

representative is not an attorney, the provider or supplier must file with CMS written notice of the appointment of a representative; this notice of appointment must be signed and dated by, as applicable, the individual supplier, the authorized official or delegated official, or a legal representative.

(4) The provider's or supplier's failure to submit a rebuttal that is both timely under paragraph (b)(1) of this section and fully compliant with all of the requirements of paragraph (b)(3) of this section constitutes a waiver of all rebuttal rights under this section.

(5) Upon receipt of a timely and compliant stay rebuttal, CMS reviews the rebuttal to determine whether the imposition of the stay and/or the effective date thereof are correct.

(6) A determination made under paragraph (b) of this section is not an initial determination under 42 CFR 498.3(b) and therefore not appealable.

(7) Nothing in paragraph (b) of this section requires CMS to delay the imposition of a stay pending the completion of the review described in paragraph (b)(5) of this section.

(8)(i) Nothing in paragraph (b) of this section requires CMS to delay the imposition of a deactivation or revocation, pending the completion of the review described in paragraph (b)(5) of this section.

(ii)(A) If CMS deactivates the provider or supplier during the stay, any rebuttal to the stay that the provider or supplier submits that meets the requirements of paragraph (b) of this section is combined and considered with the provider's or supplier's rebuttal to the deactivation under § 424.546 if CMS has not yet made a determination on the stay rebuttal pursuant to this section.

(B) In all cases other than that described in paragraph (b)(8)(ii)(A) of this section, a stay rebuttal that was submitted in compliance with the requirements of paragraph (b) of this section is considered separately and independently of any review of any other rebuttal or, for revocations, appeal under 42 CFR part 498.

[88 FR 79542, Nov. 16, 2023, as amended at 89 FR 9784, Feb. 12, 2024]

§ 424.542 Prohibition on ordering, certifying, referring, or prescribing based on felony conviction.

(a) *General prohibition.* A physician or other eligible professional (regardless of whether he or she is or was enrolled in Medicare) who has had a felony conviction within the previous 10 years that CMS determines is detrimental to the best interests of the Medicare program and its beneficiaries may not order, refer, certify, or prescribe Medicare-covered services, items, or drugs.

(b) *Payment.* Medicare does not pay for any otherwise covered service, item, or drug that is ordered, referred, certified, or prescribed by a physician or other eligible professional (as that term is defined in section 1848(k)(3)(B) of the Act) who has had a felony conviction within the previous 10 years that CMS determines is detrimental to the best interests of the Medicare program and its beneficiaries.

[88 FR 77878, Nov. 13, 2023]

§ 424.545 Provider and supplier appeal rights.

(a) *General.* A prospective provider or supplier that is denied enrollment in the Medicare program, or a provider or supplier whose Medicare enrollment has been revoked may appeal CMS' decision in accordance with part 498, subpart A of this chapter.

(1) *Appeals resulting in the termination of a provider agreement.* (i) When revocation of billing privileges also results in the termination of a corresponding provider agreement, the provider may appeal CMS' decision in accordance with part 498 of this chapter with the final decision of the appeal applying to both the billing privileges and the provider agreement.

(ii) When a provider appeals the revocation of billing privileges and the termination of its provider agreement, there will be one appeals process which will address both matters. The appeal procedures for revocation of Medicare billing privileges will apply.

(2) *Payment of unpaid claims.* Payment is not made during the appeals process. If the provider or supplier is successful in overturning a denial or revocation, unpaid claims for services furnished during the overturned period may be resubmitted.