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Reactivation of Billing Privileges - More Onerous for HHAs

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In an April 6, 2012 Survey & Certification Letter ([S&C: 12-26-HHA](#)) [PDF] CMS reminded Home Health Agencies (HHAs) of the January 1, 2010 change in the process for an HHA to reactivate its billing privileges. Since the June 2006 overhaul of the Medicare enrollment rules, CMS and its contractors have had the authority under 42 C.F.R. § 424.540(a) to deactivate Medicare billing privileges when:

- A provider or supplier fails to submit any Medicare claims during a 12-month time period, or
- A provider or supplier does not report changes in its enrollment data within the time period required to report such changes.

Deactivation is the temporary suspension of billing privileges. It is not a final action and has no effect on the provider's or supplier's participation agreement. When the regulations were changed to authorize deactivations, CMS outlined the procedures that must be followed to have billing privileges restored, noting that reactivations would not require a new survey.

That, however, changed for HHAs when 42 C.F.R. § 424.540(b)(3) was added and became effective January 1, 2010. This enrollment rule change was announced in the "[Medicare Program; Home Health Prospective Payment System; Rate Update for Calendar Year 2010](#) [PDF]" final rules published in the Federal Register on November 10, 2009. As a result of this change, an HHA that receives a billing privilege deactivation is required to undergo an initial survey by the state or a deemed status accreditation organization to confirm compliance with the conditions of participation before Medicare billing privileges can be reactivated. Since 2007,

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initial surveys for HHA have been identified as Tier 4 surveys (i.e., the lowest priority) and many states have limited or no budgeted funds to conduct Tier 4 surveys.

In the April 2012 S&C Letter, CMS clarified the interplay between the regulation requiring a reactivation survey and whether the HHA had previously obtained deemed-status accreditation or not. If an HHA had obtained deemed-status accreditation prior to the deactivation, then the HHA must notify the accrediting organization of the need to conduct a reactivation survey. The accrediting organization then conducts the survey and notifies the CMS Regional Office upon successful completion of the survey. An HHA that did not previously have deemed-status accreditation and is unable to obtain a timely state survey could seek to obtain a deemed-status accreditation survey to have billing privileges restored. In this case, the accrediting organization would conduct an initial deemed-status accreditation survey, again notifying the Regional Office upon the HHA's successful completion of the survey.

Ober|Kaler's Comments

It is important to recognize that there are no appeal rights to challenge a deactivation of billing privileges since a deactivation is not a final action. Under the regulations at 42 C.F.R. § 424.545, however, a provider or supplier is entitled to file a rebuttal. To the extent that billing privileges were deactivated erroneously, a successful challenge via a rebuttal may be the quickest and least costly route to restored billing privileges.