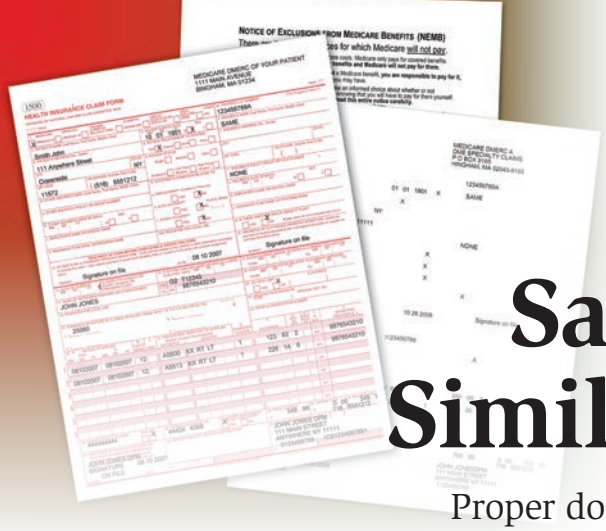

Same and Similar Denials

Proper documentation can ensure a successful appeal.

BY PAUL KESSELMAN, DPM

Orthotic and prosthetic providers have recently seen a surge in claims rejections referencing Medicare's "Same and/or Similar" policy. This article will provide some insights to this policy and how it needs reformulation in order to be fair to the patient, provider, and insurance carrier.

"Same and Similar" 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. 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".

One can easily predict these types of claim denials by enlisting the help of their DME MAC provider portal (Noridian PSP for Cigna My CGS). Using the provider portal, one can input several demographic pieces of information concerning the patient and the HCPCS code for the orthotics you wish to dispense. The portal will then let you know when/if the patient received a similar or the same device within the five-year global period. One notable exception is DME MAC A. which can research only the past four years due to the transition from NHIC to Noridian four years ago. Within the next few months, the Noridian portal for DME MAC A will also be able to go back five years.

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

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 the appeals, the patient may be financially responsible.

In the above scenarios, in order to secure patient financial responsibility, one should have the patient sign an ABN. The ABN must be very specific, stipulating that the reason the claim may be denied is because the patient was previously provided with (state the device) by (state by whom) on (state date), and then cite Medicare's "Same and Similar" policy.

Orthotic and prosthetic providers have recently seen a surge in claims rejections referencing Medicare's "Same and/or Similar" policy.

Most "Same and 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 (e.g. car ran over it, dog chewed it, lost in flood or fire)? If so, the modifier RA should be the primary modifier, followed by the KX and the site (LT RT) modifiers. The medical records should contain the date of loss/damage along with a copy of a police report or insurance

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claim (sent by the patient to their liability carrier), photos, etc.;

2) Is the item no longer useful to the patient due to a change in the patient's diagnosis, anatomy, physiology? This reason is quite broad and leaves much open to interpretation by the DME MAC. Five common scenarios 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 s(he) could be injured, or that it is so 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.

If this is all your patient's chart can support, then you have little chance of obtaining a successful appeal. In this scenario, if you wish to obtain payment from the patient, you are legally obligated to obtain a signed ABN.

B) The patient has lost or gained 50 lbs. since the last AFO was dispensed years ago. The device no longer fits, despite every attempt to repair and/or adjust it. The patient requires the same device as there are no diagnostic or other physiologic changes. In contrast to example A, this claim may be successfully appealed because the previous device can no longer be used by the patient and the new device is not a simple replacement. In this scenario, the odds are favorable for a successful appeal. However, securing an ABN is also advisable should your appeals be denied.

C) The patient was fitted with a hinged AFO (L1970) 4-1/2 years ago and recently had a CVA, resulting in a partial drop foot and now requires a hinge AFO with dorsiflex assist, plantarflex resist; or the patient had a dorsiflexion assist brace (L1970 and L2210) dispensed 4-1/2 years ago for post-CVA treatment of drop foot and recently suffered a second major CVA necessitating a solid non-hinged AFO (e.g. L1960). As with example B, this claim has great potential for a successful appeal if initially rejected due to Same or Similar.

D) A patient was seen two weeks ago with severe plantar fasciitis and possible plantarfascial tear. The patient is provided an off-the-shelf cam boot (L4361) and returns two weeks later much improved. The patient wishes to ambulate in a shoe and you wish to continue having him/her wear a night brace (L4397). Despite the fact that a CAM walker is for ambulatory use and the night brace is for non- (or limited) ambulatory use, it is doubtful that Medicare will allow for both these devices in such a proximate time frame. In this scenario, there is quite a proximate time frame and it is possible for the patient to wear the CAM walker with a clean protective bag to sleep. The rationale from Medicare is that a CAM boot can be used for both ambulatory and non-ambulatory treatment (just as a cast has been for centuries). Medicare also views both of these devices for use for an acute diagnosis, not recognizing the ambulatory/non-ambulatory use for these two different devices. As with scenario A, this has been very problematic for suppliers receiving Same and Similar denials to successfully appeal.

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E) A patient is seen with a talus/calcaneal/ankle fracture. After a period of non-weight-bearing in a CAM boot, the patient begins ambulation and is sent for PT. They are quickly identified as a patient requiring surgery and/or a long-term use of an AFO. Again, the time frame as in D is relatively proximate; however, in this situation, you initially were treating an acute diagnosis and now the patient requires long-term use of a custom fabricated item. Again, as in examples B and C, a successful appeal can be mounted with the correct documentation.

During a late October 2018 Noridian Outreach-and-Education Team phone call, a dialog on "Same and Similar" denials was initiated. "Same and Similar" denials are regulated and promulgated by CMS and enforced by the contractors. A workflow between suppliers, DME contractors, and CMS will be required to facilitate an improved "filtration" system to reduce the number of "Same and Similar" denials. An improved filtration process will not be able to eliminate all "Same and Similar" denials. Many claims may require providers to endure a

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lengthy appeals process. However, others, due to their nature (acute need vs. chronic or off-the-shelf failure to custom fabricated), simply should not be subjected to "Same or Similar" denials. The same (and more) examples cited in this article were later provided to DME MAC A for review.

Suppliers should engage their provider portal or contact the patient's insurance company to verify when their patient may have last received any DME device (e.g., AFO five years, therapeutic shoe codes per calendar year). If the patient requires a "Same or Similar" device, the supplier can then make an advance determination to proceed (or not) with providing the device, potentially enduring a lengthy appeals process, collecting directly from the patient, obtaining an ABN, or referring the patient to where they may have received their previous device.

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Lastly, simply because you have been fortunate enough to avoid "Same and Similar" denials in the past, that does not ensure continuation of the same. Many suppliers have valid concerns regarding post-payment recoupments from either the DME MAC or other post-payment agencies (e.g., RAC, ZPIC, SMERC), all of whom may reach out and "touch you" for payback. **PM**

Dr. Kesselman is in private practice in NY. He is certified by the ABPS and is a founder of the Academy of Physicians in Wound Healing. He is also a member of the Medicare Provider Communications Advisory Committee for several Regional DME MACs (DMERCs). He is a noted expert on durable medical equipment (DME) for the podiatric profession, and an expert panelist for Codingline.com. He is a medical advisor and consultant to many medical manufacturers.