V. The removal of the current exemption from accreditation and quality standards for certain practitioners and suppliers

In order to implement the proposed rule on BIPA Section 427, CMS proposes to remove the current exemption from the quality standards and accreditation requirements for DMEPOS suppliers and “certain eligible professionals and other persons” who bill Medicare for prosthetics and custom-fabricated orthotics. This exemption was premised on statutory language that allowed an exemption unless the HHS secretary determined that the standards were designed specifically to be applied to such eligible professionals and other persons, or that licensure, accreditation, or other quality requirements applied to such persons.

The preamble to the proposed rule states:

Through this proposed rule, we are now designing standards specifically to apply to such eligible professionals and other persons. We believe that it is imperative to have both licensure and certification requirements for all qualified practitioners (eligible professionals and other persons who furnish or fabricate prosthetics and custom-fabricated orthotics) and to have accreditation requirements for all qualified suppliers (DMEPOS suppliers that fabricate or bill for prosthetics and custom-fabricated orthotics that are subject to the requirements of this proposed rule). Moreover, we believe that the provisions in [BIPA Section 427] were enacted to achieve that objective.

Therefore, the proposed rule removes the existing exemption for certain eligible professionals and other practitioners (including physicians, physical therapists, occupational therapists, prosthetists, and orthotists) to satisfy the DMEPOS quality standards and accreditation requirements in order to bill Medicare for prosthetics and custom-fabricated orthotics.

VI. The penalty for submitting claims for payment of custom-fabricated orthotics or prosthetics without the required qualifications

The proposed rule goes beyond the statutory requirements of BIPA Section 427 by creating a serious penalty for practitioners and suppliers who bill the Medicare program for custom-fabricated orthotics and prosthetics but are not considered “qualified”