



**Michael D. Maves, MD, MBA**, Executive Vice President, CEO

June 9, 2006

Mark B. McClellan, MD, PhD  
Administrator  
Centers for Medicare and Medicaid Services  
200 Independence Avenue, SW, #3-4G  
Washington, DC 20201

Dear Dr. McClellan:

The American Medical Association (AMA) appreciates CMS' efforts to streamline the Medicare 855 enrollment forms. CMS, however, made two significant, problematic changes to the new enrollment process. First, CMS is requiring physicians and providers to obtain a National Provider Identifier (NPI) prior to initially enrolling in Medicare or making a change to existing enrollment information. Second, CMS is mandating the use of electronic funds transfer (EFT). We are writing to alert you to ongoing concerns we are hearing from physicians, group practices, academic medical centers, state medical societies and medical specialty societies concerning implementation of the revised 855 forms.

### **Implementing a Transition Period for New Enrollment Forms**

On May 1, 2006, CMS announced revised enrollment forms and mandated their use, effective immediately. We are very concerned that CMS chose to require the use of the new forms without any transition period, which would have allowed time to educate physicians about the changes and the availability of the new forms. We have already heard numerous examples of old applications crossing in the mail during the same week the new enrollment forms became effective, thereby jeopardizing the status of multiple enrollment applications. CMS recently issued MLN Matters article SE0634, which states that applications received on the "old forms" are acceptable until June 2, 2006, so long as they include Section 1 or 4 of the "new forms." While CMS' attempt to create a buffer period is notable, the requirement to use portions of the new forms during this short time frame defeats the purpose of a real transition period, especially considering the lack of outreach CMS conducted to alert physicians to the existence of the new form and these new requirements.

The timing of the implementation of the new enrollment forms is also causing significant challenges for medical residency programs across the country. Traditionally 4<sup>th</sup> year medical students enter residency programs on July 1. Therefore, the implementation date of the new enrollment forms is generally coinciding with enrollment of new residents into Medicare. The challenges faced by these medical residency programs was highlighted by numerous comments made during the May 16, 2006, Physician Open Door conference call. Multiple academic medical centers described not only timing as a significant concern, but also stated that numerous applications had been rejected by the Medicare carriers for not being submitted on the “new forms” and because they “did not contain an NPI.” Moreover, these rejections date back to mid-April, despite the new forms only being announced May 1, 2006.

**For these reasons, we urge CMS to:**

- **Implement a transition period.**
- **Tie the end of the transition period to October 2, 2006, the second phase of Medicare’s NPI implementation plan when existing legacy billing numbers and/or NPIs will be accepted on Medicare claims.**
- **Conduct outreach to physicians to educate them on the new enrollment forms and requirements.**
- **Work with the Medicare carriers to ensure that transition from the old to the new forms is carried out consistently so that unnecessary rejections are averted.**
- **Instruct the Medicare carriers in the near term to stop rejecting enrollment applications if the only reasons for rejection are that they are not on the “new form” and/or do not contain an NPI.**

#### **Requiring NPI Prior to Medicare Enrollment/Changes to Enrollment**

**Although, we recognize the need for the NPI, we strongly oppose Medicare’s new requirement, which calls for obtaining an NPI prior to enrollment.** Given the length of time traditionally involved with processing enrollment applications, and the fact that physicians are prohibited from billing Medicare until they are assigned a billing number, requiring physicians to obtain an NPI prior to enrollment presents one more obstacle to completing this process in a timely fashion. Of concern as well is the potential impact a rejected NPI application could have on enrollment.

We are also concerned that requiring physicians to secure an NPI prior to enrollment could jeopardize timely enrollment for those physicians who would like to take advantage of the Electronic File Interchange (EFI) or “bulk enumeration,” a process designed to allow an entity known as an Electronic File Interchange Organization (EFIO) apply for enumeration on behalf of physicians and other providers. CMS announced the availability of the EFI process on May 1, 2006, the same day the new enrollment forms went into effect. Physicians who are joining or have joined large group practices may prefer bulk enumeration. However, since the EFI process was only recently established, there needs to

be sufficient time for CMS and the industry to work through any unintended complications resulting from this new system. Lastly, we are concerned that physicians who rely on the EFI process and are required to submit NPI documentation should not have their enrollment process delayed while they wait to secure a copy of their NPI notification from the EFIO.

**For these reasons, we urge CMS to:**

- **Permit enrollment to proceed without the NPI.**
- **Allow physicians 30 days to obtain an NPI following the mailing date of their enrollment application.**

### **Requiring EFT Prior to Medicare Enrollment/Changes to Enrollment**

**While the AMA appreciates CMS' desire for increased administrative simplification, we strongly oppose the new, mandatory EFT requirement.** Physicians should be given the latitude to determine whether they prefer to receive their claims payment electronically via electronic funds transfer (EFT) or through the mail in the form of a paper check. This is critical for maintaining a physician's right to privacy concerning access to their banking information. Further, the Department of the Treasury final rule regarding *Management of Federal Agency Disbursements* (63 Fed. Reg. 51,490, 494 Sep. 25, 1998), discusses a Medicare payment exemption from the rule's general requirement that federal payments made by an agency must be made by EFT. Specifically, the final rule states, "in light of certain specific statutory provisions governing the issuance of Medicare payments, as well as the overall structure of the program, the issuance of paper Medicare payments by intermediaries and carriers would be in compliance with [this requirement]."

**In accordance with the foregoing, we urge CMS to:**

- **Repeal the mandatory EFT requirement.**
- **Alternatively, implement a transition period (ending October 2, 2006) in the event that CMS decides to maintain this requirement.**

### **Using EFT and HIPAA Covered Entity Status**

We have received a growing number of inquiries from specialty societies, states, and physicians about whether the use of EFT, for physicians who do not conduct any HIPAA standard, electronic transactions (which includes receiving their remittance advice electronically), would trigger HIPAA "covered entity" status. We understand from a number of CMS officials that the use of EFT in and of itself, when no remittance advice is received electronically, does not make a physician a "covered entity." We appreciate CMS' confirmation of this interpretation during the most recent Physician Open Door conference call. We also appreciate that CMS has agreed to develop an FAQ that clarifies this policy

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and modify existing HIPAA materials that contradict this explanation. We remain concerned, however, that this explanation is contrary to what is contained within the *HIPAA Standards for Electronic Transactions* final rule.

**Thus, we look forward to receiving an FAQ clarifying that the EFT does not trigger HIPAA covered entity status, as well as updated outreach materials reflecting this explanation. We also urge CMS to modify the *HIPAA Standards for Electronic Transactions* final rule to clearly reflect that the EFT does not trigger HIPAA covered entity status.**

In closing, given the magnitude of the changes included in the new 855 enrollment forms, we urge CMS to implement a transition period to the new enrollment applications. A transition period would allow for greater time to educate physicians about these changes and alleviate the issue academic medical centers are facing during this time of year as they enroll 4<sup>th</sup> year medical students. Moreover, we urge CMS to (i) permit physicians to obtain their NPI following Medicare enrollment; and (ii) establish that EFT is optional for physicians.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Maves", is written over a thin horizontal line.

Michael D. Maves, MD, MBA