CMS Manual System

Pub. 100-20 One-Time Notification

Department of Health & Human Services (DHHS)
Centers for Medicare & Medicaid Services (CMS)

Transmittal 79 **Date: MAY 7, 2004**

CHANGE REQUEST 3193

I. SUMMARY OF CHANGES: This one-time notification requires the issuance of a model letter to all applicants who request to participate in the Medicare program as a Medicare certified hospital. The letter describes recent statutory changes regarding two ownership exceptions to the physician self-referral prohibition, §1877 of the Social Security Act (42 U.S.C.A. 1395nn). The changes were enacted by §507 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

NEW/REVISED MATERIAL - EFFECTIVE DATE: December 8, 2003
***IMPLEMENTATION DATE: June 7, 2004**

Disclaimer for manual changes only: The revision date and transmittal number apply only to the red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will only receive the new/revised information, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS:
(R = REVISED, N = NEW, D = DELETED)

R/N/D	CHAPTER/SECTION/SUBSECTION/TITLE
N/A	

***III. FUNDING:**

These instructions should be implemented within your current operating budget.

IV. ATTACHMENTS:

	Business Requirements
	Manual Instruction
	Confidential Requirements
X	One-Time Notification
	Recurring Update Notification

***Medicare contractors only**

Attachment - One-Time Notification

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SUBJECT: 18-Month Moratorium on Physician Self-Referrals to Specialty Hospitals; Processing of Form CMS-855A Applications to Become a Medicare Certified Hospital

I. GENERAL INFORMATION

A. Background: Under §1877 of the Social Security Act (42 U.S.C. 1395nn), a physician cannot refer a Medicare patient for certain designated health services (DHS), including inpatient and outpatient services, to an entity with which the physician (or an immediate family member of the physician) has a financial relationship unless an exception applies. Section 1877 also prohibits the entity from submitting claims to Medicare, the beneficiary, or any other entity for DHS that are furnished as a result of a prohibited referral. The statute enumerates various exceptions, including exceptions for physician ownership or investment interests in hospitals and rural providers. Violations of the statute are punishable by the following: denial of payment for all DHS claims, refunds of amounts collected for DHS claims, and civil monetary penalties for knowing violations of the prohibition.

B. Policy: The Medicare Prescription Drug, Improvement, and Modernization Act of 2003, (MMA 2003) (Public Law 108-173) altered the hospital and rural provider ownership exceptions to the physician self-referral prohibition. Section 507 of MMA 2003 added an additional criterion to the whole hospital exception, specifying that for the 18-month period beginning on December 8, 2003, and ending on June 8, 2005, a physician may not refer a Medicare patient to a hospital in which he/she has an ownership or investment interest if the hospital is a specialty hospital, even if the specialty hospital is in a rural area. A specialty hospital is defined as a hospital that is primarily or exclusively engaged in the treatment of patients with a cardiac condition, orthopedic condition, or patients receiving a surgical procedure, but does not include a specialty hospital that was in operation or under development as of November 18, 2003. Applicants that had a provider agreement in effect as of that date need not obtain a determination that they were in operation as of that date. Applicants may request a determination from CMS that they were under development as of November 18, 2003. An educational article explaining this statutory provision was issued in One-Time Notification CR 3036 dated March 19, 2004. Issuance of the attached model letter will inform all new applicants and hospitals seeking or notifying CMS of a change of ownership about Section 507 of MMA and where to obtain more information. Additionally, the model letter describes the procedures for obtaining a determination that the hospital was under development as of November 18, 2003.

C. Provider Education: None.

II. BUSINESS REQUIREMENTS

"Shall" denotes a mandatory requirement
"Should" denotes an optional requirement

Requirement #	Requirements	Responsibility
3193.1	Intermediaries currently review Form CMS-855A enrollment applications. As part of their pre-screening requirement, if the enrollment applicant checks the "Hospital" block in section 2, Provider Identification, of the Form CMS-855A, the intermediary shall send the attached letter to the applicant's mailing address to the attention of the authorized official listed in section 16 of the Form CMS-855A.	Intermediaries

III. SUPPORTING INFORMATION & POSSIBLE DESIGN CONSIDERATIONS

A. Other Instructions: N/A

X-Ref Requirement #	Instructions

B. Design Considerations: N/A

X-Ref Requirement #	Recommendation for Medicare System Requirements

C. Interfaces: N/A

D. Contractor Financial Reporting /Workload Impact: N/A

E. Dependencies: N/A

F. Testing Considerations: N/A

IV. SCHEDULE, CONTACTS, AND FUNDING

Effective Date: December 8, 2003 **Implementation Date:** June 7, 2004 **Pre-Implementation Contact(s):** Jacqueline Proctor (410) 786-8852 **Post-Implementation Contact(s):** Jacqueline Proctor (410) 786-8852	**These instructions shall be implemented within your current operating budget.**

Attachment

MODEL LETTER EXPLAINING 18-MONTH MORATORIUM ON PHYSICIAN REFERRALS TO A SPECIALTY HOSPITAL IN WHICH HE/SHE HAS AN OWNERSHIP OR INVESTMENT INTEREST

DATE

DEAR ______________

This is in response to your application to become a certified provider of services under the Medicare program, or to notify CMS of a change of ownership (CHOW).

Our records show that you checked provider type "hospital" on the Form CMS-855A application. The purpose of this letter is to advise you of certain restrictions relating to referrals by physicians that may apply if the hospital applicant is a "specialty hospital" as defined in Section 507 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Public Law 108-73). For purposes of the MMA, section 507 defined a specialty hospital as a hospital that is primarily or exclusively engaged in the treatment of patients with a cardiac condition, orthopedic condition, or patients receiving a surgical procedure. If the hospital applicant is not a specialty hospital, you may disregard the rest of this letter.

However, if your application is for a specialty hospital, you should be aware of the statutory restrictions relating to referrals by physicians. Section 507 of the MMA established an 18-month moratorium on physician referrals to certain specialty hospitals in which the physician has an ownership or investment interest, including an interest held indirectly through another entity such as the physician's medical practice. Physician investors in a specialty hospital may not refer Medicare patients to the hospital until June 8, 2005, and the hospital may not submit any claims for items or services rendered pursuant to a prohibited referral. Violations of the statute are punishable by the following: denial of payment for all inpatient and outpatient services (and certain other designated health services (DHS)) furnished by the hospitals, refunds of amounts collected for DHS claims, and civil monetary penalties for knowing violations of the prohibition. However, a specialty hospital determined by the Secretary to be in operation or under development as of November 18, 2003 is exempt from the moratorium.

A hospital with a provider agreement in effect as of November 18, 2003, does not need to seek a formal determination. An applicant specialty hospital in which referring physicians have a direct or indirect ownership or investment interest **must** seek a determination from CMS that it was under development as of November 18, 2003, if it will be primarily or exclusively engaged in the treatment of patients with a cardiac condition, orthopedic condition, or patients receiving a surgical procedure. In determining whether a hospital was under development, the statute directs the Secretary to consider whether architectural plans were completed, funding was received, zoning requirements were met, and necessary approvals from appropriate State agencies were received. A hospital may not maintain its status as in operation or under development as

of November 18, 2003, if it subsequently changes the specialty services it furnishes, increases the number of direct or indirect physician investors, or increases its bed size beyond a certain threshold.

To obtain a determination regarding whether a specialty hospital was under development as of November 18, 2003, an applicant must submit a written advisory opinion request. The procedures for requesting an advisory opinion are set forth in our regulations at 42 CFR §411.370 – 411.389. Specialty hospital advisory opinions should be mailed to Centers for Medicare and Medicaid Services, Department of Health and Human Services, Attention: Advisory Opinions, P.O. Box 26505, Baltimore, Maryland 21207. Additional information concerning Section 507 of the MMA was issued in CR 3036 and is posted on www.cms.hhs.gov/medlearn/physref/asp.

Meanwhile, your application to become a certified provider of services under the Medicare program will continue to be processed. Please note that if a specialty hospital, as defined under Section 507 of MMA, obtains a provider number and submits claims for services rendered during the moratorium period as a result of a prohibited referral, the hospital will be subject to the sanctions noted above and any other sanctions under applicable law.