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CLAIMS DENIALS START APRIL 1: WHAT YOU SHOULD KNOW ABOUT CMS'S NEW PRECLUSION LIST

Beginning April 1, 2019, Medicare Part C and D plans, PACE organizations and 1876 cost contract plans ("Plans") will be required to deny payment for services rendered or prescriptions ordered by any provider on the new Centers for Medicare & Medicaid Services ("CMS") Preclusion List. The Preclusion List, which was first made available to Plans on January 1, 2019 and will be updated each month, includes two categories of individuals or entities: those who are currently revoked from Medicare and those who have engaged in behavior for which CMS could have revoked the individual or entity had the individual or entity been enrolled. Given the potential impact of the Preclusion List to organizations across the health care industry, stakeholders such as individual providers, hospitals, health systems, Plans, pharmacies and pharmacy benefit managers should carefully review the Preclusion List requirements and take steps to prepare for its implementation.

BACKGROUND

Under prior law, health care providers and suppliers were required to enroll in Medicare in order to be paid for items, services or drugs provided to patients covered by a Plan. In April of 2018, CMS rescinded this enrollment requirement[i] and created the Preclusion List in its place. The Preclusion List is a list of prescribers, individuals or entities ("Listed Providers") who fall into one of the following categories:

- Providers whose Medicare program participation is currently revoked, who are under an active enrollment bar and whose conduct is determined by CMS to be detrimental to the Medicare program.
- Providers who would meet the criteria above if they had been enrolled in Medicare when they engaged in the conduct at issue.

Listed Providers will remain on the Preclusion List for as long as the enrollment bar is in place (or, in the case of a Listed Provider, who was never enrolled, would be in place). Notably, CMS will distribute the Preclusion List only to Plans; other providers and suppliers cannot access the Preclusion List. Because of this, entities such as hospitals, health systems, pharmacies and physician groups are *not* obligated to screen employees or contractors against the Preclusion List.

IMPACT ON PLANS

CMS prohibits Plans from paying for Part D drugs and Part C items and services that are prescribed or provided by a Listed Provider. Effective April 1, 2019, Plans must begin denying payments for such services. This means that Listed Providers (or those who bill for services they provide) are at risk for non-payment of Part C claims. In the Part D context, patients will not be able to fill prescriptions written by Listed Providers using their Part D drug benefit, as Plans and/or their pharmacy benefit managers must deny such claims at the point of service.

CMS will update the Preclusion List each month through a secure online portal. Plans will be responsible for updating their systems each month to ensure that they are utilizing the most up-to-date information. When a Plan determines that a Listed Provider is included in its network, it must remove the Listed Provider as soon as possible. It must also notify any beneficiary who has received care from the Listed Provider in the last 12 months. CMS has advised plans to give beneficiaries 60 days' advance notice before denying claims from Listed Providers.

Plans that pay for services ordered by a Listed Provider are subject to sanctions under existing CMS regulations, which can include civil monetary penalties, intermediate sanctions (e.g., suspension of marketing, enrollment or payment) and termination.

IMPACT ON PROVIDERS

When CMS determines that a Provider meets the Preclusion List criteria, it will send an email to the Provider using the email address on file in the Provider Enrollment, Chain and Ownership System ("PECOS") or the National Provider Plan and Enumeration System ("NPPES"). CMS or the MAC will follow up with a letter sent through the mail.

Providers can appeal CMS's decision to place them on the Preclusion List by filing a request for reconsideration within 60 days. Providers' appeal rights are governed by CMS's appeal regulations at 42 C.F.R. Part 498. Communications from CMS will contain additional information regarding the Provider's appeal rights.

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If the Provider appeals CMS's decision, they will not be placed on the Preclusion List until the first level of their appeal is complete (i.e., until CMS has issued a decision on reconsideration). If the Provider does not appeal, they will be placed on the Preclusion List at the end of their 60-day appeal period.

PRACTICAL TAKEAWAYS

Because the Preclusion List requirements affect stakeholders across the industry, individual providers, hospitals, health systems, Plans, pharmacies and pharmacy benefit managers should carefully review the Preclusion List requirements and work with their operational and legal teams to implement strategies for compliance. Plans should be reviewing the Preclusion List on a monthly basis and be prepared to deny affected claims beginning April 1, 2019. Given that individual providers will not be able to directly access the Preclusion List and will only learn that they are on the list through notifications from CMS or a MAC, practitioners should consider reviewing their contact information listed in PECOS and NPPES, including their e-mail and mailing addresses and updating the information as necessary. Both Plans and providers should consider updating workflows, policies, procedures and contract templates to ensure that they take account of the Preclusion List; ensure that their staff and contracted vendors are familiar with the requirements; and closely monitor communications from CMS and each other related to the Preclusion List.

For additional information, CMS's Preclusion List webpage is available here. However, at the time this alert was published, CMS's webpage was missing some important information, including a Proposed Rule (not yet finalized) that the agency published in November 2018 that would make some changes to the Preclusion List procedures as of January 1, 2020.

Hall Render will continue to monitor Preclusion List developments as this process moves forward. If you have any questions about how your organization can implement these new requirements, please contact:

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- Your regular Hall Render attorney.

[i] 83 Fed. Reg. 16,440, 16,640 (Apr. 16, 2018)

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