Mar. 8, 2024

Joel Kaiser, Director
Division of DMEPOS Policy
Centers for Medicare & Medicaid Services
Department of Health and Human Services
P.O. Box 8013
Baltimore, MD 21244–8013

To Mr. Joel Kaiser:

On behalf of the undersigned stakeholder organizations, representing a unified coalition of lymphedema clinicians, lymphedema patients, and wound care experts representing the full spectrum of lymphedema care, we submit the following letter to CMS regarding the new benefit for lymphedema compression treatment items finalized in the Durable Medical Equipment Prosthetics and Orthotics Supplies Final Rule (CMS-1780-F). Specifically, the undersigned organizations believe that it is imperative CMS work toward modification of payment policy for measuring, fitting, and training services for standard and custom-fitted garments in the next rulemaking cycle to ensure the agency promotes patient flexibility in the garment selection process. The single issue we seek to raise to CMS' attention is the payment structure for measurement, fitting, and training services for lymphedema compression garments, services which are provided largely by lymphedema therapists. We have also, in a separate document, submitted questions from our members that require written clarification across a variety of significant compliance issues since the recent implementation of the benefit.

Notably, CMS's final policy does not assure payment for lymphedema therapists who perform the majority of measuring, fitting, and training services[1] associated with patient garment selection and self-management of their edema. The finalized policy amounts to little more than notice that therapists may privately contract with DME suppliers, who have no legal obligation to enter into such an agreement or provide payment. Providing only an *opportunity* to privately contract with suppliers is a significant deviation from the language CMS used in its proposed rule.

Specifically, in the proposed rule, where measuring and fitting services are provided independent of the supplier, CMS stated that "the supplier receiving payment for the garment ***would be responsible for*** paying the therapist for the fitting component that is an integral part of furnishing the item." Through the final rule, however, CMS substantially reduced DME suppliers' responsibility, noting only that "the supplier receiving payment for the garment ***may work out an arrangement*** with the therapist for the fitting component that is an integral part of

[1] USMCA Comments on CMS-1780-P (p. 16). According to survey data conducted by the United States Medical Compression Alliance, therapists accounted for 58% of professionals that perform fitting services. This survey was not distributed to APTA and AOTA members, suggesting that this number may underrepresent therapists' role in the provision of fitting services.

furnishing the item." As such, the current regulatory framework does not establish any meaningful requirements that direct payment to therapists.

We understand the complexities associated with separate payment to therapists for these services, but, as finalized, the policy disregards a substantially more basic request among this unified stakeholder group of clinical and patient advocates:

> Ensure lymphedema therapists are compensated for measuring, fitting, and training services they provide, with legally-enforceable assurances. This will ensure that beneficiaries have flexibility to receive these critical services from either their therapist or their DME supplier, with the appropriate entity receiving payment for services that are actually rendered.

It is highly concerning that CMS was not only unwilling to create a regulatory framework ensuring payment for therapists, but actually relieved DME suppliers of any obligation to provide payment to non-DME clinicians that perform these services on DME suppliers' behalf. As CMS notes in the final rule, payment for measuring, fitting, and training services is included in the DME rate for an item. It is even more disappointing that, essentially, under the finalized policy, not only do these therapists have no assurance of payment for services rendered, but DME suppliers will receive payment for performing these services regardless of whether the supplier actually *renders* the service, and with no legal obligation to pay the therapist for those services, which CMS itself described as "integral" to the garments themselves.

In fact, initial feedback from clinicians and DME suppliers since implementation of this new benefit has been that DME suppliers have expressed their unwillingness to enter into arrangements with the clinicians for fear of potential anti-kickback violations, and cite inadequate garment reimbursement rates that do not allow for payment for therapist services related to measuring and fitting. So, despite therapy measuring and fitting services being integral to the garment provision and included in the reimbursement rate, DME suppliers have signaled their intention to not work with therapists to perform these services or to not reimburse the therapist if they do perform the service. Especially in rural and underserved areas where a DME fitter may only come a few times a year, this may create dangerous delays in Medicare beneficiaries receiving the garments they need to manage their health needs.

Our organizations have also received concerning feedback that certain DME suppliers have turned away beneficiaries seeking these garments. Clinicians have reported that it has become common for the therapist to provide measurements to the DME as they have done in the past, who then verify the patient's insurance coverage and financial obligation. However, once the DME verifies the patients have coverage under Medicare, they instead notify the patient that they cannot provide the garment, requiring the patient to work with the therapist to find an appropriate DME that can supply the garments. This is already creating substantial burden for the providers and patients to find and work with new DMEs who are willing to supply the necessary garments, and creates unnecessary delays in care for beneficiaries.

As we discussed with CMS, compensating DME suppliers, but not clinicians, for work that clinicians are performing is an inefficient and inequitable use of Medicare dollars, disincentivizes the use of lymphedema therapists' expertise in garment selection, and diminishes patient choice in the provision of their care. Further, we believe CMS has not considered the substantial share of internet-based DME suppliers that rely exclusively on outside therapists for measuring and

fitting/training services. Under the new benefit policy, these entities are paid for measuring, fitting, and training services despite the fact that they exclusively rely on therapists to perform them. Ultimately, as finalized, CMS has left payment equity to both the whims of the free market and the negotiating savvy of overworked and underpaid therapists—a burdensome and impractical approach without any regulatory framework or protection for clinicians who perform a variety of critical lymphedema services that are largely uncovered by Medicare and commercial payers alike.

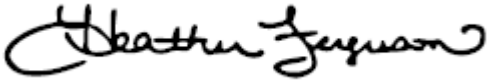
It is important that the agency understand that the undersigned coalition does not seek increased payment for the items that encompass these rates—we ask only that CMS ensure payment is provided to the individuals that render these critical services, and to provide patients with meaningful options in seeking measuring and fitting services from the lymphedema professional of their choosing.

Conclusion

We understand the challenges associated with implementing an entirely new DME benefit, functional by the Jan. 1, 2024 effective date. We hope CMS understands that our aim is to communicate the collective needs of the lymphedema community—patients and clinicians alike—for additional clarity and improved payment policies for the future. We hope that this letter is instructive in assisting CMS with changes to the benefit in 2024 and in the future, with the ultimate goal of promoting the highest quality care and flexibility for Medicare beneficiaries. The undersigned organizations would also be happy to meet with the agency to elaborate on these comments.

Sincerely,

Roger Herr, PT, MPA
President, American Physical Therapy Association



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