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CMS-6058-F: Program Integrity Enhancements to the Provider Enrollment Process March 2019

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Overview of Regulations in CMS-6058-F

Introduction

CMS-6058-P

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Road Map

- ❑ New/Revised Revocation Authorities
- ❑ New/Revised Denial Authorities
- ❑ Miscellaneous Provisions

Overview of Regulations in CMS-6058-F

Introduction

New/Revised Revocation

Authorities

42 C.F.R. § 424.535

Revised Revocation Authorities

42 C.F.R. § 424.535

- ❑ **Failure to Report - revised § 424.535(a)(9).** Today, this only applies to physicians/practitioners and physician/practitioner groups. If this revision is finalized, **it will apply to all provider and supplier types.**
 - ❑ *Example:* A DME fails to report that one of its owners was convicted of a felony within 30 days of the conviction date.

- ❑ **Other program termination - revised § 424.535(a)(12).**
 - ❑ Terminated, revoked or otherwise barred from participation in a state Medicaid program or **any other federal health care program.**
 - ❑ *Example:* Dr. Smith's TRICARE enrollment is revoked due to fraudulent billing. If this authority is finalized, CMS can revoke his Medicare enrollment as well.

New Revocation Authorities

42 C.F.R. § 424.535

- ❑ **Debt referred to the United States Department of Treasury - § 424.535(a)(17).**
 - ❑ Existing debt to CMS → CMS refers the debt to the United States Department of Treasury.
 - ❑ *Example:* ABC, Inc. HHA has an existing overpayment that is not in a repayment plan. The HHA doesn't pay back the overpayment and the debt is referred to treasury.

New Revocation Authorities

42 C.F.R. § 424.535

- ❑ **Revoked under different “identity” - § 424.535(a)(18).** CMS can revoke if it determines that the provider is revoked under a different name, numerical identifier or business identity.
 - ❑ *Example: XYZ Podiatry, LLC, a clinic/group practice which is solely owned by Dr. XYZ, is revoked for abusive billing. XYZ Podiatry LLC’s DMEPOS enrollment, which has the same tax number, can also be revoked under this authority—if it’s finalized—because it’s the same entity with a different enrollment ID.*

New Revocation Authorities

42 C.F.R. § 424.535

- ❑ **Affiliation - § 424.535(a)(19).** CMS can also revoke if it determines that the provider has or has had an affiliation that poses an undue risk of fraud, waste, or abuse to the Medicare program.
- ❑ More details, including examples, will be included in sub-regulatory guidance that will be issued in the future.

New Revocation Authorities

42 C.F.R. § 424.535

- ❑ **Billing from non-compliant location - § 424.535(a)(20).** CMS may revoke a provider's Medicare enrollment, including all of the provider's practice locations regardless of whether they are part of the same enrollment, if the provider billed for services performed at a location that it knew or should have known did not comply with Medicare enrollment requirements.
 - ❑ *Example: on next slide...*

New Revocation Authorities

42 C.F.R. § 424.535

- ❑ **Billing from non-compliant location - § 424.535(a)(20).**
 - ❑ *Example:* 123 ABC, LLC has one Maryland enrollment with one Maryland practice location in Bethesda, MD. It also owns labs in five other cities in Maryland. However, these labs are not on 123 ABC, LLC's Medicare enrollment. A medical records review confirms that 123 ABC, LLC is performing services at these unreported locations and submitting the claims to Medicare.

New Revocation Authorities

42 C.F.R. § 424.535

- ❑ **Abusive ordering, certifying, referring, or prescribing of Part A or B services, items or drugs - § 424.535(a)(21).** The physician or eligible professional has a pattern or practice of ordering, certifying, referring or prescribing Medicare Part A or B services, items or drugs that is:
 - ❑ abusive;
 - ❑ represents a threat to the health and safety of Medicare beneficiaries;
 - ❑ or otherwise fails to meet Medicare. requirements.
 - ❑ *Example: on next slide...*

New Revocation Authorities

42 C.F.R. § 424.535

- ❑ **Abusive ordering, certifying, referring, or prescribing of Part A or B services, items or drugs - § 424.535(a)(21).**
 - ❑ *Example:* From January 1, 2012 to December 31, 2012, Dr. Smith certified 130 Medicare beneficiaries for home health services, but had previously treated *only 60 of them*. No qualified practitioner performed the required the face-to-face encounters before the home health certifications were made. Dr. Smith falsely signed his name on the certification form because the remaining 70 beneficiaries were not, in fact, under his care.

Questions?

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New/Revised Denial Authorities

42 C.F.R. § 424.530

Revised Denial Authorities

42 C.F.R. § 424.530

- **Payment suspension - § 424.530(a)(7).** CMS can now deny based on a Medicare or **Medicaid** payment suspension
 - *Example:* DEF, Inc., a podiatry group, currently has a New York Medicaid suspension. The group attempts to enroll in Medicare. If this revision is finalized, the group could be denied enrollment based on the Medicaid payment suspension.
- **Other program termination or suspension - § 424.530(a)(14).** The provider is terminated or suspended from participation in a State Medicaid program or **any other federal health care program** or the **provider's license is currently revoked or suspended in a State other than that in which the provider or supplier is enrolling.**
 - *Example:* Dr. Taylor has active medical licenses in three different states. Dr. Taylor's medical license is revoked in one state based on egregious professional misconduct. After Dr. Taylor's license revocation, she attempts to enroll in Medicare in the two states in which she has an active medical license.

New Denial Authorities

42 C.F.R. § 424.530

- ❑ **Revoked under different name, numerical identifier or business identity - § 424.530(a)(12).**
 - ❑ *See revocation reason above.*
- ❑ **Affiliation - § 424.530(a)(13).** CMS can deny if it determines that the provider has or has had an affiliation that poses an undue risk of fraud, waste, or abuse to the Medicare program.
 - ❑ More details to come in sub-regulatory guidance.

Questions?

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Miscellaneous Provisions

42 C.F.R. Subpart P (§ 424)

Miscellaneous Provisions

- **3-year penalty for trying to circumvent reenrollment bar.** CMS may add up to 3 more years to the provider's or supplier's reenrollment bar if it determines that the provider or supplier is attempting to circumvent its existing reenrollment bar.
 - *Example:* Dr. Johnson's solely-owned physician group, GHI, Inc., is revoked from Medicare based on false or misleading information on an application. Dr. Johnson then creates another company/group with a different tax ID number and enrolls it in Medicare. However, in reality, he keeps GHI, Inc.'s name on the signage, business cards, and continues to operate the practice as GHI, Inc., not the new company. He deceptively interacts with Medicare as though he's operating from the new group.

Miscellaneous Provisions (cont.)

- **Extension of revocation.** If a provider's or supplier's Medicare enrollment is revoked, CMS may revoke any and all of the provider's or supplier's Medicare enrollments, including those under different names, numerical identifiers or business identities and those under different types.
 - *Example:* Dr. Miller has an (1) individual enrollment as a podiatrist, (2) a clinic/group enrollment (his podiatry group), and (3) a DMEPOS enrollment (the DMEPOS enrollment connected to the group). If Dr. Miller's individual enrollment is revoked, CMS would be able to revoke the clinic/group enrollment and the DMEPOS enrollment if this authority is finalized.

Miscellaneous Provisions (cont.)

- ❑ **Opt-out change.** Today, a provider who is excluded and opts out cannot order, refer, certify, or prescribe. If this revision is finalized, providers who are **revoked by Medicare will also not** be able to order, certify or prescribe for Medicare beneficiaries if they opt-out of Medicare after revocation. 42 C.F.R. § 405.425(j) (revised).
- ❑ *Example:* If Dr. Thompson is revoked from Medicare, he will not be able to opt-out and order back and knee orthoses for his patients if this authority is finalized.

Miscellaneous Provisions (cont.)

- ❑ **Reapplication bar.** CMS may prohibit a provider from enrolling in Medicare for up to 3 years if its enrollment application is denied because the provider or supplier submitted false or misleading information on or with (or omitted information from) its application.
 - ❑ *Example:* ABC 123 Hospital, LLC tried to enroll in Medicare, but submitted false information on its application. ABC 123 Hospital, LLC is denied enrollment and has a reapplication bar of 3 years. It will be prevented from enrolling for at least 3 years if this authority is finalized.

Miscellaneous Provisions (cont.)

- ❑ **Expansion of document retention requirements.** A provider that furnishes **any** covered ordered, certified, referred, or prescribed Part A or B services, items or drugs is required to maintain documentation for 7 years.
 - ❑ *Example:* Dr. Smith prescribed a highly potent infusion drug to his patient. The infusion is administered in a physician's office. CMS suspects that Dr. Smith may be prescribing the infusion therapy without having established medical necessity and, in some cases, without being the treating physician for the patient. If this revision to the authority is finalized, CMS will be able to request documents from the prescriber for the Part B drugs under 42 C.F.R § 424.516.

Miscellaneous Provisions (cont.)

- ❑ **Maximum reenrollment bar.** Now, there is a 1 to 3 year reenrollment bar. If this authority is finalized, there will be a 1 to 10 year reenrollment bar.
 - ❑ CMS can establish a 20-year maximum reenrollment bar (discretionary) if the entity/individual is revoked for a second time.
- ❑ **Voluntary termination.** CMS may revoke a provider's Medicare enrollment if CMS determines that the provider or supplier voluntarily terminated its Medicare enrollment in order to avoid a revocation that CMS would have imposed had the provider or supplier remained enrolled in Medicare.

Questions?

Thank You!

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