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 15, 2010

Report Number: A-09-10-02005

Mr. Dennison K.S. Lau
Director
D and M Sales, LLC
3322 Campbell Avenue
Honolulu, HI 96815

Dear Mr. Lau:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG), final report entitled *Review of Medicare Payments to D and M Sales, LLC, for Power Mobility Devices for Calendar Years 2006–2008*. 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 Doug Preussler, Audit Manager, at (415) 437-8360 or through email at Doug.Preussler@oig.hhs.gov. Please refer to report number A-09-10-02005 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 MEDICARE PAYMENTS TO D AND M SALES, LLC, FOR POWER MOBILITY DEVICES FOR CALENDAR YEARS 2006–2008

Daniel R. Levinson
Inspector General

September 2010
A-09-10-02005

Office of Inspector General

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 Act, Medicare Part B provides for the coverage of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). The Centers for Medicare & Medicaid Services contracts with four durable medical equipment Medicare administrative contractors (DME MAC) to process and pay Part B claims for DMEPOS. Pursuant to section 1862(a)(1)(A) of the Social Security Act (the Act), no payment may be made under Part B for any expenses incurred for items that are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

Medicare Part B provides for the coverage of power mobility devices (PMD), such as power wheelchairs and power-operated vehicles. Pursuant to 42 CFR § 410.38(c)(2), the physician or treating practitioner must (1) conduct a face-to-face examination of the beneficiary, (2) write a prescription that is provided to the beneficiary or the supplier and is received by the supplier within 45 days after the face-to-face examination, and (3) provide supporting documentation that is received by the supplier within 45 days of the face-to-face examination.

Pursuant to 42 CFR § 410.38(c)(1), which refers to section 1861(r)(1) of the Act, a physician is a doctor of medicine who is legally authorized to practice medicine and surgery by the State in which he performs such function or action. Section 410.38(c)(2)(iii) states that supporting documentation for a PMD includes pertinent parts of the beneficiary's medical record (for example, history, physical examination, diagnostic tests, summary of findings, diagnoses, treatment plans, and/or other information as may be appropriate) that supports the medical necessity of the PMD. The *Medicare Program Integrity Manual* states that the supplier should obtain as much documentation from the patient's medical record as the supplier determines is needed to ensure that the coverage criterion for an item has been met.

D and M Sales, LLC (D and M Sales), is a durable medical equipment supplier in Honolulu, Hawaii. During calendar years (CY) 2006 through 2008, Medicare paid D and M Sales $968,880 for 246 PMDs and associated accessories.

We reviewed a judgmental sample of 30 claims totaling $117,765, which consisted of $99,945 for PMDs and $17,820 for associated accessories. We contacted Noridian Administrative Services (Noridian), the DME MAC that processed and paid D and M Sales' Medicare claims, to evaluate 27 of the 30 claims for compliance with documentation requirements for medical necessity.

OBJECTIVE

Our objective was to determine whether D and M Sales claimed Federal reimbursement for PMDs and associated accessories in accordance with Medicare requirements.

SUMMARY OF FINDINGS

During CYs 2006 through 2008, D and M Sales did not always claim Federal reimbursement for PMDs and associated accessories in accordance with Medicare requirements. Of the 30 judgmentally sampled claims, 1 claim met Medicare requirements but 29 claims did not.

- For 26 claims, Noridian determined that there was inadequate documentation to support the medical necessity of the PMDs.

- For two claims, the written prescriptions for PMDs were not valid because they were not provided by physicians or treating practitioners legally authorized to prescribe PMDs in accordance with Federal regulations.

- For one claim, D and M Sales did not receive the written prescription and the beneficiary's medical record within the required 45 days.

D and M Sales did not have adequate controls to ensure that it claimed Federal reimbursement for PMDs in accordance with Medicare requirements. As a result, for 29 of the 30 sampled claims, D and M Sales received $113,941 in unallowable Medicare payments, consisting of $96,726 for PMDs and $17,215 for associated accessories.

RECOMMENDATIONS

We recommend that D and M Sales:

- refund to the Federal Government $113,941 in unallowable payments for PMDs and associated accessories and

- strengthen controls to ensure that claims for PMDs comply with Medicare requirements.

D AND M SALES COMMENTS

In written comments on our draft report, D and M Sales stated that "we absolutely concur with [the] … report." However, D and M Sales did not address our recommended refund. D and M Sales provided information on actions taken to strengthen controls to ensure that claims for PMDs comply with Medicare requirements. D and M Sales' comments are included in their entirety as the Appendix.

TABLE OF CONTENTS

INTRODUCTION

BACKGROUND

Medicare Program

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). CMS contracts with four durable medical equipment Medicare administrative contractors (DME MAC) to process and pay Medicare Part B claims for DMEPOS. Pursuant to section 1862(a)(1)(A) of the Act, no payment may be made under Medicare Part B for any expenses incurred for items that are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

Power Mobility Devices

Medicare Part B provides for the coverage of power mobility devices (PMD), such as power wheelchairs and power-operated vehicles (which are commonly referred to as scooters). Pursuant to 42 CFR § 410.38(c)(2), the physician or treating practitioner must (1) conduct a face-to-face examination of the beneficiary, (2) write a prescription that is provided to the beneficiary or the supplier and is received by the supplier within 45 days after the face-to-face examination, and (3) provide supporting documentation (including pertinent parts of the beneficiary's medical record that supports the medical necessity of the PMD) that is received by the supplier within 45 days of the face-to-face examination.

Contractors develop Local Coverage Determinations (LCD) for some covered DMEPOS, including PMDs. LCDs specify under what clinical circumstances the DMEPOS item is considered to be reasonable and necessary. For a PMD to be covered, LCD L23598 states that the basic coverage criteria (A to C) must be met. The documentation must demonstrate that the patient has (A) a mobility limitation that significantly impairs the ability to participate in one or more mobility-related activities of daily living (MRADL), (B) a mobility limitation that cannot be sufficiently and safely resolved by the use of an appropriately fitted cane or walker, and (C) insufficient upper extremity function to self-propel an optimally configured manual wheelchair in the home to perform MRADLs during a typical day.

D and M Sales, LLC

D and M Sales, LLC (D and M Sales), is a durable medical equipment supplier in Honolulu, Hawaii, that sells and services PMDs. D and M Sales submitted Medicare claims to Noridian Administrative Services (Noridian), the DME MAC for Jurisdiction D.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether D and M Sales claimed Federal reimbursement for PMDs and associated accessories in accordance with Medicare requirements.

Scope

During calendar years (CY) 2006 through 2008, Medicare paid D and M Sales $968,880, consisting of $852,327 for 246 PMDs and $116,553 for associated accessories.[1] We reviewed a judgmental sample of 30 claims totaling $117,765, which consisted of $99,945 for PMDs and $17,820 for associated accessories.

We did not review the overall internal control structure of D and M Sales. Rather, we limited our review of internal controls to those controls that were significant to the objective of our audit.

We performed our review from December 2009 through May 2010 and conducted fieldwork at D and M Sales' administrative office in Honolulu, Hawaii.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;
- used CMS's National Claims History data to identify the 246 Medicare beneficiaries for whom D and M Sales received Medicare payments for providing PMDs during CYs 2006 through 2008;
- obtained medical records from D and M Sales for all 30 sampled beneficiaries;
- requested that Noridian perform a medical review of documentation supporting PMDs provided to 27 sampled beneficiaries to determine whether medical necessity requirements were met;
- reviewed D and M Sales' policies and procedures for billing Medicare for PMDs; and
- interviewed D and M Sales' officials to obtain an understanding of D and M Sales' Medicare billing processes for PMDs.

[1] Examples of accessories were batteries, adjustable height armrest, and oxygen tank holder.

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

During CYs 2006 through 2008, D and M Sales did not always claim Federal reimbursement for PMDs and associated accessories in accordance with Medicare requirements. Of the 30 judgmentally sampled claims, 1 claim met Medicare requirements but 29 claims did not.

- For 26 claims, Noridian determined that there was inadequate documentation to support the medical necessity of the PMDs.

- For two claims, the written prescriptions for PMDs were not valid because they were not provided by physicians or treating practitioners legally authorized to prescribe PMDs in accordance with Federal regulations.

- For one claim, D and M Sales did not receive the written prescription and the beneficiary's medical record within the required 45 days.

D and M Sales did not have adequate controls to ensure that it claimed Federal reimbursement for PMDs in accordance with Medicare requirements. As a result, for 29 of the 30 sampled claims, D and M Sales received $113,941 in unallowable Medicare payments, consisting of $96,726 for PMDs and $17,215 for associated accessories.

INADEQUATE DOCUMENTATION SUPPORTING MEDICAL NECESSITY

Pursuant to 42 CFR § 410.38(c)(2), Medicare Part B pays for a PMD if the physician or treating practitioner provides supporting documentation, including pertinent parts of the beneficiary's medical record, that supports the medical necessity of the device. Examples in the regulations include history, physical examination, diagnostic tests, summary of findings, diagnoses, treatment plans, and/or other information as may be appropriate.

The *Medicare Program Integrity Manual*, Pub. No. 100-08, chapter 5, section 5.8, states that the supplier should obtain as much documentation from the patient's medical record as the supplier determines is needed to ensure that the coverage criterion for an item has been met.

D and M Sales provided medically unnecessary PMDs to 26 sampled beneficiaries. Noridian determined that there was inadequate documentation to support the medical necessity of the PMDs for 26 of the 27 claims reviewed. Specifically, medical reviewers from Noridian found that the documentation for the 26 claims did not meet the basic coverage criteria A to C of LCD L23598. For the 26 claims, D and M Sales received $101,709 in unallowable Medicare payments, consisting of $86,340 for PMDs and $15,369 for associated accessories.

UNAUTHORIZED ORDERING PHYSICIANS

Pursuant to 42 CFR § 410.38(c)(1), which refers to section 1861(r)(1) of the Act, a physician is a doctor of medicine who is legally authorized to practice medicine and surgery by the State in which he performs such function or action. Medical residents and podiatrists are not included in this provision.

D and M Sales provided PMDs to two sampled beneficiaries whose prescriptions were not written by authorized physicians or treating practitioners. In one instance, a medical resident wrote the prescription, and in the other instance, a podiatrist wrote the prescription. Neither met the definition in Federal regulations of a physician authorized to prescribe PMDs. For these two claims, D and M Sales received $7,312 in unallowable Medicare payments, consisting of $6,288 for PMDs and $1,024 for associated accessories.

UNTIMELY RECEIPT OF WRITTEN PRESCRIPTION AND MEDICAL RECORD

Pursuant to 42 CFR § 410.38(c)(2), Medicare Part B pays for a PMD if the physician or treating practitioner:

> (ii) Writes a prescription, as defined in paragraph (c)(1) of this section that is provided to the beneficiary or supplier, and is received by the supplier within 45 days after the face-to-face examination.
>
> (iii) Provides supporting documentation, including pertinent parts of the beneficiary's medical record … that supports the medical necessity for the power mobility device, which is received by the supplier within 45 days after the face-to-face examination.

D and M Sales provided a PMD to one sampled beneficiary without receiving the written prescription and medical record within the required 45 days after the face-to-face examination. For this claim, D and M Sales received $4,920 in unallowable Medicare payments, consisting of $4,098 for the PMD and $822 for associated accessories.

RECOMMENDATIONS

We recommend that D and M Sales:

- refund to the Federal Government $113,941 in unallowable payments for PMDs and associated accessories and

- strengthen controls to ensure that claims for PMDs comply with Medicare requirements.

D AND M SALES COMMENTS

In written comments on our draft report, D and M Sales stated that "we absolutely concur with [the] … report." However, D and M Sales did not address our recommended refund. D and M Sales provided information on actions taken to strengthen controls to ensure that claims for

PMDs comply with Medicare requirements. D and M Sales' comments are included in their entirety as the Appendix.

APPENDIX

APPENDIX: D AND M SALES COMMENTS

D AND M SALES, LLC

DURABLE MEDICAL EQUIPMENT SUPPLIES

July 29, 2010

Report Number: A-09-10-02005

Department of Health and Human Services
Office of Inspector General
Office of Audit Services, Region IX
90-7th Street, Suite 3-650
San Francisco, CA 94103
Attention: Ms Lori A Ahlstrand

Dear, Ms Lori A. Ahlstrand,

We are in receipt of the letter as to the audit findings conducted by the Department of Health and Human Services. We are very embarrassed as to the findings.

D and M Sales, LLC is a small family operated business consisting of ourselves, husband and wife, our two sons and one sales representative serving the islands. It is our livelihood and in no way are we or wish to intentionally misrepresent the Medicare program.

Action A:
Upon receipt of your letter, immediate in-service meeting was called. On July 08, 2010 at 8:00 am with all present, the letter was read to all.

Objective:
It was agreed the objective is to determine where this company has failed and how we can eliminate this failure. Where changes need to be made in order to be in compliant with Medicare standards. It is believed that the first thing we needed to do in order put a stop to further non-compliant is to first re-educate staff so from here on out, no more mistakes. Install controls to eliminate any further noncompliant.

Plan A:
In our meeting this day, we outlined what we would do first. That which is go back to basic one again and fully understand what documentations need to be had prior to dispensing a mobility device of any sort.
Sales team will re-educate the physicians as to what is needed to be done by them for us to help their patients.
In receiving an order from a physician, we will appoint 2 staff members to review total documentation to make sure all documentation is in file and all is in compliant as to what Medicare stipulates as one needing a durable medical equipment.
Will establish a better check list that is part of patient folder which will insure all documentations are in patient folder.

3322 CAMPBELL HONOLULU, HAWAII 96815 PH: 808 735-2557 TOLL: 888 722-2200 FAX: 808 737-1385

D AND M SALES, LLC

DURABLE MEDICAL EQUIPMENT SUPPLIES

Plan B:
Pull all the files audited by the representatives of The Department of Health and Human Services. Review together each file in determining where we have failed in meeting Medicare standards.
On a separate sheet, note name, doctor, and in what areas we have failed to meet Medicare standards.
Initiate corrective measures immediately by contacting the physician by fax, letter and visit, where we all can help each other take action in correcting errors made by this company. Inform physician of their responsibilities as physicians.

Plan C:
We feel, to honestly report back to The Office of Inspector General, these steps needed to be followed prior to reporting to them. That way, we can say we have done it and action has been taken and not will be taken. We will then complete our report to The Office of Inspector General.

On July 12, 2010 at 8:00 am an in-service meeting was held at the office. This in-service is to get started on plan A.

All were present.

Method of presentation:
We reviewed the letter again from the Department of Health & Human Services, Office of Inspector General. Reviewed Noridian/medicare.com/dme/news/docs website to gain positive insight as to documentation requirements. Pride Mobility literature regarding documentation/reimbursement which emphasized the same information.

Objective:
To note exactly what documentation is needed from the physician.
To insure physician's face to face mobility evaluation is in compliant with Medicare standards for detailed information justifying the need of a DME.
Insure present and past clinical notes reflect patient's disease pertinent to the need of a mobility device. Progression notes of disease justifying need of a DME to aid in MRADL.
Use of a better check list in each file to make sure all is in there prior to dispensing.

Education of Physician:
In addition, today, a meeting was held with sales representative to initiate proper education literature, information sheets provided by Noridian stating exactly what they wish to be in a face to face mobility evaluation clinical notes.
It has been established from here on out, that the sales representative will emphasize a more detailed face to face mobility evaluation, where the clinical notes needs to state purpose of this visit.
What clinical note documentations are needed pertinent to MRADL.
Re-education of physician and staff to begin immediately.

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D AND M SALES, LLC

DURABLE MEDICAL EQUIPMENT SUPPLIES

On July 14-15-16, 2010 at 8:00 am an in-service was held at the office. This in-service is to get started on plan B

All were present.

Objective:
Review all files.
Find out where we have failed to meet Medicare guideline standards.
On a separate sheet, log name of client/patient, physician, note the deficits

Action taken:
We noted the errors of each client/patient and have written to each physician for their help in making correction. We've noted many client/patient files lacked the proper amount of clinical notes or documentation that justify the need of a mobility device. For some, the mobility evaluation was very vague. We found the 2 client/patient that an unauthorized physician issued a prescription for a PMD. We noted that this company dispensed a PMD to a client/patient. The prescription was received after the 45 day face to face. Therefore, it is a reflection on this company. There is a need to insure controls are in place to make sure physician's mobility evaluation report is up to Medicare standards offering a clear concise picture of client/patient's condition and there are sufficient clinical notes justifying the need of a particular DME. We have elected [redacted] and [redacted] for this task. Their responsibilities is to review each prescription to make sure all 7 points are on them, review the mobility evaluation to make sure it provides a clear concise picture of client/patient mobility condition. Check to make sure there are sufficient present and past clinical notes of progression of disease documentation supporting the need of a DME for MRADL.

We have immediately written to each physician for their help in correcting the matter. We have assigned [redacted] to follow up on each physician to make corrective measures are being taken. She will be the means of control in this area.

Conclusion:
It is with great embarrassment and humbleness that we absolutely concur with The Department of Health and Human Services report. We in no way wish to be non compliant with Medicare guidelines. We have taken immediate steps to first educate our staff as to the documentation requirements set forth by Medicare, delegated staff members to make sure all documentation is concise, that it is handled within the time allowed by Medicare, and that all documentations are in client/patient files prior to delivery a DME. We have initiated a better check list form to insure all documentations are in a client/patient file prior to delivering a DME.

We have taken immediate action in correcting all files to make sure there are substantial documentations received to justify the need of a DME. We are presently working with the physicians in getting client patient primary care physician to do the paper work required for the dispensing of a DME.

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Office of Inspector General Note: We redacted text with personally identifiable information.

D AND M SALES, LLC

DURABLE MEDICAL EQUIPMENT SUPPLIES

D and M Sales, LLC as stated is a small family owned business and wishes to continue to serve this State. We have dedicated all our resources in this effort. Hawaii is made up of many small islands. Many of the other islands do not have a provider to help these people. Records show this company is one of few helping our friends not only on this island of Oahu, but also exclusively on the islands of Molokai, Lana'i, Kauai, and on the out skirts of the island of Hawaii. We travel there at our own expense. The Polynesian and Asian extract are among the highest having hereditary diseases and are in great need of help.

We wish to continue to be of help to them as well our military veterans, some who are retired and in need of help. That which we have availed ourselves in helping exclusively at the Tripler Army Medical Center through the Outpatient Social Worker services and TriWest. It is our endeavor to be in compliant. It is our endeavor to continue to be of help to all.

We humbly entreat you as you consider your final decision, that it would allow us to continually be of help to this community.

Sincerely,

Original Signed by

Dennison Lau
Sole Member

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