



CMS Issues Updated Guidance on Enrollment Denials Based on Overpayments

Hedy S. Rubinger and Doug M. Hance

On October 17, 2013, the Centers for Medicare & Medicaid Services (CMS) revised the *MLN Matters* article MM8039, “Enrollment Denials When Overpayment Exists,” to clarify its policy on enrollment denials due to overpayments. The article discusses situations when a Medicare administrative contractor may deny a CMS-855 enrollment application based on the existence of an overpayment attributed to the owner of the provider or supplier, or the physician or non-physician practitioner. CMS’ updated guidance now provides that enrollment denials are not appropriate when overpayments are being offset, appealed, or repaid pursuant to a Medicare-approved plan of repayment. This guidance comes after CMS’ May 31, 2013 proposed revisions to the Program Integrity Manual on this topic and subsequent rescission of those proposed revisions in August 2013.

The *MLN Matters* article MM8039 (the “Article”) points out that under 42 C.F.R. § 424.530(a)(6), an enrollment application for a new enrollment or a change of ownership (CHOW) may be denied if the current owner of the applying provider or supplier, or the applying physician or non-physician practitioner, has an existing or delinquent overpayment that has not been repaid in full at the time the application was filed. The term “owner” is defined as any individual or entity that has any partnership interest in, or that has a 5 percent or more direct or indirect ownership interest in the applying provider or supplier. Unlike its initial proposal, CMS now exempts individuals or entities whose overpayments are being offset or appealed or who are on a Medicare-approved plan of repayment.

The Article includes a number of examples illustrating how Medicare contractors should properly determine whether to deny an initial or CHOW application due to an overpayment. In particular, the Article provides the following examples:

Example #1: Hospital X has a \$200,000 overpayment. It terminates its Medicare enrollment. Three months later, it reopens as Hospital Y and submits a new CMS-855A application for enrollment as such. A denial is not warranted because §424.530 (a)(6) only applies to physicians, practitioners, and owners.

Example #2: Dr. John Smith’s practice (“Smith Medicine”) is set up as a sole proprietorship. He incurs a \$50,000 overpayment. He terminates his Medicare enrollment. Six months later, he tries to enroll as a sole proprietorship; his practice is named “JS Medicine.” A denial is warranted because §424.530 (a)(6) applies to physicians and the \$50,000 overpayment was attached to him as the sole proprietor.

Example #3: Dr. John Smith’s practice (“Smith Medicine”) is set up as a sole proprietorship. He incurs a \$50,000 overpayment. He terminates his Medicare enrollment. Six months later, he tries to enroll as an LLC of which he is only a 30 percent owner; the practice is named “JS Medicine, LLC.” A denial is not warranted because the provision applies to “all” owners collectively and, again, the \$50,000 overpayment was attached to him.

Example #4 - Jane Smith is a nurse practitioner in a solo practice. Her practice (“Smith Medicine”) is set up as a closely-held corporation, of which she is the 100 percent owner. Smith Medicine is assessed a \$20,000 overpayment. She terminates her Medicare

enrollment. Nine months later, she submits a CMS-855I application to enroll Smith Medicine as a new supplier. The business will be established as a sole proprietorship. A denial is not warranted because the \$20,000 overpayment was attached to Smith Medicine, not to Jane Smith.

CMS' examples clarify that if a legal entity is assessed an overpayment, the overpayment does not impute to the owners of the enrolled entity. Further, if a provider has an overpayment, terminates its Medicare enrollment, and reenrolls under a different entity, the new enrollment cannot be denied on the basis of the overpayment. The Article also emphasizes that 42 C.F.R. § 424.530(a)(6) applies to "all" owners collectively, meaning that if an enrolling entity has multiple owners, and only one owner has an overpayment, the contractor cannot deny the application based on the one owner's overpayment.

Authors and Contributors

Hedy S. Rubinger

Partner, Atlanta Office
404.873.8724
hedy.rubinger@agg.com

Doug M. Hance

Associate, Atlanta Office
404.873.8104
doug.hance@agg.com

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Atlanta Office

171 17th Street NW
Suite 2100
Atlanta, GA 30363

Washington, DC Office

1775 Pennsylvania Ave., NW,
Suite 1000
Washington, DC 20006

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