

CMS ISSUES INTERIM FINAL RULES IMPLEMENTING PPACA'S ENROLLMENT, DOCUMENTATION, AND ORDERING AND REFERRING REQUIREMENTS

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On May 5, 2010, CMS released an [interim final rule with comment period](#) [PDF] to implement several provisions of the Patient Protection and Affordable Care Act (PPACA). One provision, Section 6406, requires the maintenance of ordering and referring documentation for at least seven years from the date of the order, referral, certification, or service for services identified as being at high risk for waste and abuse, including Medicare-covered home health, laboratory, imaging, DMEPOS, and specialist services. These documentation maintenance requirements become effective July 6, 2010, and are applicable not only to the providers and suppliers that order or make referrals for these items and services, but also to the providers and suppliers that furnish the covered items or services.

Both written and electronic documentation relating to orders or referrals, including claims, must be maintained and made available to CMS or a Medicare contractor upon request. In addition to claim denials, Medicare enrolled providers and suppliers who fail to maintain and provide access to the required order or referral documentation may be disenrolled from the Medicare program for up to one year for each act of non-compliance.

The interim final rule also implements Section 6402(a) of PPACA, which requires all Medicare and Medicaid providers and suppliers that qualify for a NPI to include the NPI on all enrollment applications. Although the Medicare program has required the inclusion of the NPI number on enrollment application forms since June 2006, this is a new requirement for the Medicaid program. The rule also requires the inclusion of the NPI and legal name for any provider or supplier required to be included on a claim, in order to receive payment for Medicare and Medicaid covered services.

Also addressed in the interim final rule is Section 6405(a) of PPACA, which requires physicians and eligible professionals who order, refer or furnish items or services for Medicare beneficiaries to have an approved enrollment record in the Provider Enrollment, Chain and Ownership System (PECOS), even if only for the purpose of ordering or referring Medicare-covered items and services. The only exception to this requirement is for those who have validly opted out of the Medicare program. Additionally, under the new rule, if the order or referral is made by an intern or resident, the teaching physician (not the resident or intern) must be identified in the claim as the ordering or referring provider.

Beginning January 3, 2011, claims for services that require but fail to include identification of the ordering or referring provider, such as a claim for DMEPOS, imaging or laboratory services, will be rejected, and the billing provider will not be paid for items or services that were furnished based on the order or referral. This particular requirement was a CMS enrollment initiative prior to PPACA. It was originally anticipated to go into effect January 2010; however, due to pressure from providers and suppliers, CMS determined it would delay implementation until 2011.

Ober|Kaler's Comments: To avoid claim denials and possible disenrollment from the Medicare program, Medicare enrolled providers and suppliers will need to ensure that they comply with new documentation retention requirements and ensure that physicians and non-physician practitioners from whom they accept orders and referrals have a PECOS enrollment record.

Although not discussed in the interim rule, currently if a claim is submitted for services in which the ordering or referring physician or eligible professional does not have a PECOS enrollment record, the provider or supplier submitting the claim will receive a remittance with an informational message notifying the provider that the claim did not contain the requisite ordering/referring provider information. These informational messages are intended to give providers and suppliers an opportunity to become familiar with the new requirement and thus avoid future claim denials. In addition to flagging claims that would not comply with this new requirement, CMS has made available on its Medicare provider/supplier enrollment website an "Ordering Referring Report" which contains the NPIs and names of physicians and non-physician practitioners who have current enrollment records in PECOS. The Ordering Referring Report will be updated by CMS periodically.

CMS will be holding a call on May 19 at 3p.m. to discuss this interim final rule. Written comments to the interim final rule with comment period must be received by CMS no later than July 6, 2010, to be considered.

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