



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

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COMPLIANCE ALERT 10-49

CMS Issues Proposed Rule for Medicaid Recovery Audit Contractors

CMS released a proposed rule on November 5 for the establishment of Medicaid Recovery Audit Contractors (RAC). Implementation by the individual State Medicaid Offices is scheduled to begin April 1, 2011. Comments on the proposed rule (found in link below) are due by January 5, 2011.

According to CMS, this proposed rule provides guidance "to States related to Federal/State funding of State start-up, operation and maintenance costs of Medicaid Recovery Audit Contractors (Medicaid RACs) and the payment methodology for State payments to Medicaid RACs in accordance with section 6411 of the Affordable Care Act. In addition, this rule proposes requirements for States to assure that adequate appeal processes are in place for providers to dispute adverse determinations made by Medicaid RACs. Finally, the rule proposes that States and Medicaid RACs coordinate with other contractors and entities auditing Medicaid providers and with State and Federal law enforcement agencies."

Since Medicaid is a State-run program, States have until December 31, 2010 to establish Medicaid RAC process and amend their plans to CMS. The Affordable Care Act (ACA) requires that States contract with one or more RACs for "the purpose of identifying underpayments and overpayments and recouping overpayments..."

Purpose: CMS's proposed rule states that..."Medicaid RACs would review post-payment claims for improper payments, overpayments, as well as underpayments consistent with State laws and regulations. Medicaid RACs are a supplemental approach to Medicaid program integrity efforts already underway to ensure that States make proper payments to providers. Medicaid RACs do not replace any existing State program integrity or audit initiatives or programs. States must maintain their existing program integrity efforts uninterrupted with respect to levels of funding and activity. Should (CMS) detect evidence of fraud, waste, and abuse that goes unreported by the Medicaid

RACs, (CMS) would work closely with States to identify focus areas for Medicaid RACs to improve their efficacy.”

Differences: Like Medicare RACs, Medicaid RACs would be paid only from amounts recovered during their audits and the amount paid cannot exceed the current highest amount for Medicare RACs. However, because Medicaid is a State-run program, the Medicaid RAC would not be run exactly the same as Medicare RACs currently in place.

There is a lot more flexibility and individuality for States under the Medicaid RAC program. The proposed rule requires “States to contract with one or more RACs to engage in reviews of Medicaid claims submitted by providers of services or other individuals furnishing items and services for which payment has been made under section 1902(a) of the Act to determine whether providers have been underpaid or overpaid, and to recover any overpayments identified. We propose at §455.506(b), to leave to the States’ discretion the manner in which they will coordinate with Medicaid RACs’ recoupment of overpayments.”

Medicaid RACS would be contracted by the States and paid by the States. Consequently, whereas Medicare RACS are limited in number (currently four), there will most probably be significantly more Medicaid RACS. While Medicaid RACs must also have an appeals process—like the Medicare RACs do—the process will not need to be uniform across the U.S. We will have to wait to see how the Hawaii Medicaid Office proceeds.

Coordination: ACA requires that the Medicaid RACs be coordinated with other audit processes in place. The proposed rule also requires coordination of efforts with law enforcement processes and investigations.

How to Prepare: Hospitals should make sure their screening, utilization review, and audit process is just as rigorous for Medicaid admissions as for Medicare admissions according to HCPro. In addition, facilities should be prepared because they could have different submission and review processes than for Medicare RACs—especially if Hawaii contracts with more than one entity (as is allowed) for the Medicaid RAC process.

Source: http://www.ofr.gov/OFRUpload/OFRData/2010-28390_PI.pdf
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