

CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-08 Medicare Program Integrity	Centers for Medicare & Medicaid Services (CMS)
Transmittal 300	Date: September 1, 2009
	Change Request 6528

Transmittal 300, dated September 1, 2009 rescinds and replaces Transmittal 297, dated August 7, 2009. The change is the implementation date from September 8, 2009 to March 1, 2010. All other information remains the same.

SUBJECT: Compliance Standards for Consignment Closets and Stock and Bill Arrangements

I. SUMMARY OF CHANGES: The purpose of this change request is to define and prohibit certain arrangements where an enrolled supplier of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) maintains inventory at a practice location which is not owned by the enrolled DMEPOS supplier, but rather, owned by a physician, non-physician practitioner or other health care professional for the purpose of distribution, commonly referred to as a consignment closet and/or stock and bill arrangement. In addition, this change request will instruct physicians, non-physician practitioners or other health care professional's practices that use of consignment closets and/or stock and bill arrangements (as defined above) must be in compliance with current standards.

NEW / REVISED MATERIAL

EFFECTIVE DATE: *September 8, 2009

IMPLEMENTATION DATE: March 1, 2010

Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual is not updated)

R=REVISED, N=NEW, D=DELETED

R/N/D	CHAPTER / SECTION / SUBSECTION / TITLE
R	10/Table of Contents
N	10/21/.8/Consignment Closets and Stock and Bill Arrangements

III. FUNDING:

SECTION A: For Fiscal Intermediaries and Carriers: N/A

SECTION B: For Medicare Administrative Contractors (MACs):

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the contracting officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the contracting officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

IV. ATTACHMENTS:

**Business Requirements
Manual Instruction**

**Unless otherwise specified, the effective date is the date of service.*

Attachment – Business Requirements

Pub. 100-08	Transmittal: 300	Date: September 1, 2009	Change Request: 6528
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SUBJECT: Compliance Standards for Consignment Closets and Stock and Bill Arrangements

Effective Date: September 8, 2009

Implementation Date: March 1, 2010

I. GENERAL INFORMATION

A. Background: This change request (CR) defines and prohibits certain arrangements where an enrolled supplier of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) maintains inventory at a practice location which is not owned by the enrolled DMEPOS supplier, but rather, owned by a physician, non-physician practitioner or other health care professional for the purpose of DMEPOS distribution, commonly referred to as a consignment closet and/or stock and bill arrangement. A common practice example is that of an enrolled physician practice that allows DMEPOS owned by a separately enrolled DMEPOS supplier to be kept at the physician’s practice location.

B. Policy: The purpose of this change request is to instruct the National Supplier Clearinghouse Medicare Administrative Contractor (NSC-MAC) that use of consignment closets and/or stock and bill arrangements (as defined above) must be in compliance with current standards. In addition, this CR defines additional specific compliance standards for NSC-MAC validation for Consignment Closets and Stock and Bill arrangements being added to the Program Integrity Manual (PIM), chapter 10, section 21.8.

II. BUSINESS REQUIREMENTS TABLE

Number	Requirement	Responsibility (place an “X” in each applicable column)									
		A / B M A C	D M M A C	F I	C A R I E R	R H I	Shared-System Maintainers				OTHER
						F I S S	M C S	V M S	C W F		
6528.1	<p>The NSC-MAC shall allow Medicare enrolled DMEPOS suppliers to maintain inventory at a practice location owned by a physician, non-physician practitioner or other health care professional for the purpose of DMEPOS distribution when the following conditions are met by the DMEPOS supplier and verified by the NSC-MAC:</p> <p>The title to the DMEPOS shall be transferred to the enrolled physician, non-physician practitioner or other health care professional’s practice at the time the</p>										NSC-MAC

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A / B M A C	D M E M A C	F I	C A R R I E R	R H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
	<p>DMEPOS is furnished to the beneficiary;</p> <p>The physician, non-physician practitioner or other health care professional's practice shall bill for the DMEPOS supplies and services using their own enrolled DMEPOS billing number;</p> <p>All services provided to a Medicare beneficiary concerning fitting or use of the DMEPOS shall be performed by individuals being paid by the physician, non-physician practitioner or other health care professional's practice, not by any other DMEPOS supplier; and</p> <p>The beneficiary shall be advised that if they have a problem or questions with the DMEPOS they should contact the physician, non-physician practitioner or other health care professional's practice, not the DMEPOS supplier who placed the DMEPOS at the physician, non-physician practitioner or other health care professional's practice.</p>										
6528.2	The NSC-MAC shall verify that no more than one enrolled DMEPOS supplier shall be enrolled and/or located at the same practice location. (NOTE: This prohibition does not exist for one or more physicians enrolled as DMEPOS suppliers at the same physical location.)										NSC-MAC
6528.3	The NSC-MAC shall verify that each practice location shall have a separate entrance and separate physical address, recognized by the United States Postal Service.										NSC-MAC
6528.4	The NSC-MAC shall inform (via provider education requirement) physicians and non-physician practitioners that determining compliance with these provisions is the responsibility of the physician or non-physician practitioner's practice, who may consult their own legal counsel if they have questions concerning compliance with this instruction.										NSC-MAC

III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility (place an "X" in each applicable column)						
		A / M A C	D M I	F I	C A R R I E R	R H I	Shared-System Maintainers	OTHER

		B M A C	E M A C		R R I E R	H I	F I S S	M C S	V M S	C W F	
6528.5	A provider education article related to this instruction will be available at http://www.cms.hhs.gov/MLNMattersArticles/ shortly after the CR is released. You will receive notification of the article release via the established "MLN Matters" listserv. Contractors shall post this article, or a direct link to this article, on their Web site and include information about it in a listserv message within one week of the availability of the provider education article. In addition, the provider education article shall be included in your next regularly scheduled bulletin. Contractors are free to supplement MLN Matters articles with localized information that would benefit their provider community in billing and administering the Medicare program correctly.	X	X								NSC- MAC

IV. SUPPORTING INFORMATION

Section A: For any recommendations and supporting information associated with listed requirements, use the box below:

X-Ref Requirement Number	Recommendations or other supporting information:
6528.1	Section 1128B(b) of the Social Security Act as Amended (anti-kickback provisions)
6528.1	42 Code of Federal Regulation 1001.952 (safe harbors provisions)
6528.1	Section 1877 of the Social Security Act as Amended (prohibition of certain referrals)

Section B: For all other recommendations and supporting information, use this space:

V. CONTACTS

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VI. FUNDING

Section A: For *Fiscal Intermediaries (FIs), Carriers and Regional Home Health Intermediaries (RHHIs)*:
N/A

Section B: For *Medicare Administrative Contractors (MACs)*: The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the

amounts allotted in your contract unless and until specifically authorized by the contracting officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the contracting officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

Medicare Program Integrity Manual

Chapter 10 - Medicare Provider/Supplier Enrollment

Table of Contents
(Rev.300, 09-01-09)

21.8 - Consignment Closets and Stock and Bill Arrangements

21.8 - Consignment Closets and Stock and Bill Arrangements
(Rev.300, Issued: 09-01-09, Effective: 09-08-09, Implementation: 03-01-10)

As mandated by Section 1834(j)(1)(B) of the Act, in order for a DMEPOS supplier to obtain and maintain Medicare billing privileges, that supplier must satisfy certain DMEPOS supplier standards, which are set forth at 42 C.F.R., Section 424.57.

Although most consignment closet or stock and bill arrangements do not satisfy the DMEPOS supplier standards, CMS has identified a limited arrangement that may be permissible. This scenario involves a DMEPOS supplier selling DMEPOS items to the practice of the physician or other non-physician practitioner (as defined in §1842(b)(18)(c) of the Social Security Act, and the billing and furnishing of a DMEPOS item(s) would be done by the physician or non-physician practitioner. Each arrangement will be evaluated on a case-by-case basis.

The CMS wants to ensure that beneficiaries are aware that the enrolled supplier who has billed Medicare on their behalf has furnished their DMEPOS item(s).

The NSC-MAC may allow Medicare enrolled DMEPOS suppliers to maintain inventory at a practice location owned by a physician or a non-physician practitioner for the purpose of DMEPOS distribution only when the DMEPOS supplier meets the following conditions as verified by the NSC-MAC:

- 1. The title to the DMEPOS shall be transferred to the enrolled physician, non-physician practitioner practice at the time the DMEPOS is furnished to the beneficiary;*
- 2. The physician or non-physician practitioner shall bill for the DMEPOS supplies and services using their own enrolled DMEPOS billing number;*
- 3. All services provided to a Medicare beneficiary concerning fitting or use of the DMEPOS shall be performed by individuals being paid by the physician or non-physician practitioner's practice, and not by any other DMEPOS supplier; and*
- 4. The beneficiary shall be advised that if he or she has a problem or question regarding the DMEPOS, then the beneficiary should contact the physician or non-physician practitioner, and not the DMEPOS supplier who placed the DMEPOS at the physician or non-physician practitioner's practice.*

In addition, the NSC-MAC shall verify that two or more enrolled DMEPOS suppliers shall not be enrolled and/or located at the same practice location. A practice location shall have a separate entrance and separate post office address, as recognized by the United States Postal Service.

The NSC-MAC customer service personnel shall respond to direct supplier questions concerning compliance with this policy. The responsibility for compliance with these

provisions is placed upon the DMEPOS supplier, physician, or non-physician practitioner.