



Salem & Green Newsletter - November 4, 2010

## **CMS Issues Proposed Rule to Implement Provider Enrollment Aspects of Affordable Care Act**

By Jeanne L. Vance, Shareholder

[jvance@salemgreen.com](mailto:jvance@salemgreen.com)

**Salem & Green, A Professional Corporation**

[www.salemgreen.com](http://www.salemgreen.com)

The Centers for Medicare and Medicaid Services (“CMS”) recently published proposed regulations that would implement provisions of the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010 (collectively, the “Affordable Care Act”) relating to provider enrollment in Medicare, Medicaid and Children’s Health Insurance Program (“CHIP”).<sup>1</sup> Published in the September 23, 2010 Federal Register, the proposed rules, if adopted, would introduce fingerprinting to the public-program enrollment process, expand provider-types subject to pre-enrollment and post-enrollment on-site agency review, specify details relating to the payment of fees for processing Medicare enrollment and revalidation applications, and provide new mechanisms for the establishment of Medicare and Medicaid enrollment moratoriums.<sup>2</sup>

### Increased Enrollment Requirements: New Tiers of Enrollment Classifications Based on Risks of Program Abuse

#### Medicare, Medicaid and CHIP

Medicare would classify providers as “limited,” “moderate” and “high” categorical risks, with varying levels of enrollment scrutiny.<sup>3</sup>

---

<sup>1</sup> Pub L. No. 111-148; Pub. L. No. 111-152.

<sup>2</sup> 75 Fed. Reg. 58204 (Sept. 23, 2010).

<sup>3</sup> 75 Fed. Reg. 58241 (to be codified at 42 C.F.R. sec. 424.518. All references in this article to the Code of Federal Regulations refer to proposed rules.)

Limited Risk Providers	Moderate Risk Providers	High Risk Providers
Physicians/non-physician practitioners, medical groups, clinics.	Community mental health centers, comprehensive outpatient rehabilitation facilities; hospice organizations, independent diagnostic testing facilities (“IDTFs”), independent clinical laboratories, ambulance services suppliers (except publicly traded and government-owned)	Newly enrolled home health agencies (except publicly traded)
Publicly traded providers.	Revalidating home health agencies (except publicly traded)	Newly enrolling DMEPOS suppliers (except publicly traded)
Ambulatory surgery centers, end-stage renal disease facilities, federally qualified health centers, histocompatibility labs, hospitals, Indian Health Service facilities, mammography screening centers, organ procurement organizations, mass immunization roster billers, portable x-ray suppliers, religious non-medical health care institutions, rural health clinics, radiation therapy centers, public or government owned or affiliated ambulance services suppliers, and skilled nursing facilities.	Revalidating DMEPOS suppliers (except publicly traded)	

While “limited” risk providers could expect, if the new rule is implemented, to experience enrollment processes that are very similar to that which they currently experience (verification of Medicare provider-specific requirements, license verifications, and certain database checks to verify Social Security Numbers, national provider identifiers and taxpayer identification numbers) “moderate” and “high” risk providers would experience new Medicare enrollment and revalidation requirements. Moderate and high risk providers would be subjected to unscheduled or unannounced pre- and post-enrollment site checks and high risk providers would be subject to criminal background checks and fingerprinting requirements for their “Provider Principals.”<sup>4</sup> (As used herein, Provider Principals means persons with an ownership or control interest in the provider, or an agent or managing employee of the provider.)

While State Medicaid and CHIP programs are permitted some discretion over how they implement CMS’ requirements, Medicaid and CHIP programs would similarly be required to classify providers as “limited,” “moderate” and “high” categorical risks, with varying levels of enrollment scrutiny to be afforded to each provider category.<sup>5</sup> State Medicaid and CHIP providers would effectually be required to classify providers operated by publicly traded entities as “limited” risk providers.<sup>6</sup> State Medicaid and CHIP programs would also be required to conduct pre-enrollment and post-enrollment site visits on “moderate” and “high” risk providers,<sup>7</sup>

<sup>4</sup> 75 Fed. Reg. 58241-2; 42 C.F.R. sec. 424.518.

<sup>5</sup> 75 Fed. Reg. 58245-46; 42 C.F.R. part 455.

<sup>6</sup> 75 Fed. Reg. 58246; and 42 C.F.R. sec. 455.450.

<sup>7</sup> 75 Fed. Reg. 52346; and 42 C.F.R. sec. 455.432.

and collect fingerprints and conduct criminal background checks on Provider Principals of high risk providers.<sup>8</sup>

### Medicaid and CHIP

Under the proposed rule, state Medicaid and CHIP programs would require that all ordering and referring physicians and other professionals providing services under the State's Medicaid and CHIP programs be enrolled as participating providers and, thus, be subject to the scrutiny of the Medicaid and CHIP enrollment process.<sup>9</sup> In addition, Medicaid and CHIP programs would be required to screen all providers at least every five years.<sup>10</sup> Medicaid and CHIP programs would be required to terminate Medicaid and CHIP enrollments for the following providers:

1. Those that do not provide accurate and complete information required under Medicaid enrollment process (or do not cooperate in the enrollment process).
2. Those that have a Provider Principal who has been convicted of a criminal offense related to that person's government program participation.
3. Those that have a Provider Principal who fails to submit fingerprints within 30 days of a CMS or State agency request.
4. Those that fail to permit access for agency inspection.<sup>11</sup>

### Special Medicare Revalidation Requirement for DMEPOS Suppliers

Suppliers of durable medical equipment would be required to revalidate their Medicare enrollment files ever three years (rather than every five years).<sup>12</sup>

### Application Fees

Non-physician/physician organizations Medicare providers would be required to submit an application fee of \$500 (for 2010) on new enrollment and revalidation applications submitted on or after March 23, 2011.<sup>13</sup> Providers could request an exception for hardship to have the fee waived; in addition, the fee would increase in 2011 and subsequent years based on a consumer price index inflator.<sup>14</sup>

Beginning March 23, 2011, State Medicaid and CHIP programs would be authorized to collect application fees from healthcare providers seeking to enroll in the Medicaid and CHIP programs (except for physicians), providers enrolled in the Medicare program or another state's Medicaid or CHIP programs, or providers that have paid the applicable application fee to a Medicare contractor or another state Medicaid program.<sup>15</sup>

---

<sup>8</sup> 75 Fed. Reg. 58246; and 42 C.F.R. sec. 455.450; see too 42 C.F.R. sec. 455.434.

<sup>9</sup> See proposed Subpart E of Part 455, Title 42, Code of Federal Regulations at 75 Fed. Reg. at 58345.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> 75 Fed. Reg. 58240; 42 C.F.R. sec. 424.57.

<sup>13</sup> Id.; 42 C.F.R. sec. 424.514.

<sup>14</sup> Id.

<sup>15</sup> 75 Fed. Reg. 58247; 42 C.F.R. sec. 455.460.

## Enrollment Moratoria

The proposed rule would provide that CMS may impose a moratorium on the enrollment of new Medicare program providers or the establishment of new practice locations of a particular type in a particular geographic area or nationally, if CMS determines that there is a significant potential for fraud, waste or abuse; or if a state Medicaid program has imposed a moratorium on a group of Medicaid providers or suppliers or on enrollment in a particular geographic area.<sup>16</sup> Examples of instances in which it would be appropriate for CMS to identify that there is a high risk of fraud and abuse area:

1. A highly disproportionate number of providers and suppliers in a category relative to the number of beneficiaries.
2. A rapid increase in enrollment applications within a category.

The proposed rule does not specifically provide that there would be an exception to Medicare moratoria for new enrollments for provider-types that do not have a change of ownership process available for them (ambulance companies, clinics, medical groups, independent clinical laboratories, IDTFs, mammography centers, mass immunization roster billers, portable x-ray suppliers, radiation therapy centers and slide preparation facilities). There is also no exception described in the proposed rule for providers who could engage in a Medicare change of ownership, but choose not to. While CMS could write such exceptions into the provisions of any specific moratorium, critics on the proposed rule might consider suggesting changes in this regard to clarify the rule.

The Secretary of the Department of Health and Human Services will be required to identify providers whose continued Medicaid/CHIP enrollment poses an increased risk to the Medicaid/CHIP program. States will be required to enact Medicaid/CHIP enrollment moratoria for these providers unless the state Medicaid agency/CHIP agency identifies that the moratoria would adversely impact beneficiary access to care.<sup>17</sup>

## Opportunity for Comment

Parties have until November 16, 2010 to submit comments to the proposed rule.

Salem & Green  
A Professional Corporation, Attorneys  
3604 Fair Oaks Boulevard, Suite #200, Sacramento, California 95864-7256  
(916) 563-1818 | [www.salemgreen.com](http://www.salemgreen.com)

Copyright © 2010 Salem & Green. All rights reserved.

---

<sup>16</sup> 75 Fed. Reg. 58242-3; 42 C.F.R. sec. 424.570.

<sup>17</sup> 75 Fed. Reg. at 58247, 42 C.F.R. sec. 455.470.

## Salem & Green

**Salem & Green,**

A Professional Corporation, Attorneys

3604 Fair Oaks Boulevard  
Suite #200,  
Sacramento, California 95864-7256

916 563-1818

[www.salemgreen.com](http://www.salemgreen.com)

David S. Salem

[dsalem@salemgreen.com](mailto:dsalem@salemgreen.com)

Julie E. Green

[jgreen@salemgreen.com](mailto:jgreen@salemgreen.com)

Christopher F. Anderson

[canderson@salemgreen.com](mailto:canderson@salemgreen.com)

Jeanne L. Vance

[jvance@salemgreen.com](mailto:jvance@salemgreen.com)

Deborah J. Rotenberg

[drotenberg@salemgreen.com](mailto:drotenberg@salemgreen.com)