



CHECK YOUR MAIL

The Centers for Medicare and Medicaid Services announced on August 10, 2011 that it will begin sending revalidation requests by mail (we can only hope the US Postal Service is still here) to nearly 1.5 million health professionals, more than half of whom are physicians. These notifications are already being sent and will continue until March 23, 2013.

CMS has implemented new screening criteria for all Medicare applications in an effort to weed out individuals and institutions that shouldn't have billing privileges. There is, however, a great concern expressed by many physician organizations that legitimate physicians and other health professionals could mistakenly get caught up in this enrollment sweep.

We aren't joking about checking your mail. Once you receive the request, you will have sixty days to recertify your enrollment information. CMS is playing hardball: "Failure to submit the enrollment forms as requested may result in a deactivation of your Medicare billing privileges" according to a CMS notice.

But Can They Handle It?

Currently, Medicare administrative contractors around the country process approximately 27,000 new enrollments and more than 30,000 reassignments or changes to billing and patient payment information each month. Having had firsthand experience in assisting physicians in that process, we know how tedious and confusing it can become.

Here are the steps to take:

- Make sure that your staff is on the lookout for any letters requesting the revalidation from CMS.
- Begin the revalidation process as soon as you receive the request.
- Physicians, PAs, nurse practitioners, nurse midwives and nurse anesthetists can revalidate using paper applications or by using CMS' online enrollment system, the Provider Enrollment Chain and Ownership System or PECOS, which CMS claims is the most efficient way to submit the information.
- Obviously if you send anything via the mail system, make sure that it is sent certified with return receipt requested, or that it is sent via one of the national commercial carriers.

Note that this recertification is also required for clinics and group practices. And, as you might expect, we anticipate that the notifications for the physicians in a large group practice might arrive in a "piece meal" manner. Diligence is required on behalf of you and your staff to avoid having your Medicare billing privileges deactivated.



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NEW FEDERAL POSTER REQUIREMENTS

Effective November 14, 2011 most employers (based on our understanding medical practices and hospitals are NOT exempt) will be required to display a new poster from the National Labor Relations Board (NLRB). The poster is entitled “Employee Rights under the National Labor Relations Act”. Simply stated, under this act, all employers covered under the National Labor Relations Act (NLRA) must notify their employees of certain rights.

Rather than paraphrase, the following is taken directly from the poster:

Under the NLRA, you have the right to:

- *Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.*
- *Form, join or assist a union.*
- *Bargain collectively through representatives of employees’ own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.*
- *Discuss your wages and benefits and other terms and conditions of employment or union organizing with your co-workers or a union.*
- *Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.*
- *Strike and picket, depending on the purpose or means of the strike or the picketing.*
- *Choose not to do any of these activities, including joining or remaining a member of a union.*



The notification goes into further discussions regarding what it is illegal for an employer to do, as well as what it is illegal for a union that represents an employee to do.

The background to this situation is that this is actually a rule put forth by the National Labor Relations Board. It was not passed by the Congress nor was it signed by the President. However, as it was recently pointed out by a labor attorney, the NLRB is largely appointed by the President.

What does this do to Your Practice?

What this does is effectively inform your employees that they do have the right to organize. It is widely understood that the Service Employees International Union (SEIU) has specifically targeted the Southeast, where there are a number of right to work states, with the intent of organizing. The healthcare industry, being obviously a significant service industry, is one of the key targets.

This being said, understand that if an employer knowingly and willfully even fails to post the notice, the failure may be considered as evidence of unlawful motive in an unfair labor practice case.

The recommendation is that you watch for any implementation delays (there are a number of legal challenges of this requirement) and, assuming no change comply by Monday, November 14th. As practices become larger and larger due to mergers and other consolidations, it may inevitable that at some point or another, unions may approach your employees, or your employees approach unions.

Click the link below to download a PDF copy of this poster from the NLRB.

<https://www.nlr.gov/poster>

HIPAA ENFORCEMENT INTENSIFIES

The implementation of the HITECH Act under the ARRA in early 2009, and the recent refining of the regulations related to the enforcement of HIPAA by the Office of Civil Rights (OCR), has increased the scrutiny that healthcare organizations may undergo. In July 2011, the Office of Civil Rights awarded \$9.2 million dollars to KPMG to conduct HIPAA compliance audits under the guidance of the Department of Health and Human Services staff. Under this program, there will be 150 audits varying in size and scope. Booze Allan Hamilton, another consulting firm, is being paid \$180,000 to identify the audit candidates.

Of note in the discussion surrounding this project is the fact that most of the significant violators of late have been major institutions. For example, UCLA Medical Center, Massachusetts General Hospital, and Cignet Health of St. George County Maryland.

Mainly because of the publicity focused around HIPAA violations in national news coverage, there appears to be an increased awareness on the part of the general public about it. From January 1, 2010 thru December 31, 2010 there were 9,158 HIPAA complaints reported to the Office of Civil Rights nationally. Of those, 54% were resolved after intake and review. Of the remaining 4,229 cases that required investigation, in 2,703 (64%) the OCR required corrective action.

It's worth taking a look at how this process works.

- Initially a letter is sent from the Office of Civil Rights investigating the complaint. It includes specific information and questions and will include requests for certain documents depending on the nature of the complaint. These may include policies and procedures, audit logs, the history of the internal investigation, and any mitigation or disciplinary action that may have been taken.
- Response to the letter is key. You may want to engage in a formal discussion with the representatives of OCR at first, but the response should address questions raised in the initial letter from OCR.

As to how important cooperation is, in the case of Cignet, mentioned previously, \$3 million of their \$4.3 million fine was related to the fact that they failed to cooperate with OCR's investigation on a continuing daily basis. This was perceived by the OCR as a willful neglect on behalf of Cignet to comply with the Privacy Rule.

Additional guidance will be forthcoming from CMS regarding specific issues related to the enforcement of the Security Rule under the HITECH Act. Look for this information to be published by CMS in the fall of 2011.

The Office of Civil Rights is seriously taking into account the severity of any privacy or security breach. There is what is known as a "threshold risk of harm" analysis that requires four steps. These are as follows:

1. What was the nature of the data elements breached?
2. What is the likelihood that the information is accessible and usable?
3. What is the likelihood that the breach may lead to harm?
4. What is the ability of the covered entity to mitigate the risk of harm?

Some of the many breaches that have occurred have related, for example, to the theft of laptops containing protected health information (PHI). In many of these cases, the nature of the elements breached was significant in that it related to PHI. However, the likelihood that the breach could lead to harm was minimal due to the security systems that had been implemented and enforced. Simply stated, it was likely the thieves wanted the laptop and had no interest whatsoever in the PHI that it contained. In fact, in some cases, the laptops have been recovered at pawn shops, etc. by law enforcement agencies and the covered entity has determined that the information was never accessed.

GatesMoore consultants are always available to assist you with questions related to the enforcement of HIPAA. Over the past few years we have had a number of situations in which our clients have been involved in breaches of PHI. Many of these were simply violations of common sense, others were due to carelessness. Fortunately we can state that none of them were done in a vindictive or truly harmful manner. Nonetheless, you need to be vigilant, constantly train your staff and keep them updated on HIPAA requirements.

Also be aware that a number of government agencies are involved in HIPAA enforcement. Aside from the HHS Office of Civil Rights, the Federal Trade Commission Bureau of Consumer Protection, the Centers for Medicare and Medicaid Services, as well as the Attorney General in your state may become involved.

If you need assistance with HIPAA questions or staff training, please contact Barbara Stahura, Simone Barker or Mike Fleischman.

Company News

CONGRATULATIONS TO EMMA MILLER

Emma Miller recently received her Accredited Member designation from the American Society of Appraisers (ASA) in the discipline of machinery and technical specialties (machinery and equipment).

This accreditation involved a significant amount of dedicated time on Emma's behalf including passing an eight hour challenge exam, and a one hour ethics exam. As well, a sample of Emma's work products were reviewed prior to her receiving her accreditation. Emma's accreditation adds another level of depth to our valuation team. Please join us in congratulating her on this fine accomplishment! Cheers, Emma.



MEET THE NEWEST MEMBER OF OUR CONSULTING TEAM

Jeff List joined the consulting team in August as a consulting coordinator. Jeff will be assisting the valuation team in machinery and equipment appraisals, research, and product development. He holds a Bachelor's of Art from Tulane University.

SAVE THE DATE! 2012 CPT CODING LUNCH-N-LEARN

December 7, 2011 in Atlanta

Walk through the CPT code changes that have the biggest impact on practices and learn how to implement the changes in your practice. Will include brief overview of ICD-10 transition.

Watch for e-blasts and updates on our website for more details and registration.

Update: Practice Management
is published quarterly for clients by
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