

## **Comments and Responses on the CMS-855S, OMB: 0938-1056**

### **Comments related to the proposed changes (DATA Collection)**

Comment: Two commenters recommended that CMS revise the check box regarding “reactivation” on page 5 to state, “You are **reactivating** your Medicare Billing Privileges.”

Response: CMS declines to accept this suggestion as the actual Medicare billing number is deactivated, rather than the billing privileges.

Comment: One commenter suggested changing the wording in various sections of the CMS 855S “reenrolling” to “revalidation” to be consistent with changes made to the CMS enrollment regulations.

Response: CMS agrees with this wording change and will change “reenrolling” to “revalidation” in sections 1B and sections 2A3 of the CMS 855S.

Comment: One commenter suggests for consistency between the CMS 855B and the CMS 855S, that the wording in section 2G of the 855S, “(includes exempt providers)” be added to the end of the sentence that states “The enrolling supplier is not accredited.”

Response: CMS has minimized the applicable check boxes for accreditation identification and clarified the language.

Comment: One commenter questioned the need for additional language specifying “...the business location in Section 4A...” in reference to accreditation as only one practice location can be reported for a supplier of Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) per CMS 855S instructions.

Response: CMS agrees with this inconsistency and has deleted the language as recommended.

Comment: Two commenters suggested that CMS change the terms “reenroll” and “reenrollment” on pages 4 and 5 of the CMS-855S to “revalidate” and “revalidation.”

Response: CMS agrees, and will make the change.

Comment: One commenter suggested changing the language of “place of birth” to clarify if the intent is City, State, and/or Country of Birth.

Response: CMS has clarified the Place of Birth requires State data and Country of Birth data. These fields are present in all applicable CMS 855 applications.

Comment: One commenter stated the formatting of the question “How long has this owner had ownership...” is such that it would not be used to state the amount of time, but rather the effective date of ownership in both the organizational and individual ownership sections.

Response: CMS concurs and has revised the language to accurately reflect the effective date of ownership in sections 5A and 6A of the CMS 855S.

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### **Comments that are Out-of-Scope for these proposed changes (DATA Collection)**

Comment: Two commenters suggested that CMS include information on the CMS-855S that provides DMEPOS suppliers with information about the Medicare application fee and fingerprint processes. They contended that by not including information about the application fee in the CMS-855S, CMS is “hiding the ball” on DMEPOS suppliers and delaying application processing by the NSC.

Response: CMS disagrees with the commenters’ assertion. We have conducted substantial outreach on the application fee requirements and plan to include a reference to it in a future version of the CMS-855S. As for fingerprinting, we are not in a position to address it in this iteration of the CMS-855S because there is currently no requirement that fingerprints be submitted as a condition of enrollment.

Comment: Two commenters suggested that CMS add information to Section 17 of the CMS-855S to remind DMEPOS suppliers to submit: (1) the Medicare application fee and hardship waiver process with the initial enrollment application or revalidation package, and (2) fingerprints with their initial enrollment application.

Response: As already stated CMS has conducted substantial outreach on the application fee requirements and plan to include a reference to it in a future version of the CMS-855S. As for fingerprinting, we are not in a position to address it in this iteration of the CMS-855S because there is currently no requirement that fingerprints be submitted as a condition of enrollment.

Comment: Two commenters suggested that CMS delete the bullet entitled “Report the NPI and provide a copy of the NPI notification from the NPI enumerator” found on page 2 (Avoid Delays In Your Enrollment) of the CMS-855S. The commenters stated that CMS does not require any other provider or supplier to submit their NPI notification with their enrollment application. Similarly, they recommended that CMS delete the check box entitled “Copy of the National Provider Identifier notification that you received from the National Plan and Provider Enumeration System (NPPES)” in Section 17 (Supporting Documents) of the CMS-855S. They stated that this requirement is no longer necessary and that eliminating it will reduce the paperwork burden on DMEPOS suppliers.

Comment: Two commenters recommended that CMS add a new bullet to page 4 (New Enrollees) of the CMS-855S, which states: “Enrolling a practice location which was deactivated due to 12 consecutive months of non-billing (see reactivation below).”

Response: CMS will retain the language in the paragraph on reactivation on page 4 of the CMS 855S as it does not specify deactivation due to a specific reason, such as 12 consecutive months of non-billing.

Comment: Two commenters suggested that CMS delete the paragraph on Reactivation on page 4 (Existing Medicare New Enrollees), as a DMEPOS supplier that is deactivated must initiate a new enrollment to re-enroll in the Medicare program.

Response: CMS believes that the current language should be retained, as it is consistent with the verbiage in 42 CFR 424.540(b).

Comment: One commenter requested that section 2 of the CMS 855S be re-numbered to match other CMS 855 forms with references to each section.

Response: CMS verified the numbering sequence in section 2 of the CMS 855S. As the requirements for the CMS 855S vary from other types of providers/suppliers, section 2 of the CMS 855S cannot mirror that of the other CMS 855 applications. CMS has reviewed and verified the numbering sequence in section 2 and referenced sections as applicable for clarity.

Comment: Two commenters urged CMS to add information to page 12 of the CMS-855 to explain how a pharmacy can be exempt from accreditation requirements.

Response: While CMS appreciates this suggestion, CMS has already conducted ample outreach to the pharmacy community on this issue. We do not believe that further elucidation of the matter is necessary on the CMS-855S.

Comment: Two commenters suggested that CMS delete this reference to “convictions” from items 2, 3, 4, 5 in Section 3 of the CMS-855S because CMS does not have statutory or regulatory authority to deny or revoke Medicare billing privileges based on a misdemeanor conviction.

Response: CMS declines to accept this suggestion, as the Office of Inspector General has the authority under section 1128 of the Act to exclude a person or entity from the Medicare program based on certain health care-related misdemeanors.

Comment: Two commenters recommended that CMS revise item 1 in section 3 to delete the phrase, “that CMS has determined to be detrimental to the best interest of the program and its beneficiaries.”

Response: CMS believes since 42 CFR 424.530(a)(3) and 42 CFR 424.535(a)(3) use the “detrimental to the best interest” language in conjunction with felony convictions, we believe that it is appropriate to use it in item 1 as well.

Comment: Two commenters recommended that CMS delete the reference to the Medicare Identification Number in section 3 of the CMS-855S (under Exclusions, Revocation, or Suspension”), in that CMS requires DMEPOS suppliers submit claims using the NPI, not a Medicare Identification Number.

Response: While providers and suppliers do submit claims via the NPI, the Medicare identification number still serves as an identifier of the provider or supplier. As such, CMS declines to adopt the commenter’s suggestion at this time.

Comment: Two commenters suggested that CMS replace the term, “Medicare law” with “Social Security Act (Act)” or “the Social Security Act” in section 15 (Certification Statement).

Response: As mentioned above, the Social Security Act contains many other statutory provisions besides those that pertain to Medicare. CMS therefore believes that the term “Medicare law” – which refers to Title XVIII of the Social Security Act – more accurately articulates the provisions that require the signatory’s compliance.

Comment: Two commenters recommended that CMS add “disregarded entity” and “government owned entity” to page 12 (Organizational Structure) of the CMS-855S.

Response: CMS will consider the recommendation to add “disregarded entity” to the Organizational Structure options in page 12 of the CMS 855S for a future revision. However, if the supplier is a government-owned entity, the owning governmental entity must be identified in section 5 of the application.

Comment: Two commenters suggested that CMS add “Expiration Date of Current Surety Bond (mm/dd/yyyy)” to Section 12 C on page 26 of the CMS-855S.

Response: The expiration date is identified on the surety bond itself.

Comment: Two commenters suggested that CMS add information to the “Billing Number Information” section of the CMS-855S to state that DMEPOS suppliers must have a separate NPI for each practice location unless the supplier is a sole proprietorship.

Response: CMS believes that the current language should be retained, as we believe that DMEPOS suppliers are already aware that each practice location must have a separate NPI.

Comment: Two commenters recommended that CMS delete the word, “Convictions” from the check box titled, “Final Adverse Action/Convictions” on page 6 (section 1.B) of the CMS-855S. They argued that this change would ensure consistency with Section 3 of the CMS-855S, and added that a “conviction” is considered a “Final Adverse Action.”

Response: Since a substantial number of the adverse actions listed in section 3 involve criminal convictions, CMS believes it is appropriate to include the term “conviction” next to the box in question.

Comment: Two commenters suggested that CMS add a new statement to the CMS-855 certification to address the concept of nominee owners and responsible parties.

Response: CMS believes “the concept of nominee owners and responsible parties” are out of scope for this information collection.

Comment: Two commenters suggested that CMS align the meaning of provider enrollment terms found under “Existing Medicare DMEPOS Suppliers” on page 4 with the “Reason for Application Submission” on pages 5 and 6 of the CMS-855S so that the information is presented in the following manner: 1. New Enrollee, 2. Adding a New Business Location, 3. Changing Your Medicare Information, 4. Reactivation, 5. Voluntarily Termination, 6. Revalidation.

Response: CMS believes that the current alignment on page 4 is appropriate and does not need to be reordered.

Comment: Two commenters suggested that CMS change the sentence “You are revalidating your Medicare enrollment” on page 5 of the CMS-855S to “CMS or the NSC requested a revalidation.” The commenters believed that this change would create less confusion for the public and help the NSC determine when a provider or supplier is actually revalidating its enrollment information rather than making a voluntary submission.

Response: CMS believes that the current verbiage is appropriate and does not need to be altered. We also note that other language on page 5 makes clear that the supplier need not submit a reenrollment/revalidation application unless the NSC requests it to do so.

Comment: Two commenters suggested that CMS delete the word “Convictions” from the title found in Section 3 of the CMS-855 because a conviction is only one type of Final Adverse Action.

Response: As previously stated, since a substantial number of the adverse actions listed in section 3 involve criminal convictions, CMS believes it is appropriate to include the term “conviction” in the section 3 heading.

Comment: Two commenters suggested that on page 11, CMS: (1) change the title for section 2.E from “Section 2E Instructions: Liability Insurance Information” to “Section 2E: Comprehensive Liability Insurance,” (2) delete the title “E. Liability Insurance Information” in the middle of page 11 (Section 2.E) of the CMS-855S, and (3) correct the regulatory citation for limited insurance information on page 11 (Section 2.E) of the CMS-855S from “42 CFR 424.57(c)” to “42 CFR 424.57(c)(10).”

Response: CMS agrees, and will make these changes.

Comment: Two commenters recommended that CMS add information about authorized sureties to page 26 (Section 12) of the CMS-855S.

Response: The National Supplier Clearinghouse has already posted information about authorized sureties on the “Frequently Asked Questions” Web page.

Comment: One commenter recommended adding instructions specific to how to complete medical record storage locations when electronic records are the sole type of medical record. It was suggested that perhaps this would be completed for where servers are located or CMS may have other disclosure requirements in these situations.

Response: CMS concurs with this recommendation. CMS will include the data fields necessary for this collection in section 4C of the CMS 855S application in a future revision.

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### **Comments that are Out-of-Scope for these proposed changes (Instructions)**

Comment: Two commenters suggested that CMS add the first two paragraphs found on page 2 of the CMS-855B to the “Billing Number Information” found in the CMS-855S. The commenters believed that this change would clarify which NPI should be submitted by a health care provider.

Response: CMS believes that the current language should be retained, as we believe that DMEPOS suppliers are already aware what NPI to use when enrolling a DMEPOS supplier in the Medicare program

Comment: Two commenters suggested that CMS add the following bullets to page 2 of the CMS-855S: (1) “Ensure that the legal business name shown in Section 2 matches the name on tax documentation and the National Plan and Provider Enumeration System,” (2) “Prior to submitting an enrollment application (CMS-855S or Internet-based PECOS application), obtain a surety bond and/or accreditation, if necessary,” and (3) “Submit your Medicare application fee or hardship waiver with your initial enrollment application or revalidation submission.”

Response: CMS will consider these suggestions for a future revision of the CMS-855S.

Comment: One commenter noted that contractors are processing the change, add and delete boxes inconsistently stating that some contractors require that these boxes be used only in situations where the provider/supplier is changing their information, while others are requiring that dates be included in these boxes when completing other reasons for application, specifically new enrollee applications and suggests additional contractor education be done in that area for consistency.

Response: CMS believes this level of detail to be out of scope for this information collection. However, CMS will instruct contractors to process applications, requiring only the change, add and delete boxes be completed for only provider/supplier changes of information.

Comment: One commenter suggests changing the required section language in section 1A to “Complete all applicable sections” to clarify that not every section is needed for each type of enrollment situation.

Response: CMS concurs and has revised the language in section 1A in the CMS 855S.

Comment: Two commenters suggested that CMS revise and consolidate the information found on page 1 and 4 of the CMS-855S regarding who should submit the CMS-855S, as this will shorten the application by at least one-half of a page.

Response: Because of the importance of the information on page 1, CMS believes that it is appropriate and beneficial to repeat it on page 4.

Comment: Two commenters recommended that CMS delete or replace the statements found on page 3 (Additional Information) of the CMS-855S that states, “The information you provide on this application will not be shared. It is protected under ...” with “The information you provide will only be disclosed according to the routine uses found in the Privacy Act Statement of this form.”

Response: CMS will consider this recommendation for a future revision of the CMS-855S.

Comment: Two commenters recommended that CMS correct the regulatory citations on page 2 (obtaining Medicare Approval) of the CMS-855S to add 42 CFR 424.58 and to delete 42 CFR 424.500-565.

Response: While CMS agrees that 42 CFR 424.58 should be added as a reference, we will retain the current citations as several of these sections are relevant to the enrollment of DMEPOS suppliers. We have added 42 CFR 424.58 as an additional reference on page 2 (Obtaining Medicare Approval).

Comment: Two commenters suggested that CMS delete the list of DMEPOS supplier types on page 1 of the CMS-855S. While it makes sense to include a general list of provider or supplier types on page 1 of the CMS-855A, CMS-855B, and CMS-855I, it does not seem to make sense in CMS-855S.

Response: The list on page 1 merely cites – for informational purposes only - examples of provider and suppliers enrolling via the CMS-855A, CMS-855B and CMS-855I that on occasion also enroll as DMEPOS suppliers via the CMS-855S.

Comment: One commenter stated that the note regarding disregarded entities appears to be copied straight from the general instructions of the Form 8832. The first sentence is correct, but the commenter questions if the second sentence should remain in the CMS 855s as the two sentences contradict themselves.

Response: CMS concurs. The second sentence has been removed from section 17 of the CMS 855S.

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### **Comments Directed at the Supporting Statement**

Comment: Two commenters suggested that CMS increase the paperwork burden estimate associated with the CMS-855S to include the burden associated with the application fee, fingerprinting, surety bond, and accreditation.

Response: This information collection does not impose new burdens associated with any of the four activities cited by the commenters.

Comment: Two commenters recommended that CMS delete the last bullet on page 6 of the CMS-855S Supporting Statement. They contended that while beneficiaries may have asked CMS to collect this information in CMS-855I, it is doubtful that beneficiaries asked CMS to indicate if a physician is accepting new patients on the CMS-855S.

Response: CMS will consider this recommendation for a future revision of the CMS-855S.



Comment: Two commenters recommended that CMS change the statement found in B.2 of the Supporting Statement from “It is submitted at the time the applicant first requests a Medicare billing number” to “The CMS-855S is submitted to obtain Medicare billing privileges, when a change of information occurs, or in response to a request for revalidation.”

Response: The statement in question in section B.2 and the sentence before it in the Supporting Statement were being used purely in the context of an initial enrollment. CMS will therefore retain them.

Comment: Two commenters recommended that CMS replace the references found in B.1 of the Summary Statement from bill titles (e.g., PPACA) or sections of the bill to the amended section of the Social Security Act (Act).

Response: Since members of the public may be more familiar with the commonly-known names of particular statutes (e.g., PPACA), CMS believes it is appropriate to use said names in the Supporting Statement.

Comment: Two commenters recommended that CMS change the statement found in B.6 of the Summary Statement from “The information is collected on an as needed basis” to “The information is collected on an as needed basis or every three years for revalidation.”

Response: CMS believes that the current language is sufficient, since it encompasses both periodic 3-year revalidations and off-cycle revalidations.

Comment: Two commenters suggested that CMS delete the reference to “privileged or confidential commercial or financial information” in B.10 (Need and Legal Basis) of the Summary Statement.

Response: CMS believes that this statement is appropriate and will retain it.

Comment: Two commenters recommended that CMS increase the hourly wage for administrative staff from \$20 per hour to \$30 per hour in section B.12 of the Summary Statement.

Response: CMS has used \$20 as an administrative wage in previous information collection submissions; for purposes of consistency, we believe a similar figure should be used in this Supporting Statement.

## **Comments that are the “Opinion” of the Commenter**

**Comment:** Two commenters recommended that CMS withdraw this proposed information collection (i.e., CMS-855S), begin a new 60- day public comment period for this information collection, and exclude these changes from any updates to Internet-based PECOS until OMB has approved a subsequent information collection. The commenters contended that CMS: (1) did not update the CMS-855S to reflect regulatory changes found in the final regulation titled, “Medicare, Medicaid, Children’s Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers” or in section 3109 of the Patient Protection and Affordable Care Act into this proposed information collection, (2) did not include the paperwork burden associated with the Medicare application fee and/or hardship waiver (see 42 CFR 424.514) or fingerprinting (see 42 CFR 424.518) into this proposed information collection, (3) did not include the paperwork burden associated to confirm that a provider or supplier is a “Disregarded Entity,” (4) did not include the paperwork burden associated providing the IRS-CP-575 or a copy of the IRS Determination Letter, if the provider or supplier is registered with the IRS as non-profit on the CMS-855S, (5) did not modify the paperwork burden estimates for this information collection instrument to reflect the use of Internet-based PECOS by DMEPOS suppliers, (6) did not update the paperwork burden estimates for the CMS-855S to reflect the actual application submission statistics using CY 2010 or CY 2011 workloads (initial, changes, revalidations), (7) did not include a summary of changes with 30-day proposed information collection for the CMS-855S on the CMS PRA Listing web site and CMS’ response to comments on the 60-day proposed information collection, and (8) did not modify the Privacy Act Statement found on page 37 in the CMS-855S to ensure consistency with the PECOS Systems of Records.

**Response:** None of the arguments presented by the commenters warrants the withdrawal of this proposed information collection. Previous Supporting Statements for CMS 855S application revisions did include the paperwork burden associated to confirm that a provider or supplier is a “Disregarded Entity” as well as the paperwork burden associated providing the IRS-CP-575 or a copy of the IRS Determination Letter, if the provider or supplier is registered with the IRS as non-profit on the CMS-855S. In addition, CMS notes several things with respect to the commenters’ other contentions. First, the CMS-855S will be updated at a future time to make reference to the application fee. Fingerprinting, meanwhile, cannot be addressed in this information collection because fingerprinting is currently not a requirement for enrollment. Second, since this collection does not address the application fee or fingerprinting, no burden was or need be calculated for these activities in the Supporting Statement. Third, we recognize that the use of Internet-based PECOS would likely reduce the time it takes to submit an application and, henceforth, would reduce the overall paperwork burden. However, we chose to exclusively use the paper CMS-855 time figures so as not to underestimate the overall burden. Fourth, we used the most recent data available when calculating the workload estimates. In reference to the exclusion of summary changes for the 30 day proposed information collection for the CMS 855S on the CMS PRA Listing website and CMS’ response to comments on the 60 day proposed information collection, CMS did not receive any comments on the CMS 855S during the 60 day comment period and therefore did not have any changes to include for the 30

day proposed information collection for the CMS 855S on the CMS PRA Listing website.  
Finally, CMS will be updating the Privacy Act Statement in the next version of the CMS-855S.