COALITION OF

Wound Care Manufacturers

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Sent electronically to policya.drafts@noridian.com and to policyb.drafts@noridian.com

Re: LCD Comments on Draft LCD DL24273, *Application of Bioengineered Skin Substitutes: Ulcers (of Lower Extremities)*

Dear Drs. Hecker and Mangold,

On behalf of the Coalition of Wound Care Manufacturers ("Coalition") , I am pleased to submit the following comments in response to the Noridian Administrative Services' (NAS) draft LCD, "Application of Bioengineered Skin Substitutes: Ulcers (of Lower Extremities" (DL 24273). The Coalition represents leading manufacturers of surgical dressings and other medical devices and supplies used by Medicare beneficiaries for the treatment of wounds. Many of our members produce biologic products to treat patients with chronic wounds and therefore have a vested interest in this policy. We appreciate the opportunity to offer our comments.

While the Coalition appreciates Noridian's innovative approach in trying to address this product sector, there are significant problems with this policy. In addition to our comments below, many of our Coalition members will be submitting individual comments to this draft LCD.

General Comments

The Coalition noticed several areas of inconsistency within this draft LCD. These include the following:

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- In the section titled, "Limitations of coverage" NAS addresses the number of applications for Venous Leg Ulcers (VLU) and Diabetic Foot Ulcers (DFU) in paragraphs 1, 4 and 6. However, paragraph 1 is inconsistent with paragraph 4. As such, the Coalition recommends deleting paragraph 1 as the number of applications is inconsistent with and is already being addressed in paragraph 4.

- Throughout the policy when addressing when it is permissible to change to adjunctive therapy, NAS states: when the wound fails to heal in "greater than 6 weeks in duration" as well as when the wound fails to heal in "greater than 4 weeks in duration". The Coalition recommends deleting reference to wounds healing in "greater than 6 weeks in duration" so as to be consistent with other such limitations elsewhere in the draft LCD.

  This would align with published clinical data showing that wound (DFUs) that failed to reduce in size more than 50 percent in four (4) weeks are far less likely to close at 12 weeks than those wounds (DFUs) that did reduce in size more than 50 percent in four (4) weeks (Sheehan et al. *Diabetes Care*. 2003;26:1879-1882). This has been used to establish the benchmark period of four (4) weeks of conventional wound care before utilizing adjunctive forms of wound care.

  In addition, it would allow for consistency among Medicare medical policies – which all have the benchmark period of four (4) weeks of conventional wound care before utilizing adjunctive forms of wound care.

Finally, the Coalition is concerned over the lack of consistent terminology to address the products covered under this draft LCD. The draft LCD utilizes several terms. At various points throughout the LCD, the following terms are used: bioengineered skin substitutes, product/products, skin substitutes, and devices. With the different types of products available and the slight nuances between products, the most precise language in terms of dealing with these products is critical. We do not believe that the term "skin substitutes" adequately – or accurately – describe all of the products that are in the marketplace and that are subject to this draft policy. Clinical associations that are providing comments to this draft LCD will likely be discussing more appropriate terminology to address this product sector. As such, for the sole purpose of our comments, we have utilized the term "biologic products" in this document to be consistent with the nomenclature used by NHIC, NGS and CGS in the title of their model LCDs ("Biologic Products for Wound Treatment and Surgical Intervention".) This is also stated in our recommendations under "Nomenclature."

Specific Comments

The Coalition has provided our specific comments below in the order in which they appear in the draft LCD.

AHRQ Technology Assessment

Noridian stated in this draft policy that it will consider making changes to its LCD depending on the outcome of the AHRQ Technology Assessment (TA) on Skin Substitutes. The Coalition had significant issues with the TA. We found its methodology to be flawed, it listed and categorized biologic products inaccurately, and the definitions for bias and other inaccuracies in the report were very troublesome.

More importantly, it is disconcerting that Noridian would utilize information from the AHRQ TA in their LCD without allowing for public comment. Therefore, we strongly recommend that if Noridian chooses to use any information from the final AHRQ TA - especially that which negatively impacts coverage, Noridian should place the new LCD out for public comment prior to it becoming final.

TheraSkin®

The Coalition appreciates Noridian's decision to cover TheraSkin®. The Coalition trusts that since NAS tentatively covers TheraSkin® in this draft LCD, that NAS will in fact include TheraSkin as a covered product under the final version of the LCD. However, the Coalition would like Noridian to provide clarification on the following statement from the draft policy:

"*tentatively adding the use of TheraSkin® (Q4121) as a payable service. However, this draft also serves as notification that NAS is also considering instituting coverage limitations under which ONLY devices for which there exists adequate clinical trial literature to clearly support their use and their superiority to standard conservative wound care therapy will be covered. We are seeking, therefore, submission by the provider and industry communities any new literature or information on current ongoing studies or trials"*

The Coalition would like to know whether this policy statement regarding considering instituting coverage limitations is related only to TheraSkin® or to all products in this category?

Furthermore, with respect to TheraSkin®, the Coalition recommends adding the reference citations to the peer reviewed journal articles that support the TheraSkin® coverage determination. These include:

Landsman AS, et al. "A Retrospective Study of 188 Consecutive Patients to Examine the Effectiveness of a Biologically Active Cryopreserved Human Skin Allograft (TheraSkin®) on the Treatment of Diabetic Foot Ulcers and Venous Leg Ulcers," Foot Ankle Spec. Feb. 2011;4(1):29-41.

DiDomenico L, et al. "A Prospective Comparison of Diabetic Foot Ulcers Treated With Either a Cryopreserved Skin Allograft or a Bioengineered Skin Substitute," Wounds 2011;23(7):184-189

Indications and Limitations of Coverage and/or Medical Necessity

Clinical Trials

In this draft policy, Noridian served notification to manufacturers that NAS is considering "instituting coverage limitations under which ONLY devices for which there exists adequate clinical trial literature to clearly support their use and their superiority to standard conservative wound care therapy will be covered". However, Noridian does not provide any guidance on what is adequate literature nor does Noridian provide clearly defined coverage parameters.

There should be consistent and clear guidance on what is expected of manufacturers when a new product comes into the marketplace and a company is seeking Medicare coverage. This will help to ensure transparency and will allow manufacturers to conduct appropriate and cost effective studies to provide to Medicare in order to gain coverage. Furthermore, Noridian does not identify what wound-care recognized criteria meets the requirements of adequate clinical trial literature to clearly support their use and to gain positive coverage. For example, does NAS look to the published clinical trials? In order to be more transparent, Noridian needs to clearly identify the criteria upon which coverage decisions are based.

The Alliance of Wound Care Stakeholders has recently written a wound care research guidance document, "Consensus Principles for Wound Care Research Obtained Using a Delphi Process," which was published in the May/June 2012 edition of *Wound Repair and Regeneration* 20 284-293. The Coalition has reviewed this document and believes it will help to assist the manufacturer community in their wound care research and believes that Noridian should use the principles and information contained in this paper as criteria for determining the type of data required for coverage.

Finally, the Coalition respectfully recommends that Noridian look to three A/B MAC contractors (NHIC, CGS, NGS) in developing its format for its final LCD. These LCDs and their accompanying brand-specific articles are great models for Noridian to determine coverage for these biologic products. We recognize the challenge in managing the LCD development process for the many biologic products that are currently on the market and that are in the pipeline. We believe that the format of the NHIC, CGS, and NGS LCDs and their clear description of coverage based on evidence would be helpful to all parties involved in this process.

Registries

In the draft policy, Noridian states that "*NAS will consider the option of covering them ONLY when used within clinical trials or active participation in a formal Registry incorporating the reporting of services provided as well as ongoing outcomes data. This would also require the study designs and/or registry standards to be consistent with AHRQ (Agency for Healthcare Research and Quality) standards and Technical Assessment criteria".*

The Coalition would request that NAS provide additional language in the policy which addresses how NAS plans to use the registries to base coverage decisions. This will ensure a more transparent process.

General Information-Graft definition

The Coalition is very concerned about the definition of the term "graft" in the draft LCD. Noridian defines what products will be considered as a '**graft'** for determining coverage as:

> "*1) a substance that at the time of application fully replaces lost tissue, and 2) achieves closure of a wound, and the expectation that the product itself will function as a permanent replacement for the lost or damaged skin".*

This 'graft' definition is medically inaccurate and not consistent with the mode of action of any currently available biologic products. Additionally, it would result in coverage denials for any currently available biologic product for wound repair for the Medicare patients.

The Coalition recommends that this section of the LCD be eliminated. Instead, coverage decisions for biologic products should be based on evidence-based information from clinical studies, retrospective studies or data reviews, meta-analysis, registry information and ongoing clinical evaluations.

Nomenclature

Noridian has stated that it would "only cover products (other than Q4101, Q4106 or Q4121) that are specifically FDA-labeled as "skin substitutes" and for use in the types of ulcers considered in this LCD".

As a preliminary matter, the draft LCD does not provide an accurate summary of FDA's classification scheme for tissue-derived biologic wound care products. FDA classifies these devices as "dressing, wound, collagen" (Class II), or "dressing, wound and burn, interactive" (Class III) and human tissue intended for homologous use (Human Cells, Tissues and Cellular and Tissue-based Products-HCT/Ps). The FDA does not classify any of these devices as "skin substitutes." The manner in which the FDA classifies these products does not crosswalk to the Medicare program – especially when making coverage determinations. The FDA's classification of a product is not determinative of a product's status for Medicare coverage purposes; rather, eligibility for Medicare coverage is dependent on whether (a) a product is considered a "drug or biological" under Medicare law, and (b) the product otherwise meets the requirements to be covered as a drug or biological provided "incident to" a physician's service. Furthermore, the FDA does not intend for its clearance/approval process to be used for coding, payment, and coverage purposes. In fact, if that were the case we would not need the FDA/CMS parallel review process.

Medicare defines the terms "drugs" and "biologicals" as those products that:

… are included (or approved for inclusion) in the United States Pharmacopoeia, the National Formulary[1], the United States Homeopathic Pharmacopoeia, or in New Drugs or Accepted Dental Remedies (except for any drugs and biologicals unfavorably evaluated therein), or as are approved by the pharmacy and drug therapeutics committee (or equivalent committee) of the medical staff of the hospital furnishing such drugs and biologicals for use in such hospital.[2]

Several tissue-derived biologic wound care products are the subject of USP monographs, including but not limited to: Small Intestinal Submucosa Wound Matrix (e.g., OASIS® Wound Matrix and OASIS® Ultra Tri-Layer Matrix), Cryopreserved Human Fibroblast- Derived Dermal Substitute (e.g., Dermagraft), and Graftskin (e.g., Apligraf). As such, these products are considered a "drug or biological" under Medicare law, notwithstanding FDA's classification of such products as a "wound dressing". In addition, many of the HCT/Ps have USP issued monographs under the heading "Human Acelluar Dermal Matrix"(e.g., Graftjacket® RTM), while others are in the process of being incorporated into draft USP monographs. Insofar as such products meet the remaining "incident to" requirements, such products should be identified as covered.

Furthermore, Noridian utilizes the term "skin substitutes" throughout this policy. The term "skin substitutes" is inappropriate to describe the range of biologic products that the LCD purports to cover. It is not used by the FDA in its classification and CMS' division that addresses HCPCS coding for these products also abandoned the term "skin substitute" effective in 2010. None of the HCPCS Q codes in this product category have the term "skin substitutes" attached to them in the descriptor.

The Coalition would like to recommend that NAS re-review the proposed non-covered items to determine whether they meet the Medicare standard for Part B coverage. We would further recommend that NAS eliminate referring to these products as "skin substitutes" (in general) or "wound dressings" (for non-covered products). This terminology is not accurate. Clinical associations that are providing comments to this draft LCD will likely be discussing more appropriate terminology to address this product sector.

As stated in our earlier general comments, for the sole purpose in this document, we have utilized the term "biologic products" to be consistent with the nomenclature used by NHIC, NGS and CGS in the title of their model LCDs ("Biologic Products for Wound Treatment and Surgical Intervention".)

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[1] The United States Pharmacopoeia and the National Formulary are merged into one compendium.

[2] Soc. Sec. Act § 1861(t)(1).

Coverage of OASIS® Wound Matrices

The draft LCD states that, in addition to other biologics, it will not provide coverage for OASIS® Wound Matrix and OASIS® Ultra Tri-Layer Matrix because such products are at most non-separately payable "biologic wound dressings". The Coalition is extremely concerned about the precedent that Noridian is setting by withdrawing coverage for a product that has been previously covered without explicitly addressing why it proposes to withdraw coverage.

While the draft LCD suggests that the decision was based, at least in part, on Noridian's judgment that the clinical evidence is insufficient to support a determination that OASIS® Wound Matrix and OASIS® Ultra Tri-Layer Matrix are "reasonable and necessary" in the treatment of Medicare patients, the Coalition would like to point out that Noridian previously reviewed the evidence supporting coverage for OASIS® Wound Matrix and determined that it was reasonable and necessary and warranted coverage. The LCD released by Noridian on June 15, 2007 included language that Noridian was providing coverage for OASIS® Wound Matrix based on "the substantial amount of literature that has emerged in review of the use of this product." In the April 10, 2012 draft LCD Noridian cited no new evidence that caused it to change its determination. We are not aware of any evidence that would support such a change in Noridian's assessment of the effectiveness and safety of OASIS® Matrix products.

We maintain that both OASIS® Wound Matrix and OASIS® Ultra Tri-Layer Matrix should be covered by Noridian for the following reasons:

- They both meet Medicare's definition of "biologicals" as defined above. Both OASIS® products are the subjects of a USP monograph and meet the USP standards. Both OASIS® products are not usually self-administered. Both OASIS® products are furnished by the treating physician. Both OASIS® products are administered by the treating physician. Both OASIS® products are reasonable and necessary for the management of certain wounds (it was administered on or after the date of the FDA's clearance/approval; it is reasonable and necessary for the individual patient; and all other applicable coverage requirements are met).

- Both OASIS® products are FDA-cleared for the management of 8 types of wounds. Clinical data from 5 randomized controlled trials support that OASIS® products are reasonable and necessary for the management of the types of wounds discussed in Noridian's LCD. A systematic review of 20 randomized controlled trials found that 5 of the trials showed an increased proportion of ulcers healed at the end of the study and a reduced time to healing over the control arm. Only 2 of the 5 studies (those with OASIS® Wound Matrix and APLIGRAF®) used all 7 of the FDA guidance document's desirable characteristics of clinical trials. The review clearly demonstrates that the OASIS® studies are of similar high quality to the studies submitted and reviewed by FDA for products subject to PMA.

- Noridian used the 2 randomized controlled trials (that were available at that time) and the systematic review to extend coverage to the OASIS® products in 2007. In the five years

since Noridian made this positive coverage determination, 3 additional OASIS® products randomized controlled trials have been published, no evidence has been published that should change Noridian's positive coverage, and no characteristics of the OASIS® products have changed.

As such, the Coalition recommends that Noridian continue to cover OASIS® Wound Matrix and OASIS® Ultra Tri-Layer Matrix for the management of partial and full-thickness wounds, pressure ulcers, venous ulcers, chronic vascular ulcers, diabetic ulcers, trauma wound (abrasions, lacerations, second-degree burns, skin tears), drainage wounds, and surgical wounds (donor sites/grafts, post-Mohs' surgery, post-laser surgery, and wound dehiscence). This positive coverage will be consistent with the 3 LCDs (NHIC, NGS, and CGS) that have stringent clinical evidence coverage thresholds. In fact, the Coalition recommends that Noridian use the LCDs (*Biologic Products for Wound Treatments and Surgical Interventions*) and Articles (*OASIS® Wound Matrix and OASIS® Ultra Tri-Layer Matrix*) created by NHIC, NGS, and CGS as the model for the final Noridian LCD and Article.

Conclusion

The Coalition appreciates the opportunity to provide our comments on this very important draft LCD. The Coalition believes that physicians and Medicare beneficiaries should have access to the full-range of biologic products that are eligible for "incident to" coverage under Medicare and are supported by substantial clinical evidence from the published literature. If you need further information or have any questions, please do not hesitate to contact me.

Sincerely,

Marcia Nusgart R.Ph

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Executive Director