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# Make sure your practice is protected as CMS finalizes exclusion-for-debt rule

The finalization of a Medicare enrollment rule puts your practice in danger of disruption if you haven't tightened up your personnel practices.

One section of the Dec. 3 final rule from CMS allows "denial of enrollment" for providers or suppliers who previously owned a business that accumulated Medicare debt during their tenures or within one year of leaving if CMS feels that "the uncollected debt poses an undue risk of fraud, waste or abuse." Those providers and suppliers can avoid termination by paying off their old debts or by entering a payment plan with CMS. Failing that, they can be excluded.

If one of your providers gets caught in this net and can't come to terms with CMS, you could face financial and legal troubles. If excluded, your provider can't accept payment for treating Medicare patients. Also, as OIG informed providers in 2013, if you miss your provider's exclusion and continue to submit Medicare claims for him, you face overpayment liability and civil monetary penalties.

**Their debt, not yours**

One good thing: In the final rule, CMS did not extend the threat of exclusion to the enrolling entity's current managing employees, corporate officers, directors or board members, which had been proposed. But that may change: CMS says it's leaving the other management figures off the hook to "ensure that we can focus on the implementation" of the rule and that the agency may revisit this in future rulemaking.

"They want to try to make it work with owners first before attempting the rest," says Brenda Tso, an associate with the Khouri Law Firm in Dallas.

**Why CMS targets providers with debt**

The final rule is meant to defeat scam artists who rack up a big Medicare bill with one entity, jump ship and start another Medicare business down the road.

“Of course, the reason that providers walk away are often the result of CMS’ process for dealing with overpayments and the fact that by the time you actually have an opportunity for a hearing in front of a disinterested party, you are out of business anyway,” says Robert Markette of Hall Render Killian Heath & Lyman in Indianapolis. “The big impact here is it formalizes a situation where you can walk away to avoid repayment, but you can’t come back.”

It’s CMS’ way of sending a message on fraud, adds Paul H. Keckley, Ph.D., managing director of global financial services firm Navigant in Chicago.

Also, CMS has been frustrated in getting its money from defunct businesses.

“If there is no entity to recoup from because that entity no longer exists, then CMS has to take substantial steps to collect the debt, which, depending on the amount, may not be financially feasible,” says Tso. “There is a Medicare manual for contractors on determining when to refer a debt to Treasury, and another manual on when Treasury should refer to the Department of Justice for filing in district court — obviously, pursuing payment in court would be costly and not worth it for a $2,000 overpayment.”

Threatening exclusion is an easier way to get recompense.

The new rule also might make managers nervous about their practices’ exposure in the event that one of their physicians suddenly fails to validate for the Medicare program because of debt.

**2 things to do all the time**

**Check your exclusions.** You should be checking the Office of Inspector General (OIG) exclusions list every month when CMS updates it, says David Zetter, president of Zetter Healthcare Management Consultants in Mechanicsburg, Pa. For one thing, it’ll let you know if Medicare excludes one of your providers; for another, it will show due diligence if any of an excluded provider’s claims happen to slip through. “I recommend my clients plug in each employee’s name, get their status and keep a print-out of the page in their personnel file,” says Zetter. “It takes five seconds to plug in a name.”

**Separate the practice from excluded physicians.** “Our contracts state that if you’re excluded by any payer, that’s cause for termination,” Zetter says. “There has to be a clause [in your contract] that allows you to terminate the contract of an excluded provider. ... Because remember, Medicare can exclude you if you don’t.”

**3 things to do when hiring providers**

Avoid hiring physicians who may be excluded and unable to bill for Medicare patients with these three tips:

**Put the provider's liability into the contract.** Liability could be avoided by a full disclosure section in the contract between the practice and the individual physician, says Tso. "Another option would be an indemnification provision or some sort of penalty the individual physician would have to pay if the physician practice is denied enrollment because of his prior Medicare debt."

**Call the Medicare administrative contractor (MAC).** Get the provider's permission to call the MAC in his or her previous jurisdiction and speak to its overpayment recovery unit to see whether the provider has any accounts receivable outstanding, says Christopher A. Parrella of the Health Law Offices of Anthony C. Vitale in Miami.

**Have the provider attest to his or her responsibility.** If your background check doesn't catch everything, it helps if you can show you tried. Throw the responsibility onto the incoming provider by having him or her fill out a questionnaire, asking whether they've had prior Medicare overpayments that were not satisfied, medical bankruptcies, etc., says Parrella.

*— Roy Edroso (redroso@decisionhealth.com)*