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OIG WARNS DME SUPPLIERS

The Office of Inspector General of the Department of Health and Human Services (the "OIG") issued recently a News Release that outlines "new efforts aimed at stopping abuse of the power wheelchair benefit in the Medicare program." The news release is premised on the OIG's belief that there is a proliferation of durable medical equipment ("DME") fraud, inflated billings to Medicare, charges for equipment and supplies not delivered, and the falsification of documents to qualify beneficiaries for wheelchairs or equipment that they may not need. The Centers for Medicare and Medicaid Services ("CMS") plans on conducting a "nationwide clean-up campaign," which it plans to begin in Harris County, Texas. The focus on Texas is because of a significant jump in the number of power wheelchairs ordered there between 2001 and 2002.

Under the campaign called "Operation Wheeler Dealer," CMS plans to use a number of approaches, including: (1) insuring that applicants renew supplier numbers meet "reputable business standards of operation;" (2) existing power wheelchair suppliers in Harris County, Texas, will be required to receive education on the proper coverage and utilization of power wheelchairs or have their billing privileges suspended; and (3) claims for power wheelchairs will undergo special scrutiny from CMS clinicians before payment will be made. Additionally, CMS will be more aggressive in pursuing application of sanctions, and civil or criminal prosecutions. CMS will also be aggressive in using "one of its strongest administrative tools," payment suspensions.

Finally, CMS will be implementing revised coverage policies for motorized wheelchairs and scooters and working with the durable medical equipment regional carriers regarding their local medical review policies and medical review activities.

This action by the OIG and CMS with regard to power wheelchairs and scooters in Texas is a harbinger of things to come in other states and other DME categories if CMS or OIG believe there are significant fraudulent billings and/or overutilization.

The OIG's new focus on power wheelchairs and scooters suggests that all suppliers ensure that their policies and procedures are compliant with CMS's and their DMERC's requirements for the furnishing of this type of equipment. As important, supplier should ensure that the documentation that they maintain reflect this compliance.

Perhaps the most important issue involved in the supply of scooters and power wheelchairs is the documentation of medical necessity. Consequently, suppliers should ensure that their files contain some form of documentation from the ordering physician, in addition to the certificate of medical necessity, reflecting that the physician has evaluated the customer specifically for the use of the equipment ordered. The documentation should specifically reference all of the medical necessity criteria applicable to the equipment with the results of the evaluation for each of the criterion required.

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The documentation could be in the form of a progress note, but additionally the supplier could provide a form for the physician's use that includes all of the medical necessity criteria to ensure that the physician considers and documents each point. The form should allow the free entry of information by the physician rather than suggested responses in the form of check-offs. Supplier should ensure that all required documentation is in their file prior to delivering the equipment and submitting the claim to Medicare.

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Broad and Cassel, founded in January 1946, has more than 140 lawyers and 200 support personnel located in seven offices throughout the state of Florida. Broad and Cassel has a national and international client base with offices located in Boca Raton, Fort Lauderdale, Miami, Orlando, Tallahassee, Tampa, and West Palm Beach. The Firm has extensive experience in a wide variety of practice areas including: Corporate and Securities; Real Estate; Estate Planning and Trusts; Commercial Litigation; Construction Law and Litigation, Health Law; Taxation; Bankruptcy and Creditors' Rights; Labor and Employment; Intellectual Property Law; Computer and Technology Law; Appellate Law; White Collar Criminal and Civil Fraud Defense; and Special Assets.