POST PAYMENT AUDITS: RACs, MACs and MORE

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DAVIS WRIGHT TREMAINE LLP

DWT 2011 Health Care Regulatory and Compliance Update

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The Audit and Improper Payment Landscape

* Medicare RACs
* Medicaid RACs
* MACs
* MICs
* PSCs/ZPICs
* OIG

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RACs
RECOVERY AUDIT CONTRACTORS

* Medicare Part A and Part B
* Medicare Part C and Part D
* Medicaid RACs

Medicare Part A/Part B Fee for Service Program

Glowing Success Story?

GAO Report

* Most of the RAC-identified vulnerabilities that led to improper payment have gone unaddressed
* Contractors did not address 60% of the significant vulnerabilities identified
* Corrective actions not taken on $231 million of $378 million in overpayments identified
* CMS corrective actions?

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HERE NOW: Part A / Part B

* Now a national permanent program

* Slow rollout

California

- ** HDI
- ** Contact information issues/misdirected requests

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On the plus side, availability of discussion period and delays in RACs' entitlements to their contingency fees seems to be reducing the number of inappropriate denials

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LIMITATIONS ON MEDICARE PART A AND PART B RACs

Medical Record Requests Limits: Ensure that Provider's ability to provide patient care is not negatively impacted

3 year look back limit

Medical Director and Clinical Reviewer requirements

Palomar Appeal

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IN THE WINGS: Medicare Part C and Part D

* RAC Program expanded to Part C and Part D

* Also paid on contingency fee basis

* Additional tasks include reviewing fraud prevention plans, so focus is broader than recovery of improper payments

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MEDICARE PART C AND PART D RACs

* CMS has been soliciting comments on this RAC program as to how the RAC findings could be used to reduce improper payments in Part C and Part D

  * Comments were due February 25, 2011

  * CMS December 27, 2010 solicitation of comments

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MEDICARE PART C AND PART D RACs

MANY CONCERNS: DOES MEDICARE FFS RAC MODEL EASILY TRANSLATE TO MEDICARE PART C AND PART D?

* Managed care payment models generally do not involve a dollar for dollar correction between what is paid and the costs associated to the MCO and CMS
* The MA organization (MAO) contracts with RACs on contingency fee and then MAO retains any overpayments
* There are questions as to the qualifications of the auditors to review Medicare Part C payments

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MEDICARE PART C RACs

IMPACT OF PROVIDER-PLAN CONTRACTS ON RAC REVIEWS

- Contractually negotiated look backs
- Medical record requests
- Time allowed for RAC review
- Type of issues which may be reviewed
- The number of auditors that may review
- Information that may be requested
- Contractual process for appeals

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MEDICAID RACs

* State plan amendments was due by December 31, 2010

  * California submitted on December 16, 2010, approved on February 18, 2011

    * Contingency fee basis

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MEDICAID RACs

CMS Proposed Rule Published November 10, 2010

** Claims would be reviewed using State Medicaid rules and State may use its current appeal process

** While states have flexibility as to the details of their Medicaid RAC programs, the Medicaid RACs cannot replace existing state program integrity or audit programs

** Implementation of the state's Medicaid RAC is delayed until the new implementation date is indicated in the final rule later this year

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MEDICAID RACS

* Comments from several associations and RACs
* Concerns that the lessons learned from the RAC demonstration project are not incorporated into the proposed regulatory framework, including:
    * Continued challenge to medical necessity reviews in light of the bias inherent in contingency fees
    * Duplication of audits
    * Medical record limits
    * Lack of transparency and restrictions on RACs
    * Timing of payments to RACs
    * Need for a Medicaid RAC data warehouse to avoid multiple requests for review of the same claim by various auditors

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MICs
MEDICAID INTEGRITY CONTRACTORS

* Deficit Reduction Act § 6034 mandated creation of the Medicaid Integrity Program, including engagement of MICs to perform review, audit and education regarding Medicaid payments

  * CMS is to:
    (1) Hire MICs
    (2) Provide effective support and assistance to the State's efforts to fight Medicaid fraud and abuse

ROLE OF THE STATE MEDICAID LAWS

* Record retention requirements
* Record request limits
* Extrapolation
* Special Rules

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MICs

* Overpayment demand comes through the State
  * CMS collects FFP from the State
  * State is responsible for collecting the overpayments from the Provider
  * State appeal process applies
  * Look back period
    * September 29, 2011 informational bulletin sets a national 5 year look back period regardless of State law

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MICs

* Contrast to Medicare RACs
    * No limits on number of records requested
    * Provider has shorter time to produce records

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MACs

MEDICARE ADMINISTRATIVE CONTRACTORS

* FIs and carriers transitioning to MACs who are or will handle both Part A and Part B claims except in certain circumstances

* One MAC hat involves program integrity

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OIG
OFFICE OF INSPECTOR GENERAL

* Work Plan

* Audit Contractor Issues, e.g., MICs

* Database Analysis

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POST PAYMENT AUDITORS' ROLES IN MEDICARE AND MEDICAID FRAUD PREVENTION

RAC's Role

* Medicare RAC's role in Medicare program integrity
  ** CMS to educate RACs to know it when they see it
  ** RACs to report any suspected instances to CMS
  ** GAO experience: The case of 2 cases
  ** CMS' solicitation for comments on Medicare Part C and Part D RACs for implementation of ACA § 6411(b) to ensure each Plan has anti-fraud plans in place and to review the effectiveness of those anti-fraud plans and payment for such reviews on a contingency basis

Medicaid RACs

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* MAC’s Role

** Integrity Goals:

*** To help prevent improper payments through claims analysis and complaint reviews

*** To identify suspected billing problems

*** To receive and process voluntary disclosures and refunds

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* MIC's Role

** Part of the Medicaid Integrity Program

** Goal: To prevent and reduce Medicaid fraud and abuse

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* OIG's Role

** Responsible for investigating fraud cases and enforcement action

** Refers to Department of Justice

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ROLE OF COMPLIANCE PROGRAMS

Establish a culture within an organization that promotes prevention, detection, and resolution of instances of conduct not in compliance with federal and state law or federal healthcare program requirements

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COMPLIANCE PROGRAMS

Already mandatory for certain entities

Pre-ACA:

* Medicare FFS Contractors

* Medicaid Managed Care Plans

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COMPLIANCE PROGRAMS

Post-ACA:

* DHHS Secretary must mandate that a provider within a particular industry sector or category adopt a compliance program as a condition of enrollment in Medicare, Medicaid, or CHIP

* On February 2, 2011, CMS published a final rule implementing provisions of ACA, generally effective March 25, 2011

  ** CMS notes that it is in the process of developing a new Notice of Proposed Rulemaking incorporating compliance program provisions

  ** Will reference comments it had solicited from the Industry

EFFECTIVENESS OF COMPLIANCE PROGRAM

Education

Awareness

Detection

Corrective Actions

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ROLE OF SELF DISCLOSURES AND REFUNDS

Impact on RAC, MAC and MIC review

Impact on OIG

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JUGGLING ACT

* Track differences between government auditors
  e.g., look back periods
  e.g., record request limits
  e.g., appeal process

* Take OIG work plan and compliance programs seriously

* Head them off at the pass
  ** Education
  ** Self Audit
  ** External Audit
  ** Self Disclosure

QUESTIONS?

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