



**CMS ISSUES INTERIM FINAL RULE REGARDING
PPACA MEDICARE PROGRAM INTEGRITY PROVISIONS**

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On March 23, 2010, President Barack Obama signed the Patient Protection and Affordability Act (H.R. 3590) (the “PPACA,” or the “Act”) into law.¹ The PPACA included, among other things, a series of provisions aimed at promoting and protecting the integrity of the Medicare and Medicaid programs, particularly in regard to suppliers and providers of durable medical equipment, prosthetics, orthotics and supplies (“DMEPOS”) and home health services, and other suppliers and providers of items and services that entail a “high risk of fraud and abuse.” The Act also directed the Department of Health and Human Services (“DHHS”) to promulgate regulations to implement certain of the Act’s statutory requirements.

To that end, on May 5, 2010, the Center for Medicare and Medicaid Services (“CMS”), on behalf of DHHS, issued an interim final rule (the “Rule”) to implement certain provisions of the PPACA. The Rule imposes new and additional requirements on certain suppliers and providers with respect to (i) Medicare enrollment; (ii) ordering and referring certain Medicare Part B items and services; and (iii) documenting referrals of such items and services. These new requirements will come into effect July 1, 2010.

1. Medicare, Medicaid Enrollment and NPIs

Under the Rule, with limited exceptions, any supplier or provider of items or services (i) who enrolls in Medicare or Medicaid must obtain an NPI and include the NPI in its enrollment application; and (ii) who submits a claim for payment for such items or services must include its NPI in the claim, as well as the NPI for any other supplier or provider identified therein. These requirements apply to a supplier or provider already enrolled in Medicare, even if it does not have an NPI². The Rule provides that a Medicare or Medicaid contractor “will reject a claim” for payment from a supplier or provider who does not comply with these requirements.

The Rule does not apply to every supplier and provider of items and services, however. Suppliers and providers who have opted out of the Medicare program³, and dentists and pediatricians, who provide little or no Medicare services, need not obtain an NPI. Even this sort of supplier or provider, however, must have an enrollment record on file in the Provider Enrollment, Claim and Ownership System (“PECOS”). In the case of an intern or resident who orders or refers an item or service, any claim for reimbursement must include the appropriate teaching physician’s NPI.

¹ The President also signed The Health Care & Education Reconciliation Act (H.R. 4872) (the “Reconciliation Act”) into law March 30, 2010. The Reconciliation Act modified certain provisions of PPACA, but those modifications did not impact any of the provisions discussed herein.

² A supplier or provider who enrolled in Medicare more than six (6) years ago, and has not made changes to his or her enrollment information during that time, may not have an NPI.

³ To opt out of the Medicare program, a supplier or provider must file an affidavit with the appropriate Medicare contractor.

2. Ordering and Referring DMEPOS and Home Health Services

The PPACA and the Rule combine to require that suppliers and providers of DMEPOS and home health services may not obtain reimbursement for such items or services unless (i) the item or service is ordered or referred by a physician or, in the case of DMEPOS, another eligible professional;⁴ (ii) the applicable reimbursement claim includes the legal name and NPI of the physician or eligible professional, as the case may be, who ordered or referred the item or service; and (iii) the physician or eligible professional, as the case may be, who ordered or referred the item or service has an approved enrollment record (or a valid opt out record) in PECOS.

3. Documentation Requirements for Maintaining Medicare Enrollment

Under the Rule, (i) a supplier or provider who furnishes a DMEPOS item or a referred home health, laboratory, imaging or specialist service; (ii) a physician who orders home health services; and (iii) a physician or eligible professional who orders or refers a DMEPOS item or a laboratory, imaging or specialist service must maintain documentation relating to the ordered or referred item or service for seven (7) years. The required documentation must include (i) any written and electronic information that relates to orders and requests for payment of the item or service; and (ii) the NPI of the physician or eligible professional, as the case may be, who ordered or referred the item or service.

The Rule also requires that any supplier or provider, or any physician, required to maintain the specified documentation, must make the documentation available to CMS upon request.

A supplier or provider or a physician who fails to comply with these requirements is subject to exclusion from the Medicare program for up to one (1) year for each event of noncompliance.

This Client Alert does not provide an exhaustive review of the Rule or the PPACA, nor whether or how the Rule or the Act would apply to any particular facts or circumstances. If you have questions relating to the current or potential application of the Rule or the Act, please call Brent Wills or John Weiss at (334) 244-1111.

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⁴ For this purpose, eligible professionals include physical and occupational therapists, qualified speech-language pathologists, physician assistants, nurse practitioners, or clinical nurse specialists, certified registered nurse anesthetists, certified nurse-midwives, clinical social workers, clinical psychologists, registered dietitians and nutrition professionals.