



Alert

Life Sciences and Health Care Client Service Group

To: Our Clients and Friends

September 22, 2010

New Medicare Enrollment Requirements Will Burden Providers and Suppliers

Today, September 22, 2010, the Centers for Medicare and Medicaid Services (“CMS”) issued proposed rules that will dramatically change the enrollment process for Medicare providers and suppliers, including new enrollment following a change of ownership. The proposed rules are intended to carry out various provisions of the Patient Protection and Affordable Care Act (“PPACA”), particularly section 6401, which requires that HHS develop procedures to screen Medicare providers for risk of fraud and abuse. The rules represent a shift in CMS’ anti-fraud strategy from one that pays first and asks questions later to one designed to prevent fraud before it starts.

Many of the new requirements will be familiar to those who have enrolled in Florida Medicaid or other state Medicaid programs that require fingerprint and background checks. CMS proposes to divide providers into three categories of risk: high, moderate, and limited. Providers and suppliers are divided among the categories based on the risk and history of fraud and abuse for that provider or supplier type. CMS considered factors like state licensure (indicating a lower risk of fraud) and dependence on Medicare as the primary revenue source (indicating a higher risk of fraud).

High Risk

Providers in the High Risk Category: Non-publicly traded DMEPOS suppliers and home health agencies newly enrolling in Medicare or enrolling a new practice location.

New Enrollment Requirements Applicable to High Risk Providers:

- Verification that a provider or supplier meets any applicable federal regulations, or state requirement for the provider or supplier type
- Verification of state licensure
- Database checks on a pre- and post-enrollment basis to ensure that providers and suppliers continue to meet applicable enrollment criteria

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- Unannounced and unscheduled site visits
- Criminal background checks for owners, authorized officials, delegated officials, and managing employees
- Submission of fingerprint cards for owners, authorized officials, delegated officials, and managing employees

Moderate Risk

Providers in the Moderate Risk Category: IDTFs; currently enrolled DMEPOS suppliers; currently enrolled home health agencies; hospices; independent clinical labs; community mental health centers; CORFs; and private ambulance suppliers.

New Enrollment Requirements Applicable to Moderate Risk Providers:

- Verification that a provider or supplier meets any applicable federal regulations, or state requirement for the provider or supplier type
- Verification of state licensure
- Database checks on a pre- and post-enrollment basis to ensure that providers and suppliers continue to meet applicable enrollment criteria
- Unannounced and unscheduled site visits

Limited Risk

Providers in the Limited Risk Category: Physicians; non-physician practitioners; medical groups; publicly traded providers and suppliers; SNFs; ASCs; and hospitals.

New Enrollment Requirements Applicable to Limited Risk Providers:

- Verification that a provider or supplier meets any applicable federal regulations, or state requirement for the provider or supplier type
- Verification of state licensure
- Database checks on a pre- and post-enrollment basis to ensure that providers and suppliers continue to meet applicable enrollment criteria

Application Fees and Temporary Suspensions

CMS is proposing a \$500 application fee, the proceeds of which would be used to pay for the new enrollment requirements. The fee will adjust yearly based on the consumer price index. In addition, the proposed rules permit CMS to temporarily suspend enrollment of new providers and suppliers in Medicare, Medicaid, and CHIP, either categorically or individually, if necessary to prevent fraud, waste, or abuse.

How the Rules Will Affect Our Clients

The proposed rules are an additional restriction that providers and suppliers will have to contend with when expanding their businesses. For example, since a DMEPOS supplier enrolling a new location is considered “high risk”, the supplier will have to consider the financial and administrative cost of background and fingerprint checks when deciding whether to expand to other practice sites. Investors in the healthcare industry need to carefully consider these proposed rules before acquiring or expanding enrolled suppliers.

The proposed rules are also troubling for the questions they leave unanswered. They make no mention of whether a new enrollment following a change of ownership of a previously enrolled provider will be considered “high risk”. Although publicly traded providers and suppliers are “limited risk”, the rules do not specify whether subsidiaries of publicly traded companies also fall into the limited risk category. We will submit a comment to CMS that addresses both issues and suggests that a new enrollment following a change of ownership is not “high risk” and that a subsidiary of a publicly traded provider or supplier is “limited risk.” If you have any additional comments or questions you would like to include, feel free to contact us.

The new screening procedures will be effective for newly enrolling providers beginning in March of next year. The new procedures take effect for enrolled providers beginning in March of 2012. Comments on the proposed rules are due by November 16.

We would be pleased to discuss the impact of this matter on your organization. Feel free to contact any member of the Bryan Cave [Life Sciences and Health Care](#) team.

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