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Are You Your Brother's Keeper? CMS Finalizes Rule to Reduce Fraud in Federal Health Insurance Programs

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On September 10, 2019, the Centers for Medicare & Medicaid Services (CMS) published a final rule with comment, entitled "Program Integrity Enhancements to the Provider Enrollment Process" (Final Rule), which CMS claims will strengthen its ability to stop fraud before it happens by blocking potentially unscrupulous providers from federal health insurance programs based on their affiliations with other providers. The commenting period for the Final Rule ends November 4, 2019 at 5pm.

Under the Final Rule, providers must disclose to CMS certain relationships with affiliated entities that have been previously sanctioned by federal healthcare programs. CMS can use that information to identify providers that pose an undue risk of fraud based on their relationships with other previously sanctioned entities, even if the provider itself has not been sanctioned. For example, a currently enrolled or newly enrolled organization that has an owner/managing employee who is "affiliated" with another previously revoked organization can be denied enrollment in Medicare, Medicaid and CHIP or, if already enrolled, can have its enrollment revoked because of the problematic affiliation.

Although CMS claims that "the only providers and suppliers that will face additional burdens are 'bad actors'... who have real and demonstrable histories of conduct and relationships that pose undue risk to taxpayers, patients and program beneficiaries," providers have raised concerns about the scope of the rule. American Hospital Association Executive Vice President Tom Nickels wrote in a comment when the rule was proposed: "[E]nrollment should not be put at risk for minor administrative errors, and providers should not be held responsible for reporting information that they have no ability to access or verify."

The Final Rule also gives CMS a basis for administrative action to revoke or deny Medicare enrollment if:

- a provider or supplier circumvents program rules by coming back into the program, or attempting to come back in, under a different name (e.g. the provider attempts to "reinvent" itself);
- a provider or supplier bills for services/items from non-compliant locations;
- a provider or supplier exhibits a pattern or practice of abusive ordering or certifying of Medicare Part A or Part B items, services or drugs; or
- a provider or supplier has an outstanding debt to CMS from an overpayment that was referred to the Treasury Department.

The new rule also gives CMS the ability to prevent applicants from enrolling in the program for up to three (3) years if a provider or supplier is found to have submitted false or misleading information in its initial enrollment application, and

expands the reenrollment bar that prevents fraudulent or otherwise problematic providers from re-entering the Medicare program. CMS can now block providers who are revoked from re-entering the Medicare program for up to 10 years. And if a provider or supplier is revoked from Medicare for a second time, CMS can now block that provider or supplier from re-entering the program for up to 20 years.

If you have questions or need more information, contact Dana Petrillo (215.864.7017; petrillod@whiteandwilliams.com) or another member of the Healthcare Group.

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