ALLIANCE OF
WOUND CARE
STAKEHOLDERS
POWER THROUGH COLLECTIVE ADVOCACY

November 6, 2014

Novitas Solutions
Medical Policy Department
Union Trust Building
Suite 600
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Pittsburgh, PA 15219

Submitted electronically to: jackie.dunn@novitas-solutions.com

RE: DRAFT Local Coverage Determination (LCD) for Application of Bioengineered Skin Substitutes to the Lower Extremity for Chronic Non Healing Wounds (DL27549)

Dear Ms. Dunn:

On behalf of the Alliance of Wound Care Stakeholders ("Alliance"), we are pleased to submit the following comments in response to the draft local coverage determination for Application of Bioengineered Skin Substitutes to the Lower Extremity for Chronic Non Healing Wounds ((DL27549)). The Alliance is a nonprofit multidisciplinary trade association of health care professional and patient organizations whose mission is to promote quality care and access to products and services for people with wounds through effective advocacy and educational outreach in the regulatory, legislative, and public arenas. These comments were written with the advice of Alliance clinical specialty societies and organizations that not only possess expert knowledge in complex chronic wounds, but also in wound care research. Many of our members utilize Bioengineered Skin Substitutes in their practices as an adjunctive therapy when treating a patient with a chronic non-healing wound. As such, we have a vested interest in this policy. A list of our members can be found at www.woundcarestakeholders.org.

General Comments

As stated in our specific comments below, the Alliance is concerned with Novitas using the term "bioengineered skin substitutes". This term is not a technically accurate term and does not describe the technology that is either currently or will be in the marketplace for products that contain living cells or constitute tissue-based products intended for use in the management, treatment, or healing of skin wounds. Historically, these products have been referred to as "skin substitutes" in reference to their initial use as substitutes for skin grafts in clinical procedures. However, over time, the usage of these products shifted toward chronic ulcers where grafts are infrequently used and not standard of care. Moreover, newer products in this category may look nothing like skin and, indeed, have not been designed to function as skin replacements. Thus, there is a need to define terminology in the context of skin wounds as opposed to skin grafting procedures. As such, the Alliance recommends that Novitas adopt the term "Cellular and/or tissue based products for wounds" ("CTPs") which does

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accurately describe and is broad and inclusive of both current and future technology. We would respectfully point out that other organizations and contractors are beginning to adopt this verbiage in the following examples:

- The American Society of Testing and Materials (ASTM) is currently revising its nomenclature on its guidance documents on this product sector to align with the CTP nomenclature.
- In addition, Cigna Government Services is utilizing the term "Cellular and/or Tissue Based Products for Wounds" as the title for its LCD.
- Historically, the AMA-CPT Editorial Panel intended to change the words "skin substitute" in its grafting code descriptors to a more clinically appropriate term in 2012, but AMA was concerned that it would affect Medicare payment and coverage for this work. If the MACs begin referring to these products with correct terminology, we can then request a correction to the CPT® Skin Substitute grafting code descriptors.

The Alliance voted to adopt this term in 2013 which has since been used since by its clinicians in clinical articles, publications and speeches. Thus, we will be using the acronym "CTPs" when referring to Cellular and/or tissue based products for wounds in this document.

The Alliance recognizes the challenges and difficulties that the A/B MAC contractors such as Novitas are facing in managing the LCD development process with new CTPs entering the marketplace. We recognize that Novitas has attempted to establish a fair, balanced and accurate coverage policy. However, this draft policy falls short and the Alliance has significant issues with this draft policy as our specific comments will strongly reflect.

The draft language in the policy gives the appearance that Novitas will allow expanded treatment options for clinicians based upon their clinical decision making by including more CTPs. The Alliance supports this medical decision making approach. However, the language is conflicting and makes statements such as "specific products may be considered non-covered based on clinical literature that establishes inferiority in head to head studies with other products" and "overall body of published evidence regarding the safety and efficacy of bioengineered skin substitutes is limited and does not clearly demonstrate established or reproducible benefits of these products compared with optimal wound care". These statements lead us to believe that if a product does not have adequate studies then Novitas will not cover the product despite the clinicians' decision making.

CTP products, as an advanced therapy, have helped our members treat patients with chronic wounds that have not progressed to healing despite best standard of care approaches. Therefore clinicians use CPTs for these non-healing wounds to achieve closure and avoid complications. We question whether most of the products listed in this policy will be covered, even with including the patient's medical necessity documentation as part of the clinical decision-making. We recommend that Novitas utilize more straightforward language in the LCD. It is currently unclear whether Novitas will cover products listed in the policy and how Novitas will judge the supportive clinical evidence for each product used. If this is the case, then we would also recommend that Novitas clearly identify what evidence they are seeking and if a product meets those criteria, then it would be covered.

Novitas also uses the term "Biologic Wound Dressings" interchangeably with "Bioengineered Skin Substitutes". These are two separate and distinct product categories with different functions, regulatory clearances and coding pathways. A wound dressing is a material that is utilized for

covering and protecting a wound, helping to maintain an optimal wound environment, and shield the wound against the environment. These products are identified under A-HCPCS codes by product category. Yet, CTPs are designated with a "Q Code" for each individual product based on their unique qualities and function. CTPs all contain viable or non viable cells and/or are derived from biological tissue with intrinsic activity, are usually not removed from the wound, are uniquely utilized for their influence on the healing process – whether they have a positive influence on the healing process without incorporation OR have the ability to stabilize or support healing through incorporation in whole or part into the regenerating tissue. Furthermore, dressings and CTPs are used differently clinically in treating wounds. Dressings are used as standard, conventional treatment. CTPs, however, are used as advanced therapy to influence the cellular response in the wound so as to aid in wound closure, when standard dressings have not been effective. All the products listed in this draft LCD are CTPs and are **NOT** wound dressings as they promote wound healing by interacting directly or indirectly with the wound bed.

The policy is fraught with confusing and inconsistent language, which we have identified in our specific comments below. We highly recommend that any inconsistencies and/or confusing language be addressed and corrected prior to issuing this policy in final. This is imperative to our clinicians – since they will be subjected to payment audits based on this policy. The Alliance has provided specific comments regarding terminology and inconsistent language. We have presented them not necessarily in order of importance but in order that they appear in the draft LCD. The issues are as follows:

Specific Comments

The Term "Bioengineered Skin Substitute" is Clinically Inaccurate and Should be Replaced with the More Inclusive Descriptor "Cellular and/or Tissue Based Products for Wounds (CTPs)".

As mentioned above, the term "bioengineered skin substitute" is clinically inaccurate and should be replaced with more inclusive descriptor "Cellular and/or tissue based products for wounds (CTPs)". The term is not a technically accurate and does not describe the technology. Instead, the Alliance recommends that Novitas adopt the term "Cellular and/or tissue based products for wounds" which does accurately describe all technologies in this sector and is broad and inclusive of both current and future technology. The Alliance adopted of this term and we will be using the acronym "CTPs" when referring to Cellular and/or tissue based products for wounds in this document.

Also, the term "skin substitute" is misleading and inaccurate to describe the products that are the subject of this LCD for the following reasons:

- This term is not used by either the FDA in its classification of these biologic products nor by CMS in its coding descriptors.

- The CMS HCPCS Work Group abandoned the term "skin substitute" effective in 2010 when a manufacturer requested that CMS delete this term since it was an incorrect descriptor. The manufacturer stated at the 2010 CMS HCPCS Public Meeting that this language was incorrect

since allografts are mislabeled as "skin substitutes." Allografts differ in structure, tissue origin, and in some cases differ from biologic products in terms of how they are approved by the FDA (human skin for transplantation not devices). CMS thus changed the descriptors and eliminated the term "skin substitutes" from all of the Q-HCPCS codes for these items.

- In addition, the Agency for Healthcare Research and Quality (AHRQ), in its 2011 draft technology assessment on skin substitutes stated that these products were not "skin substitutes."

In 2012, the Alliance embarked on a yearlong effort to determine an appropriate term. In order to achieve a fair and inclusive process for determining this new term, a workgroup of scientists, clinical organizations, and business entities was created from the Alliance to address this issue. Such diverse multidisciplinary clinical specialties societies as the American Podiatric Medical Association, Society of Vascular Medicine, American College of General Surgeons, Society Association for the Advancement of Wound Care, American Professional Wound Care Association and the American Physical Therapy Association participated in this process.
The following were the criteria used to select the new term:

- be based on science
- be inclusive of all products in marketplace today with eye towards what is in the "pipeline"
- be neutral in regards to FDA--- nothing that would be offensive and not allow manufacturers to get their products approved in the future if needed
- ensure that all products are eligible for Medicare coverage as drugs and biological consistent with their USP monographs
- easily understood by clinicians
- easily linked to the existing CPT codes for the application of the products

The Alliance reviewed over 18 different names during this process and selected the term "Cellular and/or tissue based products for wounds" since it met the criteria listed above. As such, the Alliance recommends that Novitas not utilize the term "skin substitute" in its policy and instead use the term "cellular and/or tissue based wound care products for wounds (CTPs)".

Coverage Indications, Limitations, and/or Medical Necessity

Bioengineered Skin Substitutes vs. Biologic Dressing

As stated above, Novitas utilizes the term "biologic dressings" interchangeably with "bioengineered skin substitutes". In the Skin Grafting or Replacement section, Novitas states, "bioengineered skin substitutes have been developed in an attempt to circumvent problems inherent with autografts, allografts and xenografts. These constitute biologic dressings….."

The Alliance respectfully disagrees with Novitas, as it is scientifically incorrect.
CTPs/Bioengineered skin substitutes are NOT biologic wound dressings and should not be referred to interchangeably with one another. A "bioengineered skin substitute" promotes wound healing by interacting directly or indirectly with the body tissues. There is direct effect in the wound bed as a result. The role of CTPs is not to cover and protect wounds but rather to stimulate endogenous

healing, although whether or not an individual CTP is capable of exerting effects on wound healing must be determined by adequate evidence. Yet, as stated above, a wound dressing is a material that is utilized for covering and protecting a wound, helping to maintain an optimal wound environment, and shielding the wound against the environment without exerting any direct effect in the wound bed. These terms should not be utilized interchangeably.

Furthermore, the Alliance is concerned and has significant issues with the following language, "all products, unless they are specifically FDA-labeled for use in the types of ulcers considered in this LCD, will be considered to be biologic wound dressings and part of the relevant E/M service provided and not separately payable." As mentioned previously, Novitas has not correctly identified the regulatory status of these products. The FDA recognizes three regulatory pathways for CTPs: PMA, 510K and HCT/Ps. CTPs have different regulatory pathways depending on the source of the tissue. HCT/Ps do not have a specific indication for use like PMA and 510K products. Instead, they have a broad intended use statement. Just because a CTP product is not labeled for use in the types of ulcers listed in this policy – does NOT deem them to be a wound dressing. As we have already differentiated wound dressings from cellular and/ or tissue based products [CTP] above, it is not correct for Novitas to determine that a CTP, which has been cleared as a human HCT/P with FDA and has broad indications not specified in labeling, to eliminate its use based on this clearance process, or to designate it as a wound dressing.

The Alliance recommends that Novitas remove from the LCD the verbiage regarding products not being separately payable and included in the relevant E/M service unless they are labeled for use in the types of ulcers considered in the LCD. Instead, the section should read: "each marketed product is eligible for Medicare reimbursement if it is provided in accordance with their proposed use." The Alliance also recommends that Novitas not use the term "biologic wound dressings" interchangeably with "CTPs/bioengineered skin substitutes." It is scientifically inaccurate to do so.

Skin Grafting or Replacement – Classification of Products

The Novitas policy is problematic in terms of how the products are actually defined. The definitions of "Allografts," "Human Skin Allografts," and "Acellular Matrices" are confusing and misleading. For instance, in the definition of an "Allograft," the draft LCD specifically states "from human skin" which is exactly the same as the second category definition of "Human Skin Allograft". The term "Acellular Matrices" is limited to "derived from other than human skin". There are ample acellular matrices derived from human skin (e.g., Graftjacket, DermACELL, and AlloSkin AC]. Furthermore, it is unclear where amniotic products that are acellular [e.g., Epifix (MiMedx), AlloWrap (AlloSource)] fit in to the classifications/definitions contained in the policy. These products are not composed of skin, but rather amniotic membranes.

The Alliance suggests that if Novitas is attempting to define the different product types in this product sector within the LCD, that it is done correctly. The Alliance has provided a chart which may be helpful in assisting you with your definitions and classifications. [Attachment A]

Food and Drug Administration Approval Processes for CTPs

Novitas states that "each marketed product is required to have designated FDA approval for Medicare

reimbursement for its proposed use". The Alliance is concerned that Novitas is requiring information that does not exist for some of these products in order for the coverage criteria to be met. CTPs have several FDA pathways to enter the market and not all of them require FDA "approval".

PMA and 510K products are approved with specific indications for use and have FDA approved package labels. These products will receive an approval letter from the FDA. However, Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps) have another FDA pathway, have package instructions for use, but do not receive FDA "approval".

The authority for the HCT/P framework is the Federal Food Drug & Cosmetic Act, which requires premarket clearance or approval for certain products, Sections 351 and 361 of the Public Health Service Act (PHS Act), and 21 CFR 1271, which FDA promulgated to effectuate the requirements for tissue products. The FDA regulatory framework for HCT/Ps has been in place and routinely enforced for 14 years. A product eligible for regulation as a 361 HCT/P solely under Part 1271 is not subject to premarket clearance or approval. To be a 361 HCT/P, the product must meet all four of the following criteria:

1. It is minimally manipulated.
2. It is intended for homologous use as determined by labeling and advertising.
3. Its manufacture does not involve combination with another article, except for water, crystalloids, or a sterilizing, reserving, or storage agent.
4. It does not have a systemic effect and is not dependent upon the metabolic activity of living cells for its primary function.

The overarching policy for this two-tiered framework is that, in developing the regulatory framework for HCT/P products, FDA considered the long history of clinical use of tissue products and the existing body of clinical evidence for human tissue. Based on this body of evidence, the FDA determined that when they are minimally manipulated, intended for a homologous use, not combined with other articles, and do not have a systemic effect, tissue products are ***safe*** and may be marketed and used without any FDA pre-market review, clearance, or approval – thus they do not have any FDA approved package instructions nor do they receive FDA "approval".

While Novitas recognizes in the draft policy that HCT/Ps do not require PMA or 510K approval, there is still a statement in the draft policy which seems to preclude these products for reimbursement since they do not receive FDA "approval" for their proposed use.

The Alliance recommends that Novitas edit the draft policy language which reads, "each marketed product is required to have designated FDA approval for Medicare reimbursement for its proposed use" and instead utilize the following language, "each marketed product is eligible for Medicare reimbursement if it is provided in accordance with their proposed use."

Chronic Non Healing Wound Definition

Novitas is inconsistent with their definition of chronic non- healing wounds. In the procedural coding section, Novitas states, "A wound that fails to show evidence of healing by contraction and

advancement of epithelial margins following 6 weeks of optimization – including all aspects of standard therapy, is considered a chronic non healing wound". However, in the indications and criteria for specialized wound treatment for chronic wounds, Novitas states that "a chronic wound is a wound that does not respond to standard wound treatment for at least a 30 day period during standard conservative treatment". Novitas goes on to say it will cover a "Diabetic foot ulcer after failing to respond to conservative wound care measures of greater than 4 weeks", yet... "will cover specialized wound therapy when a venous stasis ulcer fails to respond to documented appropriate care for greater than 2 months".

Defining a chronic non healing wound as a wound that does not respond to standard wound treatment for 4 weeks is more consistent with the literature, and with all other LCDs and NCDs related to wound products, therapies and devices. The Alliance recommends that Novitas utilize the standard by which all policies have been written and use the 30 day or 4 week timeframe and not the 6 weeks as the measure of a chronic non -healing wound. Furthermore, the Alliance recommends that Novitas clear up this inconsistency prior to this policy becoming final.

Podiatrists

The Alliance is concerned that Novitas will not be providing coverage for the service or the product when they are applied by a podiatrist. The draft LCD states, "patients receiving a skin substitute graft must be under the care of a physician licensed by the state with full scope of practice for the treatment of their systemic disease process". Furthermore, Novitas states in the draft policy, "This LCD does not endorse particular products for separate payment so the MD/DO/NPP documentation must support the need for skin replacement surgery and the product used". It may simply be an oversight, however, the Alliance urges Novitas to recognize podiatrists as providers who can and do treat patients with wounds – especially diabetic foot ulcers.

Criteria for Specialized Wound Treatment for Chronic Wounds

Novitas states, "In all wound management the ulcer must be free of infection and underlying osteomyelitis with documentation of the conditions that have been treated and resolved prior to the institution of biologic or bioengineered skin substitute therapy". The Alliance's concern specifically lies with the language "these conditions have been successfully treated and resolved".

The Alliance recommends that the language simply read, "In all wound management, the ulcer must be free of infection and underlying osteomyelitis" and that Novitas eliminate the rest of the sentence prior to the LCD becoming final.

Limitations/Utilization

The Alliance has significant issues with the utilization section of the LCD. First, Novitas states that the utilization of 3 or more applications of a skin substitute product in an episode of care (which previously was defined as 21 days) for all indications may be subject to prepayment medical review. However, Novitas also stated in the limitations section, "one specific graft will be allowed in a 21 day period – unless it was per FDA guidelines". This language is confusing and is conflicting

with FDA guidelines for the products. Novitas stresses that the products should be utilized in accordance with the FDA instructions for use for that product. Yet, Novitas has placed conflicting limitations within the policy. The Alliance recommends that Novitas simply state that the limitations and utilization for a specific product be based upon the labeling of that product. This would be clear for clinicians to understand, not allow for confusion and be in line with the statements Novitas has made throughout the document regarding referring to and following FDA labeling.

Furthermore, as stated above, the LCD discusses an "episode of care" as a 21 day event and that the clinician can only apply one skin substitute per episode OR in compliance with FDA assessments and submitted guidelines for the specific product. This conflicts with the judgment of the clinician based on the response of a wound. Reapplication is dependent on FDA labeling and/ or the clinical need for reapplication.

Novitas goes on to state that FDA labeling for most skin substitute grafts include language suggesting multiple applications, even though Medicare does not expect that every ulcer in every patient will require the maximum number of applications. The Alliance has concerns about the conflicting and confusing language contained in this draft policy in this critical section related to the number of applications. Again, the Alliance recommends that Novitas simply revised their policy language to have clinicians follow the FDA labeling with respect to the utilization and application of these products. We also recommend that the documentation in the medical record support the use of the product.

Finally, the Alliance has concerns pertaining to the language that retreatment of a successfully healed ulcer is not covered nor is retreatment of an ulcer following an unsuccessful course of treatment. This is hugely problematic as patients can down the road, due to mechanical issues often not resolvable, develop another ulcer in the same location or can have further breakdown OR can be placed on another type of product after an unsuccessful course of treatment on one type of product. The Alliance does not agree with the language as drafted in this policy as it is not appropriate to eliminate coverage for Medicare beneficiaries if they have further breakdown after a successful treatment of a wound or if a particular product was tried unsuccessfully on a patient and the clinician determines that another product may be used to help heal the wound. We therefore recommend that this language be eliminated from the policy as it is not clinically sound.

Clinical Evidence

Novitas states that each product will be assessed on the basis of the available scientific evidence specific to that product. Yet, Novitas does not identify specifically what it is looking for. The Alliance suggests that Novitas provide the specific criteria it will use for determining coverage for any CTP so as to guide the wound care community in its research and publication efforts. This will also allow for a more transparent process for manufacturers when submitting a CTP for coverage.

The Alliance believes that evidence can be established for coverage not only through RCTs but also through registry data, retrospective clinical studies (includes populations of patients with multiple co-morbid conditions who are commonly eliminated in most RCTs), scientific evidence and expert

knowledge. This approach is consistent with the widely accepted definition of evidence-based medicine but also adopted by the newly created important organization Patient Centered Outcomes Research Institute (PCORI). We believe that payers should cover these CTPs if the manufacturers provide clinical evidence in peer reviewed journals showing positive outcomes of their products without regard of how they are regulated by the FDA—Class II, III or HCT/Ps.

Product Wastage

The Alliance is concerned about the way the product wastage section is worded as it seems to imply that the same product should be utilized on several patents prior to discarding. This not only goes against many if not all of the manufacturer recommendations but also against standards of care (i.e. contamination and viability of product etc.). Furthermore, the apparent response regarding a statement by Novitas that providers in the past did not necessarily choose the appropriate product by packaging size is contradictory to its own policy. The previous policy was very limiting and only approved products that had packaging of similar sizes.

We strongly disagree with the statement that Novitas will not reimburse for the entire single use product, regardless of what is used and what is discarded. We are recommending this statement be removed. As noted in the Medicare claims processing manual, Chapter 17, Section 40:

> *If after administering a dose/quantity of the drug or biological to a Medicare patient, a physician, hospital or other provider must discard the remainder of single use vial or other single use package, the program provides payment for the amount of drug or biological administered and the amount discarded, up to the total amount of the drug or biological as indicated on the vial or package label.*

It would be inappropriate and against CMS guidelines not to reimburse for the entire product. Numerous products have various sizes and while we agree that in order to minimize waste, the provider should always utilize the most appropriate size it would be inappropriate not to reimburse for the single use piece. If Novitas is concerned about tracking wastage it is our recommendation the policy be updated to include the utilization of the JW modifier so it is clear the portion of the product that was utilized and the portion that was discarded.

Conclusion

On behalf of the Alliance of Wound Care Stakeholders, we appreciate the opportunity to submit these comments. We have also included, with our email submission, a chart that more concisely outlines our concerns and recommendations. If you have any questions or would like further information, please do not hesitate to contact me.

Sincerely,

Marcia Nusgart R.Ph.

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Executive Director