Medicare exclusions not just for OIG anymore: RFK Jr.

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Heads up: While currently only the Office of the Inspector General (OIG) can exclude Medicare providers for cause, it appears HHS is giving CMS the authority to do so as well.

In a July 21 announcement, HHS Secretary Robert F. Kennedy Jr. told reporters that in "under my authority as HHS Secretary, we are expanding the exclusion authority. Now the CMS and the Office of Inspector General be able will be able to use that authority to remove bad actors from federal healthcare programs."

At the same event Inspector General T. March Bell said the change would "be a force multiplier" that would "exclude additional bad actors."

CMS has long been able to exercise revocation, which withdraws a Medicare provider's enrollment. The agency also can utilize preclusion, which prevents potential Medicare providers from enrolling. But exclusion is a more sweeping authority that prevents providers from getting payments from any federal health care program, including Medicaid and CHIP (PBN 11/22/21).

The press conference was mainly about HHS' retention of Medicaid funds meant for Minnesota and California on the grounds of suspected fraud, and the exclusion expansion is thought to be part of the administration's aggressive enforcement policies.

No stopping it

The official press release doesn't specifically mention the innovation, saying only that "HHS and the HHS Office of Inspector General continue to exercise exclusion authorities as a critical tool to remove bad actors from Medicare and Medicaid programs." HHS has yet to issue further guidance on the change.

But experts take Kennedy's words seriously, and say he has the legal right to do it.

Andrew Tsui, a partner with Arnall Golden Gregory LLP in Washington, D.C., and formerly a litigation attorney in the HHS Office of the General Counsel for the CMS division, says his understanding is that "Kennedy specifically delegated [exclusion authority] to CMS as opposed to CMS taking it, which is an important distinction, because the statute [section 1128 of the Social Security Act] permits the Secretary to make that delegation. Or, rather, nothing prevents the secretary from making that delegation."

And that authority under Section 1128 allows the Secretary and his assignees to exclude providers from all programs receiving federal funding for health care. That is, Tsui says, "an excluded individual cannot furnish items or services, cannot order or prescribe items or services, and cannot provide administrative or management services to any entity that participates in a federal health care program."

For example, says Christopher J. Kutner, a partner in the health services practice group at Rivkin Radler LLP in Uniondale, N.Y., if a legitimate Medicare enrollee gets federal program money, they cannot pay an excluded provider for anything.

How this gets operationalized will probably be spelled out in rulemaking, guidance documents, and maybe updates to sub-regulatory manuals, Tsui says, so "providers need to pay very close attention to how this gets operationalized in the Federal Register notices."

And when it hits, it will certainly change the way you need to respond to disciplinary correspondence from CMS.

"I don't think there's a percentage of the population that really understands the distinction between preclusion, revocation and exclusion," Kutner says. "So when clients call and say, 'you know, we got this letter from CMS or OIG,' I say: 'Get me the letter quickly so that I can see the language, because the appeal rights and time frames are not the same in all cases.'"

Kutner expects further variation once exclusion authority is shared, so practices should be aware and go straight to counsel with any such CMS communications.

Resources

- C-Span, HHS press conference, “HHS Secy. Kennedy, Dr. Oz, and Others News Conference on Combating Fraud,” July 21, 2026: www.c-span.org/program/news-conference/hhs-secy-kennedy-dr-oz-and-others-news-conference-on-combating-fraud/683173
- HHS press release, “HHS Defers More Than $1 Billion in Medicaid Payments to California, Minnesota Pending Review of High-Risk Claims in Crackdown on Fraud,” July 21, 2026: www.hhs.gov/press-room/hhs-defers-medicaid-payments-california-minnesota-fraud-review.html

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