

Publications

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Not Just a Form: Eleventh Circuit Upholds CMS-855 Conviction, Expanding Medicare Enrollment Risk

Key Takeaways:

- The Eleventh Circuit recently upheld a surgeon's conviction, prison sentence and forfeiture for false ownership disclosures on a CMS-855 Medicare enrollment form, reinforcing that inaccurate enrollment information can carry criminal consequences.
- The court confirmed that CMS-855 accuracy is not limited to initial enrollment but extends to every submission, including routine updates and revalidations.
- Providers and suppliers should implement robust CMS-855 verification and oversight controls across all submissions, with a focus on accuracy, consistency and accountability.

The U.S. Court of Appeals for the Eleventh Circuit recently upheld an orthopedic surgeon's conviction, nearly three-year prison sentence and forfeiture of \$125,000 for making a false statement, in violation of 18 U.S.C. § 1035, on a Medicare enrollment application.¹ This case underscores how false ownership disclosures by providers and suppliers on Medicare 855 forms (CMS-855) can carry significant risk, including potential criminal liability.

For providers and suppliers, the takeaway is clear: CMS-855 accuracy is not a box to check at initial enrollment, but rather, an ongoing obligation that attaches to every submission, including updates and revalidations. In this alert, we discuss the decision and outline practical steps providers and suppliers can take to reduce risk.

Case Overview: Eleventh Circuit Affirms Conviction for False CMS-855 Disclosures

In 2016, the defendant, an orthopedic surgeon, created a durable medical equipment (DME) company named Silent Hill Bracing and Orthopedic Supplies, LLC. Silent Hill's initial application with Medicare as a DME provider only listed the defendant's mother as an owner, even though she had no role in the business and was not an owner. In 2019, Silent Hill submitted a new CMS-855 form to update information and notify Medicare that Silent Hill had changed their hours of operation. The updated form still falsely listed the defendant's mother as the business owner and contained a certification of its truth.

Related People

- Mary Buckley Tobin
- Adrienne A. Testa
- Joshua D. McCann, Pharm.D.
- Kathy L. Schaeffer

Related Capabilities

- Licensure, Enrollment & Certification
- Health Care

The Eleventh Circuit held that false ownership disclosures on CMS-855 forms are material because ownership information can influence Medicare's decisions about establishing or maintaining billing privileges. The Court also found sufficient evidence that the surgeon aided and abetted the false submission by proposing to list his mother as an owner, supplying her identifiers and signatures and consenting to filings. A government expert at trial testified that Medicare enrollment is considered an "ongoing conversation" with Medicare that extends beyond the initial enrollment form. The CMS-855 forms explicitly state the importance of including accurate ownership information. Submitting false ownership information on a provider enrollment form may lead to enrollment termination. Therefore, the Eleventh Circuit held that regardless of whether a CMS-855 form is used for initial enrollment or to simply update hours of operation, including false information can influence Medicare's enrollment decisions. When determining whether a false statement is material, the government does not have to prove it relied upon the false statement — just that it was cable of influencing Medicare's decision-making.

However, the Eleventh Circuit vacated a nearly \$316,000 restitution order because the government failed to show a causal link between the false Medicare enrollment application and subsequent claims for payment. To succeed on the restitution claim, the government needed to offer sufficient evidence demonstrating a causal link between the false statement and later claims to support an order of restitution. Here, the government failed to prove a causal link — i.e., actual reliance by Medicare on the January 2019 CMS-855 or that the false statement directly and proximately caused the paid claims — particularly given the absence of evidence that the Medicare Administrative Contractor (MAC) processed or relied on the CMS-855 form updating information when paying claims.

This decision established that the standard for restitution differs from materiality for false statements on a CMS-855 submission.

Practical Steps for Providers and Suppliers to Strengthen CMS-855 Compliance

The Eleventh Circuit's decision is an important reminder that providers and suppliers should review their current CMS-855 filing policies and procedures to ensure the veracity of every submission, even when a CMS-855 submission is updating mundane information like hours of operation.

Providers and suppliers should take the following steps to strengthen CMS-855 compliance:

1. **Ensure accurate ownership and control disclosures.**
 1. Ensure all CMS-855-series filings (initial, updates, recertifications, revalidations) accurately disclose, among other things, direct and indirect owners, managing employees and control interests.
 2. Maintain documentation evidencing all disclosed ownership and control (e.g., operating agreements, equity ledgers, capitalization tables, management agreements). Be prepared to submit this documentation as required or requested by CMS.
2. **Strengthen enrollment update protocols.**
 1. Establish protocols to reverify the entirety of the CMS-855 record prior to every submission.
 2. Confirm the accuracy of *all* submitted information, not just the section being updated. If inaccuracies are discovered in past submissions, correct errors proactively and in accordance with counsel guidance.
 3. Create a single, accountable owner for CMS-855 accuracy who is tasked with coordination across stakeholders (i.e., enrollment, compliance and

finance teams).

3. **Enforce governance and signature controls.**
 1. Adhere to strict signature authority rules (i.e., do not submit pre-signed forms).
 2. Verify that only an Authorized Official or Delegated Official, as defined by CMS, certifies the CMS-855 submission.
 3. Maintain an audit trail of who prepared the submission versus who approved it.
4. **Maintain complete CMS-855 records.**
 1. Maintain submission receipts, processing notices and MAC correspondence for every CMS-855 filing. This record can be critical to establish compliance and, if necessary, to contest restitution by showing Medicare's lack of reliance or absence of causation.

The Bottom Line

The Eleventh Circuit's ruling highlights that providers and suppliers can face criminal penalties for providing false information at any stage of the CMS enrollment process, not just during the initial registration. Medicare enrollment is an ongoing process, which requires providers and suppliers to implement robust verification and submission policies to ensure every CMS-855 form submitted contains accurate information. For more information about this decision and its implications, please contact **Mary Tobin, Adrienne Testa, Joshua McCann, Kathy Schaeffer**, a member of the **Licensure, Enrollment & Certification team** or your preferred Polsinelli attorney.

[1] United States v. Alexander, No. 23-11322 (11th Cir. Mar. 24, 2026).