

HEALTH LAW UPDATE

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

855 Fun, Part I: CMS' New Provider Enrollment Applications

July 26, 2011

Early in July 2011, the Centers for Medicare & Medicaid Services (CMS) quietly posted new versions of the Medicare Enrollment Applications, or 855s, on its website. In the months leading up to the publication of the new 855s, CMS had submitted drafts of the revised applications to the Office of Management and Budget (OMB) for review, but there was no real fanfare with respect to CMS' submission of drafts or posting of the new forms. In fact, during informal conversations, provider enrollment representatives at certain Medicare contractors have indicated that CMS did not alert them of the new 855s and that they first learned of the new applications when providers and suppliers called with inquiries. To date, it does not appear that CMS has provided formal guidance to the Medicare contractors on implementation of the new 855s.

In this issue of *Health Law Update*, we will summarize the changes to the new 855s, focusing specifically on the substantial revisions to the Form 855A (for Institutional Providers) and on the new Form 855O, which will be used by physicians and non-physician practitioners (NPPs) who enroll for the sole purpose of ordering or referring items for Medicare beneficiaries. Note that many of the changes made to the other 855s, e.g., Form 855B (for Clinics/Group Practices and Certain Other Suppliers) are merely formatting changes.¹ In a subsequent issue of *Health Law Update*, we'll review additional 855 changes that are on the horizon specifically for Medicare skilled nursing facilities and Medicaid nursing facilities.

Form CMS-855A

Changes Specific To Physician-Owned Hospitals

One of the main factors driving the development of the new 855A is Section 6001 of the Patient Protection and Affordable Care Act ("PPACA"), which amends the Stark Law's whole

¹ Other new 855s containing formatting changes are the 855I (for Physicians and Non-Physician Practitioners), 855R (for Reassignment of Medicare Benefits), and 855S (for Durable Medical Equipment, Prosthetics, Orthotics, and Suppliers).

hospital exception.² The amended exception requires Medicare-enrolled hospitals to report whether they have physician owners and certain information regarding those physician owners. Accordingly, Section 2 of the 855A now requires the applicant to indicate whether it is a physician-owned hospital.³ A physician-owned hospital must then complete the new Attachment 1 to the 855A, which consists of two sections. Providers that do not have physician ownership are not required to complete Attachment 1.

Section 1 of Attachment 1 must be completed for every *organization* that has any percentage of ownership or investment interest in the physician-owned hospital. Similarly, Section 2 of Attachment 1 must be completed for every *individual* that has any percentage of ownership or investment interest in the physician-owned hospital. This standard is stricter than Section 5 of the 855A, which generally requires the reporting of owners only if they have a direct or indirect ownership interest of at least 5 percent.

As to the expanded category of owners with any percentage interest that now must be disclosed for physician-owned hospitals, Section 1 and Section 2 of Attachment 1 require the submission of the following:

- Full legal name;
- Address;
- Medicare identification number and NPI (if applicable);
- Effective date of ownership interest;
- Percentage of ownership interest (reported to two decimal places); and
- History of certain reportable final adverse legal actions.

Changes Applicable to All Enrolling Institutional Providers

In addition to the information now requested from physician-owned hospitals in Attachment 1, other sections of the new 855A require the submission of additional information by *all* enrolling providers. For example, the 855A now requires the following additional disclosures:

- Providers must report their year-end cost report date in Section 2B;
- Organizations and individuals with an ownership interest or managing control must report their "exact" percentage of ownership in the provider in Section 5 and Section 6, respectively;
- Organizations with an ownership interest or managing control must indicate whether they were "solely created to acquire/buy the provider and/or the provider's assets;"

² For more information about the amended whole hospital exception, please see "[Closing the Whole Hospital Window: Impact on Hospitals and Physicians.](#)" April 6, 2010, "[Are We Clear Now? CMS Issues Proposed Rule Implementing Health Reform's 'Whole Hospital' Restrictions.](#)" August 3, 2010, and "[Auld Lang Syne For Physician Ownership of Hospitals.](#)" December 17, 2010.

³ In accordance with 42 CFR § 489.24, the 855A defines a *physician-owned hospital* as "any participating hospital in which a physician, or an immediate family member of a physician has an ownership or investment interest in the hospital...through equity, debt, or other means, and includes an interest in an entity that holds an ownership or investment interest in an entity that holds an ownership or investment interest in the hospital." See Section 2, Special Enrollment Notes.

- Organizations with an ownership interest or managing control must indicate their type of organization in Section 5 (e.g., holding company, medical staffing company, investment firm, etc.);
- Organizations and individuals with an ownership interest or managing control must indicate in Sections 5 and 6 what type of contractual services (if any) they provide to the enrolling provider; and
- Section 17 makes it clear that the Medicare contractor “may request, at any time during the enrollment process, documentation to support or validate” information reported in the 855, including documents not listed in Section 17.

Given the specificity of the information that must now be reported, the new 855A may significantly increase the burden on providers to obtain and maintain their Medicare enrollment. For example, given the precision with which ownership interests must be reported, it is unclear whether CMS will expect providers to update the contractor each time an ownership percentage fluctuates. If so, this would be particularly burdensome—if not unrealistic—for providers owned by publicly traded companies, where ownership levels change frequently. Furthermore, it is unclear whether CMS will expect providers to submit a change of information to their contractors each time the nature of contractual services provided by an organization or an individual with an ownership interest or managing control changes. CMS will need to provide additional guidance on some of these points to the provider community as well as to CMS’ contractors.

Form CMS-855O

The 855O is a relatively short enrollment application, consisting of only six sections and 13 pages. The application, which is to be completed only by providers or NPPs that will order or refer Medicare items or services but not submit claims to Medicare, asks for only basic information about the provider or NPP. For example, the provider or NPP must provide basic identifying information, contact information, professional licensure and credentialing information, and a description of any adverse legal history.

Implementation

Although the July 2011 revised 855s have now replaced the previous 855s on the CMS website, it is unclear when CMS will require providers to submit, and Medicare contractors to process, only the new forms. CMS has not indicated whether there will be a transition period to the new 855s or how long any transition period may last, but during informal, non-binding telephone conversations, certain Medicare contractors have indicated that they will continue to accept and process the previous versions of the 855s until they receive directions to the contrary from CMS. In contrast, for those providers and suppliers that use internet-based PECOS for Medicare enrollment, the internet-based PECOS interface has been updated to reflect the information requested on the new 855s. Even though providers and suppliers may still be able to use the previous versions of the 855s, it would be wise to become familiar with the significant additional requirements on the new 855s and begin gathering the information necessary to complete them.

If you have any questions regarding this issue of *Health Law Update*, please contact any of the attorneys in our Healthcare Practice Group listed below.

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