



Client Alert

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CMS Publishes Proposed Rule for Medicaid RAC Program

On November 10, 2010, the Centers for Medicare & Medicaid Services (CMS) published proposed regulations which if promulgated as a final rule, will govern state implementation of the new Medicaid Recovery Audit Contractor (RAC) Program for identifying and recouping improper payments from providers (Proposed Rule) (75 Fed. Reg. 69,037; Nov. 10, 2010). As enacted in March of 2010, the Patient Protection and Affordable Care Act (PPACA) (Pub. L. 111-148) required each state Medicaid program to establish a program for contracting with one or more RACs by December 31, 2010. While acknowledging that states are still required to submit state plan amendments to the CMS by December 31, the Proposed Rule extends the deadline to April 1, 2011, for states' Medicaid RAC programs to contract with RACs and to be fully implemented. Further, the Proposed Rule suggests that extensions or exceptions to this deadline may be available.

Similar to the Medicare RACs, the Medicaid RACs receive payment from states on a contingency basis. The Proposed Rule allows states to retain the flexibility to determine the fee structure to be used but notes that any amount of an individual state's contingency fee that exceeds the 12.5 percent maximum contingency fee currently received by Medicare RACs is not eligible for federal financial participation (FFP) and must be paid from state-only funds, absent a waiver by the CMS. However, FFP is available to cover the state's administrative costs related to operation and maintenance of the Medicaid RAC program.

The Proposed Rule also requires:

- Medicaid RACs to employ trained medical professionals to review claims;
- Medicaid RACs to coordinate their efforts with the CMS and various federal and state law enforcement agencies, as appropriate, to report fraud or criminal activity; and
- States to provide an adequate appeals process for providers to seek review of adverse Medicaid RAC determinations.

The CMS is seeking public comment on the Proposed Rule until January 10, 2011.

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