

## **New Fraud, Waste and Abuse Requirements for Part B Providers**

- Screening requirements
  - Beginning March 25, 2011, newly-enrolling and existing providers will fall into one of three levels of categorical screening.
    - Limited, moderate, or high.
    - Screening applies when a provider initially enrolls in Medicare, adds a new practice location, or revalidates its enrollment information.
    - Fingerprinting and criminal background checks apply to providers in the “high” category, but will be implemented at a yet to be specified later date.
- Application Fee
  - Providers that are initially enrolling in Medicare, adding a practice location, or revalidating their enrollment information, must submit with their 855S application:
    - An application fee in an amount prescribed by CMS, and/or
    - A request for a hardship exception to the application fee.
  - This fee applies to applications that the DME MAC receives on or after March 25, 2011.
  - The fee for March 25, 2011, through December 31, 2011, is \$505.00. Fee amounts for future years will be adjusted by the percentage change in the consumer price index.
  - The provider must pay the application fee electronically through pay.gov, either via credit card, debit card, or check. Providers are strongly encouraged to submit with their application a copy of their pay.gov receipt of payment.
  - The DME MAC will not begin to process the provider’s application until:
    - The fee has been paid, or
    - The hardship exception request has been approved.
  - Once processing commences, the application will be processed in the order in which it was received.
- Hardship Exception
  - A hardship exception request must include with the enrollment application a letter (and supporting documentation) that describes the hardship and why the hardship justifies an exception.
    - If a paper CMS-855 application is submitted, the hardship exception letter must accompany the application.
    - If the application is submitted via the Internet-based PECOS, the hardship exception letter must accompany the certification statement.
    - Hardship exception letters will not be considered if they were submitted separately from the application or certification statement.
    - Upon receipt of a hardship exception request, the contractor will send the request and all documentation accompanying the request to CMS for approval. During CMS’s review, the DME MAC will not begin processing

the provider's application. CMS will communicate its decision to the provider and the DME MAC via letter.

- Acceptable Hardship Justifications
  - It is not enough to assert that the imposition of the application fee represents a financial hardship.
  - The provider must instead make a strong argument to support its request, including providing comprehensive documentation (which may include, without limitation, historical cost reports, recent financial reports such as balance sheets and income statements, cash flow statements, tax returns, etc.).
  - Other hardship factors include:
    - Considerable bad debt expenses,
    - Significant amount of charity care/financial assistance furnished to patients,
    - Presence of substantive partnerships (whereby clinical, financial integration are present) with those who furnish medical care to a disproportionately low-income population;
    - Whether a provider receives considerable amounts of funding through disproportionate share hospital payments, or
    - Whether the provider is enrolling in a geographic area that is a Presidentially-declared disaster.
- If the provider fails to submit appropriate documentation to support its hardship exception request, the DME MAC is not required to contact the provider to request it. It is the provider's responsibility to furnish the necessary supporting evidence.
- Appeal of a Hardship Denial
  - If the provider or supplier is dissatisfied with CMS's decision, it may file a written reconsideration request with CMS within 60 calendar days from receipt of the notice of initial determination.
  - The request must be signed by the individual provider or a legal representative, or any authorized official within the entity.
  - Failure to file a reconsideration request within this timeframe is deemed a waiver of all further appeal rights.
- Temporary Moratoria
  - CMS may impose a moratorium on the enrollment of new Medicare providers of a particular type or the establishment of new practice locations of a particular type in a particular geographic area.
  - The announcement of a moratorium will be made via the Federal Register.
  - For initial and new location applications involving the affected provider and supplier type, the moratorium:
    - Will not apply to applications for which an approval or a recommendation for approval has been made as of the effective date of the moratorium, even if the DME MAC has not yet formally granted Medicare billing privileges.

- Will apply to applications that are pending as of the effective date of the moratorium and for which the DME MAC has not yet made a final approval/denial decision or recommendation for approval. The DME MAC will deny such applications and will return the application fee if it was submitted with the application.
  - Will apply to initial applications that the DME MAC receives on or after the effective date of the moratorium, and for as long as the moratorium is in effect. The DME MAC will deny such applications and will return the application fee if it was submitted with the application.
- If a particular moratorium is lifted, all applications pending with the DME MAC as of the effective date of the moratorium's cessation are no longer subject to the moratorium and may be processed.
  - Such applications will be processed in accordance with the "high" level of categorical screening.
  - In addition, for any initial application received from a provider or supplier:
    - (a) that is of a provider or supplier type that was subject to a moratorium, and
    - (b) within 6 months after the applicable moratorium was lifted, the DME MAC will process the application using the "high" level of categorical screening.