

PUBLICATION

Will Your Claims Survive the Automated Ordering and Referring NPI Edits? [Ober|Kaler]

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The April 27, 2012 *Federal Register* publication, [Medicare and Medicaid Programs; Changes in Provider and Supplier Enrollment, Ordering and Referring, and Documentation Requirements](#); and, [Changes in Provider Agreements](#), contained the final regulations related to the ordering and referring of certain Medicare-covered items and services. For additional background information on this CMS initiative, including the provisions of the May 5, 2010 Interim Final Rule, refer to the article "[Requirement to Have a Current Approved PECOS Record](#)." CMS determined these requirements were necessary to ensure physicians and other eligible professionals who order and refer certain items or services have an approved Medicare enrollment record.

In the final rule, CMS reiterated the July 6, 2010 effective date for the requirement to have the NPI number of the ordering or referring physician or non-physician practitioner on the claim. And, CMS clarified that compliance is based on the date of service, not the date of the order or referral. The specific services that are subject to this requirement were modified slightly in the final rule and are: DMEPOS items and services, imaging services, clinical laboratory services, and home health services. Specialist services that had been included in the Interim Final Rule were removed from the final requirements.

Another change in the final regulations benefits physicians and non-physician practitioners who enrolled in Medicare years ago and have not been asked to submit a revalidation application, i.e., those whose enrollment record is in the prior legacy system. CMS determined that any Medicare enrollment record, not just an enrollment record in PECOS, would be acceptable.

The Interim Final Rule change to allow physicians and non-physician practitioners that validly opt out to order and refer these services remains included in the final regulations. These individuals still need to complete the opt-out process but they will not need to submit an enrollment application for any reason. Furthermore, CMS noted it will enter these individuals into PECOS which will eliminate having to search different sources to confirm if a particular physician or non-physician practitioner is approved to order and refer these designated items.

CMS responded to questions regarding certain special circumstances:

- For unlicensed residents and interns, the teaching physician will need to comply with these regulations.
- Hospital services paid under the Inpatient Prospective Payment System are not subject to these requirements.
- With respect to home health services:
 - The physician who orders the services and the physician who completes the certification both need to comply, when two different physicians performed these functions.
 - Payment for the episode of care will not be denied if the physician subsequently terminates his or her enrollment after providing the referral.

CMS still has not set a date for when the automated claims edits, which would cause claims to deny, will be implemented, stating that advance notice will be provided prior to implementation. Currently, non-compliant

claims are only flagged noting the claim may not be paid in the future. When asked if providers and suppliers could be held liable for claims that were not in compliance with the requirements prior to the implementation of the automated claims edits, CMS noted that it could not "provide relief to providers whose claims would be subject to recoupment by any CMS contractor." CMS continued, however, by explaining that it does "not believe it would be a prudent use of resources to pursue large-scale recoveries against claims with dates of service from July 2010 until such time as we activate prepayment edits."

Several commenters noted the potential effect on Medicare beneficiaries who might be denied services because they had an order from a physician who had not complied with these requirements. CMS acknowledged this may occur in some situations but pointed out the efforts being made to educate Medicare beneficiaries regarding these rules.

Lastly, under the final regulations, both the individual who orders or refers and the provider or supplier that furnishes the ordered items or services must maintain documentation for seven years from the date of service. Commenters noted situations in which the referring physician may not be the custodian of the medical record, e.g., home health services ordered by a physician during a beneficiary's inpatient hospitalization or nursing facility stay, licensed residents working in a dental school clinic who order laboratory services. CMS responded that further guidance will be provided on this issue at a later date.

Ober|Kaler's Comments

Providers and suppliers who submit claims for the services subject to these rules need to fine tune procedures for confirming that the ordering or referring physicians and non-physician practitioners are enrolled in Medicare or have validly opted out of the program. It is not too late to educate your referral sources and the beneficiaries you serve about the need to comply with these regulations.