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Health Law Alert

Complying with Medicare's Ordering/Referring Provider Claim Edits

Earlier this month, the Centers for Medicare & Medicaid Services ("CMS") announced that, beginning May 1, 2013, CMS will deny Medicare claims for certain items and services if the claims do not identify the ordering/referring provider as a physician or non-physician practitioner ("NPP") who has a current Medicare enrollment record and is eligible to make the order/referral. A copy of CMS's announcement is posted at http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/Downloads/SE1305.pdf.

This Health Law Alert provides background and details concerning CMS's announcement, and concludes with recommended action items needed for compliance to avoid costly Medicare claim denials.

Background

To combat Medicare fraud and abuse, the Affordable Care Act requires physicians and NPPs to be enrolled in the Medicare program to order/refer items or services for Medicare beneficiaries. To implement this directive, CMS announced in 2009 a two-phase claim edits process to verify that the physician or NPP who is listed as the ordering/referring provider on a Medicare claim:

- Has enrolled in Medicare in an approved status or has validly opted-out of the Medicare program;
- Has a valid individual National Provider Identifier ("NPI"); the NPI needs to be for the individual physician or NPP, not an organizational NPI; and
- Is of a provider type/specialty that is eligible to order/refer for Medicare beneficiaries (see below).

What Items and Services are Subject to the Ordering/Referring Provider Edits?

The ordering/referring provider edits apply to the following ordered/referred items and services billed to Medicare:

- Medicare Part B imaging services (only technical component), submitted in claims (technical or global) from independent diagnostic testing facilities ("IDTFs"), portable x-ray suppliers, mammography centers, and radiation therapy centers;

- Medicare Part B clinical laboratory services, submitted in claims from clinical laboratories;

- Medicare Part B items of durable medical equipment, orthotics, and supplies ("DMEPOS"), submitted in claims from DMEPOS suppliers; and

- Medicare Part A and Part B home health services, submitted in claims from home health agencies.

The ordering/referring provider edits do not apply, for example, to prescription drugs, services of physician specialists, the professional component of imaging services, or hospital outpatient imaging services.

Can Residents and Interns Order/Refer for Medicare Beneficiaries?

State-licensed residents may enroll in Medicare to order/refer for Medicare beneficiaries and may be listed on claims. Claims for Medicare-covered items and services from unlicensed interns and residents need to specify the name and NPI of the teaching physician. If states provide provisional licenses or otherwise permit residents to order/refer items and services, interns and residents are allowed to enroll in Medicare to order/refer Medicare-covered items and services consistent with applicable state law.

What NPPs are Eligible to Order/Refer for Medicare Beneficiaries?

With respect to the third ordering/referring provider edits requirement (above), only the following NPPs are eligible to order/refer for Medicare beneficiaries:

- Physician assistants;
- Clinical nurse specialists;
- Nurse practitioners;
- Clinical psychologists;
- Medical interns, residents, and fellows;
- Certified nurse midwives; and
- Clinical social workers.

What are Other Limitations on Ordering/Referring for Medicare Beneficiaries?

In its recent announcement, CMS reminds providers and suppliers that:

- Chiropractors are not eligible to order/refer items or services for Medicare beneficiaries;
- Home health services may be ordered/referred only by a Doctor of Medicine (M.D.), Doctor of Osteopathy (D.O.), or Doctor of Podiatric Medicine (DPM); and
- Optometrists may order/refer only DMEPOS items or services, and laboratory and x-ray services payable under Medicare Part B.

Phase 1: Informational Messages (Began in 2009)

During Phase 1 of Medicare's ordering/referring provider claim edits process, which began in 2009, CMS has been alerting IDTFs, portable x-ray suppliers, mammography centers, radiation therapy centers, clinical laboratories, DMEPOS suppliers, and home health agencies (collectively, "Covered Entities") that the identification on their claims of the ordering/referring provider is missing, incomplete, or invalid, or that the ordering/referring provider is not eligible to order/refer for Medicare beneficiaries. Notably, although the alert warned that such claims may not be paid in the future, the claims were still paid during Phase 1.

Phase 2: Claims Denials (Begins on May 1, 2013)

Effective May 1, 2013, CMS will turn on the Phase 2 ordering/referring provider edits. During Phase 2, CMS will deny the above-listed imaging, clinical laboratory, DMEPOS, and home health claims if they do not identify the ordering/referring provider as a physician or NPP who: (i) has enrolled in Medicare in an approved status or has validly opted-out of the Medicare program; (ii) has a valid individual NPI; and (iii) is of a provider type that is eligible to order/refer for Medicare beneficiaries (see above).

Claims that are denied because they failed the ordering/referring provider edits would not expose the Medicare beneficiary to any liability, and an Advance Beneficiary Notice would not be appropriate in that case. A billing provider/supplier can appeal a claims denial that failed the ordering/referring provider edits through the standard Medicare claims appeals process.

Recommended Action Items

To avoid claims denials for imaging, clinical laboratory, DMEPOS, and home health claims, it is essential that Covered Entities develop and implement billing procedures to ensure compliance with Medicare's ordering/referring provider edits.

Periodically Determine if a Physician or NPP is Eligible to Order/Refer an Item or Service for Medicare Beneficiaries Before Providing the Item or Service

CMS makes available on its website (http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/MedicareProviderSupEnroll/MedicareOrderingandReferring.html) the Medicare Ordering and Referring File, which contains the NPIs and names of physicians and NPPs who have current Medicare enrollment records in the internet-based Provider Enrollment, Chain and Ownership System ("PECOS") and are of a type/specialty that is eligible to order/refer for Medicare beneficiaries. The Medicare Ordering and Referring File lists, in alphabetical order based on last name, the NPI and name (last name, first name) of the physician or NPP. CMS updates the Medicare Ordering and Referring File on a weekly basis. Only the most current Medicare Ordering and Referring File will be available at any given time for downloading.

Notably, the Medicare Ordering and Referring File does not contain the names of physicians and NPPs who have validly opted out of the Medicare program. Because each Medicare Administrative Contractor ("MAC") maintains its own opt-out list, Covered Entities will need to check the applicable MAC opt-out list if the name of the ordering/referring provider is not in the Medicare Ordering and Referring File.

We recommend that Covered Entities check, at least once per year, the Medicare Ordering and Referring File and applicable MAC opt-out list(s) for the names of their ordering/referring providers because these materials are periodically updated to add and remove names of physicians and NPPs. Unfortunately, it is time-consuming to review these materials because each name needs to be manually checked. As such, Covered Entities should consider developing an automated checking system to save administrative time.

Contact Non-Enrolled Physicians and NPPs who Order/Refer Items or Services to Ensure They Have Current Medicare Enrollment Records

Because claim denials directly affect payment of claims to the billing provider/supplier, and not to the ordering/referring provider Covered Entities should be proactive to ensure that all of their ordering/referring providers have enrolled in Medicare in an approved status or have validly opted-out of the Medicare program. Some ordering/referring providers may not have enrolled in Medicare because they do not perform or bill for any Medicare-covered items or services. Covered Entities should advise these ordering/referring providers that they still need to be enrolled in Medicare on an opt-out basis to order/refer imaging, clinical laboratory, and home health services and DMEPOS items for Medicare beneficiaries.

To have current Medicare enrollment records on an opt-out basis, ordering/referring providers will need to submit a CMS-855O enrollment application either electronically by using PECOS or by completing a paper enrollment application. The CMS-855O enrollment application, located at http://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/downloads/cms855o.pdf), is for physicians and NPPs who will provide only orders/referrals for Medicare beneficiaries, and will not provide or bill (directly or through reassignment) any items or services for Medicare beneficiaries. By submitting the CMS-855O enrollment application, the ordering/referring

provider can obtain a Medicare enrollment record that will allow claims for Medicare-covered items or services ordered/referred by the provider to be paid.

Ensure that the Claim is Correctly Completed with Respect to the Ordering/Referring Provider

In its recent announcement, CMS offers the following additional tips to ensure that claims do not fail the ordering/referring provider edits:

- Ensure that the ordering/referring provider's legal name is spelled correctly on the claim;
- Do not use nicknames on the claim;
- Do not enter a credential (e.g., "Dr.") in a name field;
- On paper claims (CMS-1500), in item 17, enter the ordering/referring provider's first name first, and last name second (e.g., John Smith);
- Ensure that the name and NPI entered for the ordering/referring provider belong to a physician or NPP and not to an organization, such as a group practice that employs the physician or NPP who generated the order/referral; and
- Make sure that the qualifier in the electronic claim (X12N 837P 4010A1) 2310A NM102 loop is a 1 (person); organizations (qualifier 2) cannot order/refer.

Maintain Ordering/Referring Documentation for at Least 7 Years from the Date of Service

Medicare regulations require that Covered Entities maintain and, upon request of CMS or a MAC, provide access to written and electronic documents (including the NPI of the ordering/referring physician or NPP) relating to written orders/referrals and requests for payments for Medicare-covered imaging, clinical laboratory, and home health services and DMEPOS items. Failure to comply with this documentation requirement can lead of revocation of a billing provider/supplier's Medicare billing privileges. Therefore, Covered Entities should ensure that their records retention policies require retention of this documentation for at least 7 years from the date of service.

Additional Information

Please feel free to contact us if you have any questions or need any assistance in complying with Medicare's ordering/referring provider claim edits or other Medicare billing rules.