Proposed Rule Addresses Big Changes to Medicare Provider Enrollment
February 26, 2016

The Centers for Medicare and Medicaid Services ("CMS") is expected to publish its proposed rule addressing program integrity enhancements to the provider enrollment process on Tuesday, March 1, 2016. The proposed rule would implement portions of the Affordable Care Act that would require Medicare, Medicaid, and Children's Health Insurance Program (CHIP) providers and suppliers to disclose certain current and previous affiliations with other providers and suppliers. The effect of the proposed rule would be to provide CMS with the authority to deny or revoke enrollment based on affiliations that CMS determines "pose an undue risk of fraud, waste or abuse" to the federal health care programs. Providers and suppliers would be required to report affiliations with entities and individuals that:

1. Currently have uncollected debt to Medicare, Medicaid, or CHIP;
2. Have been or are subject to a payment suspension under a federal health care program or subject to an Office of Inspector General ("OIG") exclusion; or
3. Have had their Medicare, Medicaid, or CHIP enrollment denied or revoked.

If CMS determined that the affiliation poses an undue risk of fraud, waste or abuse, it could deny or revoke the provider or supplier's Medicare, Medicaid, or CHIP enrollment.

Further, the proposed rule would allow CMS to revoke provider or supplier enrollment if it determines that the provider or supplier is currently revoked under a different name, numerical identifier, or business identity. Likewise, the proposed rule would give CMS the authority to revoke a provider or supplier's enrollment if:

1. The provider or supplier is currently terminated from participation in a particular Medicaid program or any other federal health care program under any of its current or former names, numerical identifiers, or business identities; or
2. The provider or supplier's license is revoked in a state other than that in which the provider or supplier is enrolled or enrolling.

For providers and suppliers seeking re-enrollment in the programs, CMS proposes additional changes that could affect timing for re-enrollment. Currently, the maximum re-enrollment bar CMS can impose on a provider or supplier is three years. The proposed rule would increase this maximum bar on re-enrollment to ten years. Further, CMS would be authorized to add three additional years to the provider or supplier's re-enrollment bar if the provider/supplier attempts to re-enroll in Medicare under a different name, numerical identifier, or business identity. The proposed rule also authorizes CMS to impose a maximum 20-year re-enrollment bar if the provider or supplier is being revoked from Medicare for the second time.

Additional changes put forth in the proposed rule include: (a) the requirement that physicians and eligible professionals who order, certify, refer, or prescribe any Part A or B service, item, or drug must be enrolled in or validly opted-out of Medicare; and (b) authorization to CMS to revoke a

physician or eligible professional's Medicare enrollment if s/he has a pattern or practice of ordering, certifying, referring, or prescribing Medicare Part A or B services, items, or drugs that is abusive, represents a threat to the health and safety of Medicare beneficiaries, or otherwise fails to meet Medicare requirements.

The health care practice group at Plews Shadley Racher & Braun LLP is monitoring the proposed rule and will report on any changes that may occur as the rule is finalized. CMS will accept comments on the proposed rule until 5:00 pm on the 60th day after the date of filing in the Federal Register, which is currently expected to be March 1, 2016.