

CMS Announces Implementation of Fingerprint Background Checks for Owners of “High Risk” Providers and Suppliers

Authors:

George W. Bodenger

Karilynn Bayus

SUMMARY

Certain owners of home health agencies and durable medical equipment, prosthetics, orthotics, and supplies (“DMEPOS”) companies seeking to enroll in the Medicare program will now be subject to a new fingerprint-based background check system. The Centers for Medicare & Medicaid Services (“CMS”) will commence implementation of the system this year. Individuals affected must be careful to follow all requirements of the system, or risk being denied enrollment in Medicare or having their Medicare billing privileges revoked.

On April 14, 2014, the Centers for Medicare & Medicaid Services (“CMS”) published an MLN Matters article announcing the implementation of fingerprint-based background checks as part of enhanced enrollment screening provisions of the Affordable Care Act. The fingerprint background checks will be in addition to all other Medicare enrollment screenings.

CMS’ goal with the fingerprint background check system is to detect “bad actors” that may be attempting to enroll in the Medicare program, or to remove bad actors who are already enrolled. Only individuals with a five percent or greater ownership interest in a “high risk” provider or supplier will be subject to the fingerprint background check. CMS has identified newly enrolling home health agencies and DMEPOS suppliers as being in the “high” risk category. CMS will also elevate other providers/suppliers to the “high” risk category under certain circumstances. Examples of when this may occur are: (i) if CMS has imposed a payment suspension on the provider/supplier within the last ten (10) years; (ii) the provider/supplier has been excluded from Medicare or lost its billing privileges; or (iii) a provider/supplier applies for Medicare enrollment within six (6) months of a rescission of a moratorium for that particular type of provider/supplier.

The fingerprint background check process will begin this year for some providers and suppliers. CMS did not state how many providers and suppliers would be subject to the fingerprint check in 2014, or how it would select which providers and suppliers in the high risk category to be fingerprinted this year. CMS did state, however, that “once fully implemented,” the fingerprint background check process will be completed on all individuals with a five percent or greater ownership interest in a “high risk” provider or supplier.

Providers and suppliers will be notified by their Medicare Administrative Contractor (“MAC”) if their applicable owners are required to be fingerprinted. The provider/supplier must contact its MAC if there are any discrepancies in the ownership list identified in the letter from its MAC. CMS has stated that it

intends to only fingerprint individuals once, but reserves the right to require additional fingerprints. Individuals will have thirty (30) days from the date of the notification letter to be fingerprinted, at their own expense. The letter will identify the appropriate Fingerprint-Based Background Check Contractor ("FBBC"), which the individual(s) must contact for instructions prior to being fingerprinted.

Once submitted, the fingerprints will be forwarded to the FBI for processing. According to CMS, the FBI will compile the background history and share the results with the FBBC within twenty-four (24) hours of receipt. The FBBC will, in turn, review each record and provide a fitness recommendation to CMS. CMS will then make a final determination as to the provider/supplier's Medicare enrollment application or billing privileges.

Home health providers and DMEPOS suppliers must be sure to follow all of the MAC and FBBC instructions explicitly and in a timely manner. Failure to do so may result in a denial of enrollment in Medicare or revocation of existing Medicare billing privileges, even in the absence of a criminal history.

The attorneys in Saul Ewing's Health Practice have significant experience in advising health care providers and suppliers on the Medicare system, including enrollment, contracting and billing requirements. For more information on these matters, please contact George Bodenger or Karilynn Bayus, or the attorney at the Firm with whom you are regularly in contact.

This Alert was written by George W. Bodenger, Chair of the firm's Health Practice, and Karilynn Bayus, a member of the firm's Health Practice. George can be reached at 215.972.1955 or gbodenger@saull.com. Karilynn can be reached at 215.972.1892 or kbayus@saull.com. This publication has been prepared by the Health Practice for information purposes only.

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