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Same and Similar Denials

February 28, 2019

Orthotic providers have seen a rise in claim rejections referencing Medicare's 'Same and/or Similar ' policy.

'Same and Similar' denials occur when the patient's CMN history indicates a piece of equipment or item is the same or similar to the service or equipment being billed. This refers to a policy whereby Medicare (and other carriers) may not reimburse for specific services when another service (by code) was provided within a specified time period for that service.

To determine whether same or similar items have previously been provided, suppliers must obtain all possible information from a patient, which may include the following:

⇒ Patient's correct HICN (Health Insurance Claim Number)

⇒ Whether the patient has employer insurance or is enrolled in a HMO (Health Maintenance Organization)

⇒ If the patient currently has or had an identical or similar item in the past;

⇒ When the patient received the item(s) and whether or not the items have been returned;

⇒ Where the item will be used; and

⇒ CMN or DIF information, if required

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By using the **Suggested Intake Form** , it assures this information is obtained. To verify the patient has not had a same or similar item previously, suppliers can utilize the Noridian Medicare Portal or the IVR. The supplier enters their NPI, PTAN, last five digits of the TIN, the beneficiary's Medicare ID, the beneficiary's first and last name, the beneficiary's date of birth, and the HCPCS code. The IVR and portal research and return the claim history and supplier information for applicable claims processed within this jurisdiction as well as by other DME MACs by researching the Common Working File for that HCPCS code.

DME suppliers are expected to be familiar with DME coverage policies and any additional pertinent information that may have an impact on medical necessity determinations. In order to be protected under the limitation of liability provision, a supplier must provide a proper Advance Beneficiary Notice of Noncoverage (ABN) for each item that it believes is likely to be denied as not medically necessary.

If there is no indication that same or similar equipment has been previously obtained, the supplier would not have reason to provide an ABN. If the beneficiary or the beneficiary's authorized representative is unable to respond fully on the issue of "same or similar equipment," the supplier may issue an ABN. In situations where the beneficiary is planning to use a piece of equipment as a backup (e.g., an extra wheelchair to keep in the car), the supplier should always obtain a signed ABN. A signed ABN is indicated on the claim form with a GA modifier.

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If a claim is denied due to same or similar claims previously paid, suppliers can submit a redetermination. Supporting documentation would need to be included with the redetermination request. Examples of applicable documentation include the CMN or DIF, physician order, signed pick up and delivery tickets, a detailed outline of events and any changes in medical need and a copy of the ABN

According to the Medicare Lower Limb Orthotic LCD, devices described within this policy are expected to have a five-year useful lifetime. Thus, HCPCS codes listed as part of the AFO LCD will be subject to a five-year look-back regarding payment for another HCPCS code described within the AFO LCD.

A fairly common scenario is that a patient receives a CAM boot (e.g.. L4361) for a stress fracture in June 2016. The patient subsequently develops plantar fasciitis on the same (or contralateral) foot sometime in 2019, 2020, or even within the first six months of 2021. Because another device described by a HCPCS code within the Lower Limb Orthotic LCD was reimbursed in 2016, the subsequent device dispensed through June 2021 will be denied reimbursement citing the aforementioned policy of 'Same and Similar'.

When discovering that the patient has a potential for same and similar rejection, it is appropriate to explain the following to the patient:

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The patient may be expected to be financially responsible for a new device; there may be a lengthy appeals process with which you simply do not wish to be involved; and that you are willing to provide the device, but ultimately if Medicare denies and then cite Medicare's 'Same and Similar' policy.

Most 'Same ad Similar ' denials can be successfully appealed by ensuring that your chart includes some (if not all) of the following documentation:

1) Was the previous item lost, stolen, or irreparably damaged by a one-time event. If so, the modifier RA should be the KX and the site (LT RT) modifiers. The medical records should contain the date of loss/damage along with a copy of the police report or insurance claim

2) Is the item no longer useful to the patient due to a change in the patient's diagnosis , anatomy or physiology? This reason is quite broad and leaves much open to interpretation by the DME MAC. One common scenario may help to clarify which same and similar denials have the best potential for a successful appeal:

    A. The patient's AFO has worn out and is no longer medically effective due to product fatigue, and you are concerned that the patient who wears the device could be injured, or that it is o out of shape it's no longer clinically effective. Unfortunately, this describes irreparable wear, and if you're billing for the same or similar device dispensed within a five-year period, it likely will result in a 'Same and Similar' denial.