



Client Alert



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Department of Community Health Launches Medicaid RAC Review of Hospice and Nursing Home “Patient Liability” Deductions

State Review Exceeds Federal Authority with Improper Look-Back Period

Hospices and nursing homes in Georgia are getting their first taste of Georgia’s newly established Medicaid RAC (recovery audit contractor) program. Healthcare providers that participate in the Medicare program are by now familiar with the concept (if indeed not the practice) of the Medicare RACs – private entities that contract with the Centers for Medicare & Medicaid Services (“CMS”) on a contingency fee basis to identify and recoup Medicare overpayments. The Medicare RAC program, which began as a six-state demonstration project, went nationwide in 2010. Flushed with its success,¹ the federal government expanded the RAC program into Medicaid via the Patient Protection and Affordable Care Act (“PPACA”), which was enacted in 2010.

Pursuant to the requirements of PPACA, the Department of Community Health (“DCH”) amended the Georgia Medicaid State Plan to establish a Medicaid RAC program, which became effective this year. CMS approved DCH’s state plan amendment this past March, and in April, DCH named Myers & Stauffer LC the Medicaid RAC for Georgia. Shortly thereafter, hospice providers (and a few nursing homes) began receiving letters from Myers & Stauffer requesting records.

The data currently being requested by Myers & Stauffer, however, are unrelated to traditional areas of RAC review, such as recipient eligibility or medical necessity; rather, the review has to do with historical calculations of Medicaid “patient liability.” Patient liability refers to the cost-sharing amount due from a Medicaid recipient who receives care in a nursing home setting, which is essentially his or her income less \$50 per month. Problems related to the calculation of patient liability are not new in Georgia, but are of DCH’s making.

County offices of the Georgia Department of Human Services, Division of Family and Children Services (“DFCS”) make individual eligibility determinations for Medicaid’s coverage of nursing home services. One of the primary aspects of that determination is establishing whether an applicant’s

¹ The six-state Medicare RAC demonstration project reportedly corrected \$1 billion in allegedly improper payments from 2005 to 2008.

income and assets are below the Medicaid eligibility thresholds. If an applicant is approved for Medicaid nursing home payment, DFCS communicates the patient liability amount to the provider so that it can be collected from the recipient and Medicaid billed for the remainder of the applicable rate.

Reportedly, problems occurred in the communication (or lack thereof) between the information systems utilized by DFCS and those of the Medicaid fiscal intermediaries contracted by DCH. Simply put, providers billed the Medicaid program for the proper amounts as determined by DFCS (i.e., Medicaid rate less patient liability), but DCH's intermediaries paid providers a different amount – in some cases, the full Medicaid rate without a patient liability deduction. An easy fix would have been for providers simply to return any excess payments to DCH; however, providers' repeated attempts to do this were rejected due to DCH's purported inability or refusal to accept such returns. Enters the Medicaid RAC program, which years later seeks to correct this historical anomaly in exchange for a percentage of any recovery.

Of primary concern is that Medicaid RACs are limited by federal regulation to a three-year look-back period. DCH sought, and CMS approved, an exception to this requirement in the form of a five-year look back period, which DCH requested specifically to conform to the Georgia Medicaid program's five-year record retention policy. The record requests issued by Myers & Stauffer, however, uniformly request data and records dating to April of 2003, a look-back period of over nine years and well in excess of federal authority and possibly state limitations periods as well.

We understand that many hospice providers have already received Medicaid RAC letters and that a few nursing homes are beginning to receive them. AGG has been working with the Georgia Hospice and Palliative Care Organization, the state trade association for hospice providers, and the Georgia Health Care Association, the state trade association for nursing homes, towards the development of a coordinated response to adverse actions that may be taken against providers for DCH's own errors. We encourage our clients to contact us or their respective trade association as soon as they receive a request for records from the Medicaid RAC.

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