

Eli's Hospice Insider

Compliance: Don't Overlook This Serious Enrollment Threat

Beware the five-year lookback period.

Hospices have a host of mission-critical issues to deal with in 2020. But if they aren't careful, they may get ambushed by a threat that is hiding in plain sight.

Reminder: Last November, a final rule took effect that requires Medicare, Medicaid, and CHIP providers and suppliers to disclose certain current and previous affiliations with other providers and suppliers and gives the **Centers for Medicare & Medicaid Services** additional authority to deny or revoke a provider's Medicare enrollment in certain circumstances. Medicare can deny or revoke enrollment based on any disclosable event that CMS determines poses "an undue risk of fraud, waste, or abuse," or based on a failure to disclose a disclosable event (see a rule overview at Eli's Hospice Insider, Vol. 12, No. 12).

Hospices are failing to recognize how serious of a threat this may be, judge experts. "CMS estimates the new revocation authority will lead to 2,600 additional revocations a year," which will cut \$4.16 billion from Medicare spending over 10 years, noted attorney **Jennifer Papapanagiotou** with **Liles Parker** in a recent presentation for the **Texas Association for Home Care & Hospice**.

Plus: "In relation to the new affiliation provisions, over the last five years, \$51.9 billion ... has been paid to 2,097 entities with affiliations stemming from the revoked Medicare enrollment of an associated individual or other entity," Papapanagiotou noted in her presentation. "CMS projects 40 percent of the affiliated providers would have been revoked under new reg based on 'undue risk.'" That would translate to \$4.14 billion in reduced Medicare spending annually if CMS had revoked those 40 percent, the attorney added.

This information is "scary" and "threatening," judges **Tom Boyd** with **Simione Healthcare Consultants** in Rohnert Park, California.

"Healthcare provider compliance officers, healthcare legal counsel, and consultants involved in Medicare enrollment compliance are overwhelmed with the extent of activity occurring which is directed at penalizing and potentially eliminating providers that fail to appropriately report information required to secure and maintain up-to-date enrollment information," reports consulting firm **The Health Group** in Morgantown, West Virginia. "Changes relating to Medicare enrollment are directed at providers that represent a financial risk to the Medicare program," the firm says in its electronic newsletter.

"This will be a powerful weapon in the hands of CMS and the Medicare Administrative Contractors," Boyd warns. "Like getting **Al Capone** for income tax fraud, the government will use this enrollment process to suspend payments and close providers - and not everyone will be guilty," Boyd tells **Eli**.

Heavy burden: Figuring out who is considered an affiliate and whether they have disclosable events you must record and report is a monumental task under the new regulations. "We used to do these changes for clients or they did it themselves," Boyd relates. "But now a lawyer is needed, along with background checks of all involved."

Disclosable events include uncollected debts, payment suspensions, and enrollment revocation.

The regulation's fuzzy lookback period makes the burden even greater. The rule's "poorly defined 'lookback' requirement ... puts a five-year limit on how far back a provider must scour its records for bad-actor affiliates," the **American Physical Therapy Association** noted when the rule came out. But there's "no similar timeframe on how long ago that

affiliate's violations may have occurred," the trade group noted. "Providers and suppliers will be forced to become private investigators to determine whether an affiliate ever had its enrollment denied, revoked, or terminated," the group continued.

With the lookback periods, "the possible risks have greatly increased," Boyd warns.

Do this: "Providers need to be giving continuous focus on the accuracy of Medicare enrollment on file with CMS," The Health Group urges. "Begin documenting the occurrence of any of these events in preparation for any requested reporting by CMS," creating a historical file, the firm encourages.

And "add screening for affiliations with other healthcare providers with disclosable events to your pre-employment checklist," Papanagiotou advised.

Note: Register to watch the webinar at www.lilesparker.com/previous-webinars-2/. The 64-page PI final rule on enrollment is at www.govinfo.gov/content/pkg/FR-2019-09-10/pdf/2019-19208.pdf. A transmittal on enrollment changes is at www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/2019Downloads/R896PI.pdf.