



**Submitted Electronically via [www.regulations.gov](http://www.regulations.gov)**

September 11, 2023

Ms. Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
200 Independence Ave., S.W.  
Washington, DC 20201

**Re: Comments on CMS-1780P: Medicare and Medicaid Programs; CY 2024 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment and Coverage Policies; Medicare Shared Savings Program Requirements; Medicare Advantage; Medicare and Medicaid Provider and Supplier Enrollment Policies; and Basic Health Program Requirements (CMS-1784-P; 88 Fed. Reg. 52262, August 7, 2023)**

Dear Administrator Brooks-LaSure,

### **Introduction**

The American Association for Homecare (AAHomecare) is the national association representing durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) suppliers, manufacturers, and other stakeholders in the homecare community. Our members are proud to be part of the continuum of care that assures beneficiaries and other patients receive cost-effective, safe, and reliable home care products and services. Our comments will focus on the Medicare and Medicaid supplier enrollment proposals, as they pertain to Medicare Part B DMEPOS suppliers.

In the proposed rule, CMS proposes to make several changes regarding Medicare and Medicaid provider enrollment and revocation policies, including:

- Establish new and revised Medicare denial and revocation authorities,
- New and updated provider enrollment regulatory definitions, and
- Creation of a new Medicare provider enrollment status labeled a “stay of enrollment.”

### **Revocation Authority on Misdemeanor Convictions, Proposed 42 C.F.R. §424.530(a)(16)(i) and §424.535(a)(16)(i)**

§424.535(a)(3)(i) states: *“The provider, supplier, or any owner, managing employee, managing organization, officer, or director of the provider or supplier was, within the preceding 10 years, convicted*

*(as that term is defined in 42 CFR 1001.2) of a Federal or State felony offense that CMS determines is detrimental to the best interests of the Medicare program and its beneficiaries.”*

In this proposed rule, CMS proposes to add a similar regulation for misdemeanors. A proposed §424.535(a)(16)(i) states: *“CMS may revoke a provider’s or supplier’s enrollment if they, or any owner, managing employee or organization, officer, or director thereof, have been convicted (as that term is defined in 42 CFR 1001.2) of a misdemeanor under Federal or State law within the previous 10 years that CMS deems detrimental to the best interests of the Medicare program and its beneficiaries”.*

CMS proposes to add §424.530(a)(16)(i) and §424.535(a)(16)(ii) that would state that offenses under those sections include, but are not limited in scope or severity to, the following:

- *Fraud or other criminal misconduct involving the provider’s or supplier’s participation in a Federal or State health care program or the delivery of services or items thereunder. Assault, battery, neglect, or abuse of a patient (including sexual offenses).*
- *Any other misdemeanor that places the Medicare program or its beneficiaries at immediate risk, such as a malpractice suit that results in a conviction of criminal neglect or misconduct.*

### **Comments**

While AAHomecare generally supports the revisions to the Medicare provider enrollment requirements, we have concerns regarding the proposed revisions related to adding misdemeanors as cause for enrollment denials and revocations at proposed 42 C.F.R. §424.530(a)(16)(i) and §424.535(a)(16)(i), respectively. CMS may revoke or deny a provider’s or supplier’s enrollment if they, or any owner, managing employee or organization, officer, or director have been convicted of a misdemeanor under Federal or State law within the previous 10 years.

Under federal and state law, misdemeanors can include a broad range of infractions, many of which have no bearing on the integrity of the listed employees to participate in the Medicare program. CMS lists examples in the regulation for certain misdemeanor offenses and has an additional limitation of *“Any other misdemeanor that places the Medicare program or its beneficiaries at immediate risk...”* with one example. AAHomecare has concerns that without further clarification, minor offenses could lead to denials and revocations. CMS should therefore provide additional parameters describing the scope and severity of misdemeanors that could lead to Medicare enrollment denials and revocations.

In addition, determinations for denials or revocations based on misdemeanors should not be at the sole discretion of the Medicare contractors. AAHomecare recommends that CMS implement policies to protect providers against unwarranted adverse actions. CMS should therefore provide clear instructions to the Medicare contractors on the types of misdemeanors that would not likely result in a denial or revocation from the Medicare program. Finally, we recommend that contractors require prior approval by the CMS Provider Enrollment and Oversight Group for denials or revocations related to misdemeanors.

### **Proposed Timeframe to Reverse the Revocation § 424.535(e)**

Section 424.535(e) states that if a revocation is caused by actions linked to parties noted in § 424.535(e), such as owners and managing employees, the revocation can be reversed if the enrolled provider/supplier severs its business relationship with the concerned party within 30 days of the revocation notice. CMS proposes to modify § 424.535(e) by shortening the 30-day timeframe to 15 days. CMS notes that this change would not impact the provider/supplier’s right to appeal a revocation under 42 CFR part 498.

### **Comments**

AAHomecare disagrees with CMS' proposal to shorten the 30-day time to 15 days due to the fact that it often takes a significant amount of time for the notice of the revocation to reach the appropriate individual within the supplier organization. This is particularly true for larger organizations when the revocation notice is being delivered via U.S. mail (which is typical). The mail address may not be the same address where the company's principal or internal counsel is located, and it may take many days to reach the appropriate individual.

In addition, the proposed "15 days of the revocation notification" is defined as the date that CMS or its contractor mails the notice. It may take 7-10 days for that revocation notice to reach the appropriate individual, providing minimal time to act upon the revocation notice. AAHomecare therefore opposes any reduction in the 30-day time frame. In addition, revocation notices should be sent via certified mail, signature required, or other third-party notice with signature requirements.

**New "Stay of Enrollment" Status Proposed 42 C.F.R. §424.541**

CMS proposes a new section, § 424.541, defining a new enrollment status labeled a "stay of enrollment." This is a temporary status to pause an enrollment while a provider/supplier can maintain their Medicare enrollment without an immediate deactivation or revocation. It is intended to provide a non-compliant provider/supplier to address their issue. The new status allows CMS to take a measured, more appropriate action. For CMS to determine a provider/supplier to have a "stay of enrollment" status, the provider/supplier must be non-compliant with at least one enrollment requirement and CMS must determine that the non-compliance can be remedied via a new 855 form.

The "stay of enrollment" status can last up to 60 days, but during this time, providers/suppliers will not be able to bill and receive payment for services. Providers/suppliers who have received a notice on their status may submit a rebuttal within 15 days of the notice.

**Comments**

AAHomecare supports the proposed 42 C.F.R. §424.541.

**Conclusion**

AAHomecare appreciates the opportunity to provide these comments. Please contact us with any questions, or if you would like additional information.

Sincerely,



Kimberley S. Brummett  
VP, Regulatory Affairs  
American Association for Homecare