PUBLICATION

Medicare Enrolled Providers – Is Your PECOS Data Current?

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Sanctions for Failure to Provide Timely Updates

Although Medicare-enrolled providers and suppliers historically were required to provide notice of changes in enrollment data, prior to the Medicare enrollment rule changes in June 2006, there were no sanctions for failing to do so. Effective June 2006, CMS changed its rules to allow the imposition of sanctions for failing to provide timely notification of changes in enrollment data. With sanctions now in place, it is important for enrolled providers and suppliers to understand the duty to report changes in enrollment information and the time frames for reporting such changes.

Failing to provide timely updates of enrollment data could result in a *deactivation of billing privileges*. 42 C.F.R. § 424.540(a)(2). Deactivation is the temporary suspension of billing privileges and does not result in a termination of the provider or supplier agreement. In order to obtain a reactivation of billing privileges, the provider or supplier may need to complete a new CMS 855 enrollment application form.

Failing to provide timely updates could also lead to a *revocation of billing privileges*. 42 C.F.R. § 424.535(a)(9). A revocation action results in an automatic termination of the provider or supplier agreement. With regard to the revocation effective date, as a general rule the revocation becomes effective 30 days following the date the written revocation notice is mailed to the enrolled provider or supplier. However, for revocation actions based on final adverse actions, the effective date of the adverse action becomes the revocation effective date. This is significant if the enrollee fails to report an adverse action at the time it occurs and then subsequently has billing privileges revoked back to an earlier effective date.

Despite the implementation of sanctions for noncompliance with the enrollment rules, CMS continued to express concern that enrollment data was not always accurate and instituted an additional change through regulations published on June 27, 2008, which became effective August 26, 2008. With this new change, CMS implemented a *one- to three-year bar to Medicare re-enrollment* following a revocation of billing privileges action. This particular change was announced in regulations published under the title, "Appeals of CMS or CMS Contractor Determinations When a Provider or Supplier Fails to Meet the Requirements for Medicare Billing Privileges." CMS did indicate that the length of the re-enrollment bar should reflect the severity of the basis for the revocation, although there does not appear to be any mechanism in place to determine if that is occurring. We have identified situations in which the facts resulting in the revocation action were substantially the same, yet the re-enrollment bar was set at one year, two years, and three years for different providers or suppliers. 42 C.F.R. § 424.535(c).

Following the bar to re-enrollment, the provider or supplier is required to resubmit an enrollment application and may or may not be allowed to re-enroll in the Medicare program. Furthermore, when a revocation occurs, CMS will automatically review any "related" Medicare enrollment files. For example, if an individual with a reportable ownership or controlling interest is also an owner or a person in control of another Medicare-enrolled entity, CMS will review the revocation to determine whether an adverse action is warranted for the associated provider or supplier.

The 2006 rule changes were silent with regard to CMS' authority to recapture payments made to a provider or supplier who failed to report a sanction and had billing privileges revoked as of an earlier effective date. In

addition to shortening the reporting time period, the changes in the 2009 Physician Fee Schedule rule discussed below, which became effective January 1, 2009, authorize CMS to initiate an *overpayment action* for services provided from the date of the reportable event. This particular change, however, is only applicable to physicians and nonphysician practitioners, those independently practicing and those in groups. Therefore, an action taken today revoking a physician or nonphysician practitioner's billing privileges, based on an unreported December 20, 2008 license suspension, would be effective December 20, 2008, with CMS authorized to seek recovery of overpayments made for dates of service after January 1, 2009, the date the latest rule change went into effect.

Requirement to Update Provider File

Until recently, the general reporting time period for most providers and suppliers was 90 days from when the change occurred, with the exception of changes in ownership or control that were required to be reported within 30 days. Due, in part, to concern that certain changes were not being timely reported, CMS modified the reporting requirements for certain suppliers to require the reporting of final adverse actions (including license suspension, certain adverse legal actions, and exclusion or debarment form participating in a federal program) and changes in practice locations within 30 days. Rather then implementing the change through regulations related to enrollment, these more recent changes were included among the provisions in the 2009 Physician Fee Schedule final rule.

Physicians and nonphysician practitioners, those independently practicing and those in groups, are required to report enrollment data changes in accordance with the following timeline:

30-day Reporting: changes of ownership, any adverse legal action, or a change in practice location.90-day Reporting: all other changes in enrollment data.

42 C.F.R. § 424.516(d).

Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) suppliers have only one reporting timeline:

30-day Reporting: changes in any information supplied on the enrollment application forms.

42 C.F.R. § 424.57(c)(2).

All other Medicare-enrolled providers and suppliers are required to report enrollment data changes in accordance with the following timeline:

30-day Reporting: changes of ownership or control, including any changes in an authorized official, delegated official, management company, or managing employee.90-day Reporting: all other changes in enrollment data.

42 C.F.R. § 424.516(d).

Providers and suppliers need to implement compliance procedures to ensure that enrollment data is accurately reported and that any change in enrollment data is both timely and appropriately reported. Stay tuned for additional reasons to keep enrollment data current.