Arnall Golden Gregory LLP

Client Alert

Contact Attorneys Regarding This Matter:

H. Carol Saul
404.873.8694 - direct
404.873.8695 - fax
carol.saul@agg.com

Diana Rusk Cohen
404.873.8108 - direct
404.873.8109 - fax
diana.cohen@agg.com

CMS Extends Deadline for States to Implement Medicaid RAC Programs

The Centers for Medicare and Medicaid Services (CMS) has extended the deadline for states to implement Medicaid Recovery Audit Contractor (RAC) programs. CMS initially proposed an April 1, 2011, deadline for states to implement Medicaid RAC programs, but announced in an informational bulletin issued earlier this month that it will no longer require states to meet this deadline.[1]

The Medicaid RAC program is being developed pursuant to Section 6411 of the Patient Protection and Affordable Care Act, which requires states to contract with RACs to audit pay ments to Medicaid providers. CMS issued a proposed rule on the Medicaid RAC program on November 10, 2010, and a final rule is expected later this year. CMS received comments on the proposed rule from a variety of parties, including provider and professional associations, such as the American Hospital Association, American Academy of Pediatrics former and current Medicare RACs.

The proposed rule gives individual states discretion in determining the structure and requirements of Medicaid RAC programs. Thus, provider comments at the state level are an important part of the process. Locally, the Georgia Hospital Association (GHA) provided comments to the Department of Community Health (DCH) to highlight certain difficulties that occurred in connection with the Medicare RAC demonstration program and initiate discussion about how Georgia might avoid such pitfalls as it designs its Medicaid RAC program.

A copy of GHA's letter to DCH with all of the organization's comments is available here on the GHA website.[2] We list below GHA's primary areas of concern and some of the organization's proposed programs improvements in those areas:

- **Medical necessity reviews:** GHA proposed that DCH require the state Medicaid RAC to utilize a physician in the same specialty as the physician who made the initial medical necessity decision. GHA also suggested methodologies to ensure the fairness and accuracy of medical necessity audits, such as requiring the RAC to share auditor training materials with providers and allowing providers to re-bill if the RAC determines that a claim was not medically necessary at the billed level but was appropriate for a lower claim/payment amount.

1 CMS, Informational Bulletin, Clarification of CMS expectations for State implementation of Medicaid Recovery Audit Contractor (RAC) programs, CPI-B 11-03 (Feb. 1, 2011).
2 http://www.gha.org/mailnk/12-10-2010_Medicaid_RAC_Model.pdf

Arnall Golden Gregory LLP
Attorneys at Law
171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500
www.agg.com

- **Oversight:** GHA requested that DCH appoint a Medicaid RAC project officer that is responsible for RAC oversight and authorized to have regular discussions with the RAC to ensure it is following all of the program requirements. GHA also suggested that the RAC should issue regular reports to DCH and the public.
- **Appeals:** GHA encouraged DCH to adopt a "discussion period" in the Medicaid RAC program. Modeled after the Medicare RAC program, the "discussion period" would allow providers to share additional information and substantiate denied claims prior to entering the formal appeals process. Further, in light of the flexibility that CMS offered states in designing a RAC appeals process, GHA requested that DCH carefully consider and obtain provider input as it develops the appeals process.
- **Appropriate Coding Expertise:** GHA suggested that each RAC auditor should be comprehensively trained on Medicaid payment and coverage policy, billing and re-billing protocols and the appeals process, and that each auditor should demonstrate proficiency prior to conducting audits. GHA also proposed that DCH require RACs to have certified coders make coding determinations.
- **Limitations on Medical Records Requests:** Under the Medicare RAC program, CMS issued a medical record request limit per hospital, which sets limits at 1 percent of all claims submitted for the previous calendar years, divided into eight 45-day periods. Medicare RACs may not make more than one medical record request per 45-day period, must accept imaged medical records on CD/DVD and must pay for both electronic and paper records. GHA encouraged DCH to establish similar medical record request limits for the state Medicaid RAC.
- **Audit Standards:** GHA requested that DCH consider a 12-month look-back window to limit the opportunity for RACs to incorrectly apply new payment rules to old claims. GHA also suggested that the RAC should provide a case-specific rationale for each denial.
- **Timeframes for Review:** The Medicare RAC SOW requires RACs to complete complex reviews within 60 days of receipts of medical records. GHA proposed that DCH should adopt the same 60-day timeframe for the Medicaid RAC.
- **Correspondence:** To minimize confusion about appropriate provider contact information, the Medicare RAC SOW requires RACs to develop a web-based portal where providers can enter their address and point of contact. The SOW also required RACs to send only one review results letter per claim. GHA asked DCH to impose the same requirements on the Medicaid RAC and, in cases where the RAC sends correspondence to the incorrect address or point of contact, GHA suggested that providers should receive extensions for responding to RAC requests.
- **Customer Service:** GHA requests that DCH adopt the Medicare RAC SOW requirements regarding customer service. The Medicare RAC SOW requires RACs to have a customer service telephone number and a website that provides information to hospitals about responding to RAC requests and reports that status of claims currently under review.
- **Underpayments:** To ensure that the Medicaid RAC reviews underpayments as well as overpayments, GHA proposed that the same contingency fee methodology should be used in both areas.
- **Provider Education:** GHA requested that DCH require the RAC to conduct provider education before beginning the audit process.

CMS explains in the informational bulletin that it has extended the Medicaid RAC program deadline to ensure that states are able to implement programs in a way that complies with the final rule. CMS will consider the voluminous comments from provider groups and RACs as it drafts the final rule. Although we cannot predict the exact provisions of the final rule, it is likely that it will still provide states with discretion to customize certain features of their individual Medicaid RAC programs. In Georgia, the recent implementation delay gives DCH more time to consider and potentially incorporate comments from local provider organizations like GHA.