

## CMS PROPOSES ENHANCED PROVIDER ENROLLMENT DISCLOSURE OBLIGATIONS AND ENFORCEMENT AUTHORITY

### OVERVIEW

On March 1, 2016, the Centers for Medicare & Medicaid Services ("CMS") issued a **Proposed Rule** that would make several sweeping changes to the Medicare screening and enrollment requirements for providers and suppliers. In particular, the Proposed Rule would require providers and suppliers to report certain affiliations with other providers/suppliers that may pose a risk of fraud, waste or abuse to the program and would significantly enhance the reenrollment bar. CMS believes the Proposed Rule would help make certain that entities and individuals who pose risks to the Medicare program are removed from and kept out of the Medicare program for extended periods of time.

### PROPOSED AFFILIATION DISCLOSURES

The Proposed Rule would require certain providers and suppliers to disclose whether any of its owning or managing employees or organizations has, or within the previous five years had, an "affiliation" with a currently or formerly enrolled Medicare, Medicaid or CHIP provider or supplier that: 1) has uncollected debt to Medicare, Medicaid or CHIP regardless of the amount of debt or whether debt is in the process of repayment or appeal; 2) has been subject to payment suspension under a federal health care program; 3) has been excluded or is excluded from participation in Medicare, Medicaid or CHIP regardless of whether the exclusion is being appealed; or 4) had its Medicare, Medicaid or CHIP enrollment denied, revoked or terminated regardless of the reason and whether such sanction is being appealed. The Proposed Rule defines "affiliation" to include a five percent or greater direct or indirect ownership interest, a general or limited partnership interest, an interest exercising managerial or operational control, an interest in which an individual is acting as an officer or director of the entity, or certain reassignment relationships.

Under the Proposed Rule, CMS would be permitted to deny or terminate enrollment based on an affiliation that it concludes poses an "undue risk" of fraud, waste or abuse. While this Proposed Rule generally requires providers and suppliers to disclose these affiliations upon initial enrollments or revalidations, it would also require a provider or supplier to submit a change of information to report new or changed information regarding existing affiliations.

### PROPOSED ENHANCED REENROLLMENT BAR

The Proposed Rule would also make significant changes to the reenrollment bar. First, the Proposed Rule would increase the maximum reenrollment bar from three years to ten years. Additionally, CMS would be able to add up to three more years to a reenrollment bar if CMS determines that the provider or supplier is attempting to circumvent its existing reenrollment bar by enrolling under a different name, numerical identifier or business entity. Finally, CMS could impose a reenrollment bar of up to twenty years if the provider or supplier is being revoked from Medicare for the second time.

### OTHER MISCELLANEOUS PROPOSED CHANGES

In addition, the Proposed Rule would authorize CMS to:

1. Deny or revoke a provider's or supplier's Medicare enrollment if CMS determines that the provider or supplier is currently revoked under a different name, numerical identifier or business identity. This provision is designed to target providers and suppliers who try to evade a revocation or reenrollment bar by opening a new provider to effectively replace the revoked provider.
2. Revoke a provider's or supplier's Medicare enrollment, including all practice locations, regardless of whether they are part of the same enrollment profile, if the provider or supplier billed for services performed at a location it knew or should have known did not comply with Medicare enrollment requirements.
3. Revoke a physician's or eligible professional's Medicare enrollment if he or she has a pattern or practice of ordering, certifying, referring or prescribing Medicare Part A or B services, items or drugs that are abusive; represents a threat to the health and safety of Medicare beneficiaries; or otherwise fails to meet Medicare requirements.
4. May prohibit a prospective provider or supplier from enrolling in Medicare for up to three years if its enrollment application is denied

because provider submitted false or misleading information within (or omitted information from) its application in order to gain enrollment.

5. May deny a provider's or supplier's Medicare enrollment if the provider or supplier is currently terminated or suspended from participation in a state Medicaid program or any other federal health care program or if the provider's or supplier's license is currently revoked or suspended in a state other than that in which the provider or supplier is enrolling.
6. May revoke any and all of a provider's or supplier's Medicare enrollments, including those under different business names, numerical identifiers or provider types, if the provider is revoked under applicable Medicare enrollment regulations set forth in 42 C.F.R. 424.535(a). For example, a business entity may have a hospital and a group practice enrolled under the same tax identification number. If the hospital enrollment is revoked for noncompliance with enrollment requirements (or any other reason identified in 42 CFR § 424.535(a)), CMS could also revoke the group practice's enrollment, even if that enrollment is in another state.

## **PRACTICAL TAKEAWAYS**

The Proposed Rule recommends far-reaching enhancements to CMS authority under provider screening and enrollment. If finalized, the Proposed Rule would heighten providers' and suppliers' disclosure obligations regarding current and new affiliated relationships. The Proposed Rule would also increase the impact of a potential revocation of one provider or supplier on other providers or suppliers owned by the same business entity.

The Proposed Rule is available for comment until 5 PM on April 25, 2016. If you are interested in submitting a comment or would like additional information about the Proposed Rule, please contact:

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