

CMS is issuing enrollment revocations with 10-year enrollment bars under 2019 Final Rule



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In October of last year, we published an **alert** regarding a new final rule from CMS, effective November 4, 2019, relating to new enforcement authorities to combat criminal behavior in its programs. One of the provisions in this **final rule** was an increase in the maximum reenrollment bar from 3 years to 10 years. The commentary to the final rule provides that this 10-year bar would allow CMS to address a variety of factual situations especially those involving improper or fraudulent behavior and would be restricted to serious behavior and misconduct.

Although there was a slowdown during COVID of all types of CMS audits and revocations, we have recently seen a dramatic uptick in provider revocations and these include the maximum 10 year reenrollment bar. However, contrary to the situations described in the commentary to the final rule, the factual situations do not, in fact, involve allegations of fraud, serious behavior or misconduct. Each has in some way or another related to a **failure to provide sufficient documentation in response to requests** from CMS or its MACs. A 10-year enrollment bar can be a devastating, and perhaps even, a career ending sanction if the provider's field is not one that lends itself to a concierge practice. These records requests can be through the use of the Targeted Educate and Probe (TPE) program or part of regular auditing activities. We are also seeing more pre-payment review TPEs and records requests. CMS has discretion in setting the length of the enrollment bar and if it is not overturned at the reconsideration stage (or the first appeal level) then the

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there is no discretion for the administrative law judge at the second level of appeal to overturn or even adjust that reenrollment bar length.

In 2018, we issued another **alert** regarding the importance of responding to medical record requests from both federal and commercial payors in the context of the impact on overpayments. Today we are seeing that CMS is willing to take advantage of its revocation authority and its ability to now impose a 10-year bar for failure to sufficiently respond to records requests. The ability to impose a 10-year enrollment bar has only been available to CMS since November 2019, so it remains to be seen whether CMS can be persuaded to overturn the revocations or reduce the reenrollment bar upon appeal through a request for reconsideration. It is clearer than ever that every communication from CMS related to records requests must not be dismissed and must be responded to thoroughly. It is critical to set up internal policies, procedures and controls for what to do when medical records requests arrive or when a MAC initiates a TPE audit. Get counsel and/or a consultant involved early and make sure to have proactive compliance auditing measures in place.

If you have any questions or would like more information, please contact one of the attorneys below.



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