMEPOS. In all 40 instances, at least one of the following deficiencies occurred: the order was missing, the order was not signed and dated by the physician, or the DMEPOS item was not listed on the order.

### Use or Compliant Use Followup Documentation

The LCDs for the CPAP effective March 1, 2006, and July 1, 2007, and the LCDs for the RAD effective April 1, 2006, and July 1, 2007, state that, for an E0601 (CPAP) and an E0470 (RAD) to be covered beyond the first 3 months of therapy, the supplier must ascertain no sooner than the 61st day after initiating therapy that the CPAP is being used and that the RAD is being compliantly used. For the CPAP, either the beneficiary or the treating physician must confirm that the beneficiary is continuing to use the CPAP, and the supplier must maintain documentation that the requirement has been met. For the RAD, the supplier must obtain signed statements from both the treating physician and the beneficiary stating that the RAD is being compliantly used.[5] The LCDs state that continued coverage of the device will be denied if the requirements are not met.

For 28 of the 86 applicable items in our sample, suppliers did not have the use or compliant use followup documentation on file to support billing for the DMEPOS. In all 28 instances, at least 1 of the following deficiencies occurred: the use or compliant use followup documentation was missing, the use or compliant use followup was done within 60 days after initiating therapy, the statement(s) required to be completed by the treating physician and/or the beneficiary were missing for the RAD, or the item was billed after the first 3 months but before the supplier obtained use or compliant use followup documentation.

### Proof of Delivery

Pursuant to the supplier standard (42 CFR § 424.57(c)(12)), the supplier "[m]ust be responsible for the delivery of Medicare covered items to beneficiaries and maintain proof of delivery." Also, the PIM, chapter 4, section 4.26, requires suppliers to maintain proof of delivery documentation in their files for 7 years. Section 4.26.1 outlines proof of delivery requirements for different methods of delivery. Section 4.26 also states that, for "any services, which do not have proof of delivery from the supplier, such claimed items and services shall be denied and overpayments recovered."

[5] The LCD defines "compliantly used" for a RAD as an average usage of 4 hours out of 24 hours.

For 18 of the 100 items, suppliers did not have proof of delivery documentation on file to support billing for the DMEPOS. In all 18 instances, at least 1 of the following deficiencies occurred: the delivery documentation was missing, the delivery documentation was not signed and dated by the beneficiary or his or her designee, or the documentation for shipped items such as tracking numbers or the supplier's invoice was missing.

### Physician's Statement

Pursuant to the Act, § 1861(s)(12)(A), the physician must certify that the patient meets specific criteria for therapeutic shoes. The LCDs and Policy Articles for therapeutic shoes and PRSS, groups 1 and 2, state that DMEPOS items are covered if the supplier obtains a signed and dated statement from the certifying or treating physician[6] saying the patient meets specific criteria.[7] The physician's statement must be signed and dated some time during the year before the date of service for therapeutic shoes, and the Policy Articles state that the items will be denied if the requirements are not met.

For 4 of the 14 applicable items in our sample requiring a physician's statement, suppliers did not have the physicians' statements on file to support billing for the DMEPOS. In all four instances, the physician's statement of medical need was missing or was incomplete.

## KX MODIFIER SYSTEM EDITS

The LCDs require DMEPOS suppliers to include the KX modifier on claims submitted for therapeutic shoes, CPAPs, RADs, and PRSS when the "specific required documentation is on file." Use of the KX modifier constitutes a statement that the suppliers have the documentation on file that the policy requires for the particular item or service.

Noridian had electronic edits to evaluate the claims submitted by the DMEPOS suppliers. However, the edits were not effective for determining whether suppliers had the required documentation on file when they used the KX modifier on claims. The edits could only determine whether the required KX modifier was on the claim.

## EFFECT OF UNALLOWABLE PAYMENTS

For 67 of the 100 items in our sample, suppliers who did not have the required documentation on file to support their use of the KX modifier received $5,941 in payments. Based on our sample, we estimated that Noridian made approximately $70 million in unallowable Medicare payments to DMEPOS suppliers with dates of service in 2007.

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[6] The certifying or treating physician is the physician who treats the underlying condition that requires the use of the DMEPOS.

[7] For therapeutic shoes, LCDs and Policy Articles were effective March 1, 2006, and July 1, 2007. For PRSS (group 1 only), an LCD and a Policy Article were effective January 1, 2007. For PRSS (group 2 only), LCDs were effective March 1, 2006, and July 1, 2007, and a Policy Article was effective March 1, 2006.

## RECOMMENDATIONS

We recommend that Noridian:

- recover the $5,941 in payments for specific DMEPOS items claimed for which the suppliers did not have the required documentation,

- review other payments for DMEPOS related to our unallowable sample items and recover any additional unallowable payments,

- notify CMS of the suppliers who did not meet the supplier standard for maintaining proof of delivery so that CMS can take appropriate action, and

- develop a corrective action plan to improve the effectiveness of the KX modifier and potentially save an estimated $70 million.

## AUDITEE COMMENTS

In its comments on our draft report, Noridian concurred with our recommendations and acknowledged that the KX modifier is used inappropriately by suppliers. However, Noridian stated that the KX modifier does not indicate that documentation is necessarily located in a supplier's files but only that the supplier can provide the documentation when requested.

Regarding the first, second, and fourth recommendations, Noridian described the actions it intends to take in response to these recommendations. Regarding the third recommendation, Noridian recommended that the Office of Inspector General (OIG) share with CMS information on suppliers who did not meet the supplier standard for maintaining proof of delivery because OIG reviewed the claims and has specific information on the suppliers.

Noridian's comments are included in their entirety as Appendix D.

## OFFICE OF INSPECTOR GENERAL RESPONSE

The LCDs' definition of the KX modifier is: "Specific Required Documentation on File." Adding the KX modifier to the claim indicates that the claim meets Medicare coverage criteria and the supplier has the required documentation in its files. The only documentation we requested when we visited suppliers was documentation required to be in the suppliers' files before they billed Medicare.

We provided Noridian with all the suppliers' documentation for the sampled items, including a reconciliation spreadsheet that summarized the errors. We continue to recommend that Noridian notify CMS of the suppliers who did not meet the supplier standard for maintaining proof of delivery.

# APPENDIXES

## APPENDIX A: SAMPLING METHODOLOGY

### POPULATION

The population consisted of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) items for the year ending December 31, 2007, that DMEPOS suppliers claimed for payment using the KX modifier under Medicare Part B.

### SAMPLING FRAME

The sampling frame consisted of 1,171,204 line items totaling $99,661,670 for the year ending December 31, 2007. These items were for specific categories of DMEPOS (therapeutic shoes for diabetics, continuous positive airway pressure (CPAP) systems, respiratory assist devices (RAD), and pressure reducing support surfaces (groups 1 and 2) (PRSS)) claimed for payment using the KX modifier under Medicare Part B.

### SAMPLE UNIT

The sample unit was a line item.

### SAMPLE DESIGN

We used a simple random sample.

### SAMPLE SIZE

We selected a sample of 100 line items.

### SOURCE OF RANDOM NUMBERS

We generated the random numbers with the OIG (Office of Inspector General), Office of Audit Services (OAS), statistical software.

### METHOD OF SELECTING SAMPLE ITEMS

We consecutively numbered the sample units in the frame. After generating 100 random numbers, we selected the corresponding frame items.

### ESTIMATION METHODOLOGY

We used OIG/OAS statistical software to estimate the amount of potentially unallowable payments.

## APPENDIX B: SAMPLE RESULTS AND ESTIMATES

### SAMPLE RESULTS

| Frame Size | Frame Value | Sample Size | Value of Sample | Number of Unallowable Payments | Value of Unallowable Payments |
|---|---|---|---|---|---|
| 1,171,204 | $99,661,670 | 100 | $9,303 | 67 | $5,941 |

### ESTIMATES OF UNALLOWABLE PAYMENTS
***(Limits Calculated for a 90-Percent Confidence Interval)***

| | |
|---|---|
| Point estimate | $69,577,013 |
| Lower limit | 52,575,987 |
| Upper limit | 86,578,040 |

# APPENDIX C: ERROR DETAILS

| TYPES OF MISSING DOCUMENTATION | DMEPOS Required for | Total in Sample | Total Number of Errors | CPAP Related Errors | TS* Related Errors | RAD Related Errors | PRSS Related Errors | Line Items With Only One Error |
|---|---|---|---|---|---|---|---|---|
| Physician's Prescription/Order | All | 100 | 40 | 27 | 5 | 7 | 1 | 24 |
| Proof of Delivery | All | 100 | 18 | 15 | 1 | 2 | 0 | 6 |
| Use or Compliant Use Followup Documentation | CPAP/RAD | 86 | 28 | 22 | 0 | 6 | 0 | 16 |
| Sleep Study | CPAP/RAD | 86 | 0 | 0 | 0 | 0 | 0 | 0 |
| Physician's Statement | TS, PRSS | 14 | 4 | 0 | 0 | 0 | 4 | 3 |
| | | | | | | | | |
| **Total Errors (Duplicated Count)** | | | **90** | **64** | **6** | **15** | **5** | **49** |

| CATEGORIES OF DURABLE MEDICAL EQUIPMENT | Dollars Tested | Items Tested | Items Allowed† | Items Errors | Dollars in Error | 1 Error | 2 Errors | 3 Errors | Multiple Errors ‡ |
|---|---|---|---|---|---|---|---|---|---|
| Continuous Positive Airway Pressure Systems | $4,617.54 | 70 | 22 | 48 | $3,015.75 | 36 | 8 | 4 | 12 |
| Pressure Reducing Support Surfaces (groups 1 and 2) | 1,918.79 | 5 | 1 | 4 | 1,662.90 | 3 | 1 | 0 | 1 |
| Respiratory Assist Devices | 1,882.28 | 16 | 6 | 10 | 843.57 | 6 | 3 | 1 | 4 |
| Therapeutic Shoes for Diabetics | 884.77 | 9 | 4 | 5 | 418.42 | 4 | 1 | 0 | 1 |
| | | | | | | | | | |
| **Totals** | **$9,303.38** | **100** | **33** | **67** | **$5,940.64** | **49** | **13** | **5** | **18** |

*Therapeutic shoes are a one-time purchase.
†Three of these thirty-three sample items were for suppliers who were under investigation and were not considered errors.
‡Eighteen of the sixty-seven unallowable sample items had multiple errors.

TS = therapeutic shoes for diabetics

# APPENDIX D: AUDITEE COMMENTS


Medicare

900 42nd Street South
Fargo, ND 58103

July 22, 2010

Lori A. Ahlstrand
Regional Inspector General for Audit Services
Office of Audit Services, Region IX
90- 7th Street Suite 3-650
San Francisco, CA 94103

Dear Ms. Ahlstrand,

NAS has reviewed the June 24, 2010 draft report A-09-09-00111 entitled *Review of Jurisdiction D Medicare Payments for Selected Durable Medical Equipment Claims With the KX Modifier for Calendar Year 2007*. We agree inappropriate usage of the KX modifier is a widespread problem among DME suppliers and other Part B suppliers.

We concur with the recommendations outlined in the report and that the KX modifier is used inappropriately by suppliers. For this reason, NAS has focused additional education efforts on the appropriate usage of the KX modifier throughout our current DME contract, which started on September 30, 2006. Since the time frame for which claims were reviewed for this audit (calendar year 2007), many positive steps have been taken to improve the appropriate use of the KX modifier. The four DME MACs jointly have revised 17 Local Coverage Determinations to require the KX modifier and to better define appropriate KX modifier usage; these revised policies took effect on December 1, 2009. Also NAS Provider Outreach and Education staff have also addressed this modifier at nearly every educational event. NAS has written numerous educational articles on this topic.

It is also important to note that suppliers were asked for the documentation when the OIG was physically at their location and may not have had all the documentation to support the usage of the KX modifier available at the time of the visit. When the DME MACs do claim review, we allow time for the supplier to obtain the required medical documentation. The KX modifier does not mean that the documentation is necessarily located in the supplier's files, but that they can provide this when requested. This may involve obtaining copies of the physician's documentation.

OIG Recommendations and NAS' Responses

- Recover the $5,941 in payments for specific DMEPOS items claimed for which the suppliers did not have the required documentation.
    - NAS will recover the unallowable $5,941 in payments for the claims reviewed which were found to not have the required documentation. NAS will contact the OIG for the listing of these claims.

- Review other payments for DMEPOS related to our unallowable sample items and recover any additional unallowable payments.
    - NAS will review related DMEPOS items billed for the unallowable claims and will recover any additional payments found to be unallowable
- Notify CMS of the suppliers who did not meet the supplier standard for maintaining proof of delivery so that CMS can take appropriate action.
    - For those suppliers who were found to not have proof of delivery for the reviewed claims, NAS recommends that this information be shared with CMS by the OIG; CMS can then relay the concern to the National Supplier Clearinghouse (NSC) Supplier Audit and Compliance Unit for review of the supplier standard proof of delivery violations. NAS believes that this should be coordinated by the OIG as they have reviewed the claims and have the specific information on the suppliers involved. It would be necessary for the OIG to share more details with NAS for us to be able to notify CMS of the specific suppliers with proof of delivery concerns. A direct exchange of information between the OIG and CMS may be more effective and result in a timelier referral to the NSC.
- Develop a corrective action plan to improve the effectiveness of the KX modifier and potentially save an estimated $70 million.
    - NAS' will develop a proposal with our recommendations on how to address this problem. Recommendations may include additional pre-pay review of claims with the KX modifier as outlined in our current 2010 Medical Review Strategy, additional education to suppliers on this topic and other ideas of how to address this program wide Medicare concern. This proposal will be shared with our Contractor's Technical Representative, Edward Lain, by September 15, 2010. We will also recap what efforts have been taken to address KX modifier usage throughout calendar year 2007 and ongoing to demonstrate NAS' focus on addressing this concern.

Before each activity is started by NAS, we will inform our COTR to ensure that CMS agrees that NAS can proceed with the recommended actions and that funding allows for the activity.

Please contact me by phone at 701-282-1356 or by email at emy.stenerson@noridian.com with any questions regarding NAS' response.

Sincerely,

/Emy Stenerson/
NAS Vice President
Jurisdiction D Project Manager