

PUBLICATION

Requirement to Have a Current Approved PECOS Record

June 02, 2010

A recurring theme of this Blog will be to highlight various initiatives undertaken by CMS to tighten the Medicare enrollment rules in an attempt to combat fraud and abuse. Fueling one of the initiatives is CMS' concern that historically providers and suppliers with questionable qualifications have been allowed to enroll in Medicare. To address this concern, CMS determined it is necessary to ensure that physicians and other eligible professionals who order, refer or furnish certain items or services have an approved enrollment record in the Provider Enrollment, Chain and Ownership System ("PECOS"). Items and services that require an order or referral include home health, laboratory, imaging, DMEPOS, and specialist services. It is critical to understand the effect of this initiative, especially the implications for suppliers that simply render services in response to an order or referral from a physician or non-physician practitioner who fails to comply.

Rather than framing the initiative as a change in the provider enrollment rules, CMS announced a two-phase claims editing expansion via Transmittal No. 470, published on April 24, 2009, in its Internet-only manual entitled "One-Time Notification" (i.e., CMS-Pub. 100-20). The expansion was designed to allow verification that "the ordering/referring provider on a claim is eligible to order/refer and is enrolled in Medicare." Specifically, the modifications made to the claims system would allow: (1) a determination regarding whether the service billed is one that requires an ordering/referring provider and, if so, whether the ordering/referring provider is on the claim; (2) a determination if the ordering/referring provider is in the PECOS database or in the enrollment contractor's master provider file; and (3) a determination whether the ordering/referring provider is or is not of the specialties eligible to order or refer the item billed.

CMS instructed that during Phase 1, any claim that failed these edits would still be processed but the billing provider would receive a message on the remittance advice notifying the provider that such "claims may not be paid in the future if the ordering/referring provider is not enrolled in Medicare or if the ordering/referring provider is not of the specialty eligible to order or refer." However, **during Phase 2, claims failing the edits would be unpaid**. In announcing these expanded edits, CMS cautioned all providers to verify their enrollment via the CMS on-line enrollment system, known as the Internet-based PECOS. Phase 1 was implemented as planned in October 2009; however, Phase 2 has been delayed until January 3, 2011.

Although CMS was well underway in implementing this initiative, the CMS manual guidance was codified in this year's health care reform legislation, appearing in Section 6405 of the Patient Protection and Affordable Care Act ("PPACA"). To implement Section 6405 of PPACA, CMS published an Interim Final Rule entitled, "Medicare and Medicaid Programs; Changes in Provider and Supplier Enrollment, Ordering and Referring, and Documentation Requirements; and Changes in Provider Agreements" on May 5, 2010. CMS reiterated the requirement for physicians and eligible professionals who order, refer or furnish items or services for Medicare beneficiaries to have an approved enrollment record in PECOS, even if only for the purpose of ordering or referring Medicare-covered items and services.

The *Interim Final Rule* provides an exception for those who have validly opted out of the Medicare program. Additionally, the Interim Final Rule noted that 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. In a recent May 19, 2010 Medicare Provider & Supplier Enrollment Conference Call, CMS explained

that only licensed physicians and non-physician practitioner can enroll in Medicare, even if for the sole purpose of ordering or referring. CMS clarified that in a state where residents are licensed, the resident could enroll for the limited purpose to order or refer items and services. Although Section 6405 of PPACA was given a July 1, 2010 effective date, and the Interim Final Rule has a July 6, 2010 effective date, CMS previously announced in its manual guidance a January 3, 2011 effective date. CMS has confirmed the implementation will not occur until after a Final Rule is published which will announce the effective date. Nevertheless, now is the time to comply with the requirement to have an enrollment record in PECOS or validly opt out for ordering and referring providers.

In addition to flagging claims that do not pass the expanded claims edits, 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. This particular Ordering Referring Report will be updated by CMS periodically. It is a searchable document, but searching is time-consuming due to the size of the report. Furthermore, Medicare enrollment contractors maintain opt-out lists. Any physician and non-physician practitioner who orders or refers Medicare-covered items needs to take the necessary steps to comply with this rule and verify his or her name is included on the appropriate CMS report or contractor opt-out list.

Providers who bill for the ordered or referred items and services *should pay close attention to informational messages on the remittance advice* identifying claims that did not clear the edits. It will be important to educate the ordering/referring provider of the need to comply by obtaining a current PECOS record or completing the opt out process.