

CMS Publishes the Medicaid RAC Final Rule

By Adrienne Dresevic, Esq. and Carey F. Kalmowitz, Esq.

In light of governmental efforts aimed at cutting federal agency waste, the Centers for Medicare & Medicaid Services (CMS) published the Final Rule regarding the Medicaid Recovery Audit Contractor (RAC) program on September 16, 2011. Since the Medicaid RAC program is projected to recover \$2.1 billion over the next five years, it is crucial that radiology providers are familiar with the Final Rule and take steps now to prepare themselves in the event that they are subjected to such an audit in the future. The implementation date for the Final Rule is set for January 1, 2012, and all states are projected to have their Medicaid RAC programs instituted at that time.

By way of background, Section 6411 of the Patient Protection and Affordable Care Act (PPACA) mandated that states establish Medicaid RAC programs by December 31, 2010. Under PPACA, each state is directed to contract with one or more Medicaid RAC to review Medicaid claims and identify underpayments and overpayments. Subsequently, the identified overpayments are to be recouped. Payments to RACs are to be made on a contingency basis in return for collecting overpayments. The earlier established Medicare RAC program, in which CMS contracts with private entities to perform Medicare claim audits, offers guidance and context for the Final Rule as acknowledged by CMS.

Features of the Medicaid RAC Final Rule

The Medicaid RAC program requirements are not identical to the Medicare RAC elements for a number of reasons, including the overall flexibility states are given in regard to their Medicaid programs. However, the Medicaid RAC Final Rule duplicates a number of requirements previously put in place under the Medicare RAC program. For instance, the Final Rule prevents Medicaid RACs from conducting reviews of claims beyond a three-year look-back period. It also calls for state established limits on the quantity of medical records demanded by RACs; this includes both the number and the frequency of record requests made. The Final Rule also calls for RACs, with some exceptions, to hire certified coders and at least one medical director who is a licensed physician per contractor. Further, the Final Rule requires states to coordinate their recovery audit efforts with other auditing entities (ie, Medicaid RACs may not

audit claims which are under the review of a different auditing entity). Similarly, under the Final Rule, the contingency fees paid to RACs must be returned within a reasonable time if the initial RAC determination is overturned at any stage of appeal. The Final Rule also requires the development of outreach and education programs (eg, the notification of providers regarding policies and protocols) and customer service measures (eg, the provision of toll free customer service numbers, acceptance of electronic medical records from providers via alternate means when requested, and provider notification regarding overpayments within 60 days).

Although certain elements found in the present Medicare RAC program are not required under the Final Rule, CMS strongly encourages states to adopt these certain elements for their individual Medicaid RAC programs. The areas in which CMS suggests that states should follow the Medicare RAC program include medical necessity reviews, extrapolation of findings, the types of claims audited, and the external validation of findings accuracy.

Lastly, the Final Rule provides states flexibility over a number of program elements. This flexibility derives mainly from state law requirements. These flexible elements include underpayment methodology, state appeals processes (the appeals processes, however, may not be completely eliminated by the states), contingency fee rates and timing of payments to RACs (both with some guideline exceptions), and state exclusion of claims. Further, states will have flexibility over bundling of procurements and the collection of overpayments from providers.

What Radiology Providers Should Do

Since the implementation date for the Final Rule is fast approaching, radiology providers should prepare now for the potential increase in Medicaid auditing activity. Much like in the Medicare RAC program, a provider cannot prevent a Medicaid RAC review. However, similar steps should be taken to successfully combat the closer scrutiny which is likely to occur under the new program.

First, providers should frequently monitor and review guidance

publications as they become available. A Medicaid RAC program website is currently available from CMS at <http://www.cms.gov/medicaidracs/home.aspx>, and more detailed information is likely to be added to the site as the program develops. Since the Final Rule requires education and outreach programs to be established by the states and the Medicaid RACs, their guidance publications will further elaborate on policy and protocol topics, including what types of issues are subject to scrutiny. Second, providers need to establish and monitor internal protocols to identify and evaluate areas that may be subject to auditor review. Of interest to radiology providers, the technical component of radiology has been a compliance issue for CMS. It is also an "approved issue" for all of the RAC vendors in the Medicare program. As such, it will likely be an audit issue under the new Medicaid RAC program as well. Third, providers should designate a Medicaid RAC "point person" for their entity. This person would be responsible for monitoring RAC communications for the organization. Fourth, providers need to take great care to answer record requests from Medicaid RACs within the required timeframes as these requests are made down the road. Fifth, providers should implement compliance efforts within their organizations. These preventative compliance efforts will likely aid a more positive outcome for the provider if an audit is encountered under the new Medicaid RAC program. Should a claim be

denied, however, there are further steps a provider may take. After a denial, providers should thoroughly track the denial, monitor and follow the specified appeal deadlines, and properly challenge the denials in the designated appeals process. By beginning to take the proper steps now and continuing to do so in the future will ensure that providers are successful in combating the closer scrutiny under the new program.

Adrienne Dresevic, Esq. graduated Magna Cum Laude from Wayne State University Law School. Practicing healthcare law, she concentrates in Stark and fraud/abuse, representing various diagnostic imaging providers, eg, IDTFs, mobile leasing entities, and radiology and multi-specialty group practices.

Carey F. Kalmowitz, Esq. graduated from NYU Law School. Practicing healthcare law, he concentrates on corporate and financial aspects, eg, structuring physician group practice transactions; diagnostic imaging and ancillary services, IDTFs, provider acquisitions, CON, compliance, and Stark and fraud/abuse.

The authors are founding members of The Health Law Partners, P.C. and may be reached at (248) 996-8510 or (212) 734-0128, or at www.thehlp.com.

Commentary

For the Millennial: Work Life / Family Life Balance

By Michael Jordan, MHA, CRA, RT(R)

It's that time of year again at my organization. Not time for evaluations, but time for the Employee Opinion Survey. This is an annual survey utilized at my organization to determine how satisfied the employees are because happy staff equals low turnover rates and happy customers. Every year we poll staff members about multiple facets of their employment to determine how satisfied and committed they are to our organization and department. The questions relate to leadership communication, overall respect, interdepartmental teamwork, pay equity in the market, input in decision making, and work life / family life balance. Half of my staff is composed of the Millennial generation and the other half is a mix of the other generations. One of the most prevalent notions of the Millennial generation is that their personal lives comes first and work is just a means to an end. With this in mind, it is no surprise that one of the biggest topics of conversation from this survey is about the work life / family life balance. This means different things to different generations. One thing that I have noticed is that no matter what generation classification you are in, work life / family life balance is a big deal. So how do Millennials, specifically, see it and how can it be improved for them?

For Millennials, the first thing that should be understood is that employee satisfaction is not just the responsibility of the organization and the leadership group. This is a sad misconception from a group that typically thinks, "What about me?" The answer is that work life / family life balance is all about the

individual, and what the individual can do to improve it. Work life and family life is never going to be a 50/50 split. This is a balance that will constantly ebb and flow. There will be times when work life takes the majority of your time. On the converse, there will be times that family life can reclaim ground and actually be in the majority. Keep this in mind during the times when you put in more than 40 hours a week. When the time comes that family life is in the majority you will have a greater appreciation for that time.

Another thing that can be done to improve work life / family life balance is to say "no." As Millennials, we are known for saying "no" unless there is something in it for us. In my previous article, I urged all Millennials to get out there and get active. This is definitely what needs to be done if you want to grow in your profession and gain experience as a leader. There is a balance that has to be found, though. If you embrace every opportunity and challenge that is asked of you, becoming burned out is virtually a guarantee. Set your priorities as to what activities have the most impact for your organization, community, and your professional growth. Find a mentor that can help you prioritize activities so that you get the most impact for your effort. The mentors I have had over the years have been invaluable in helping me determine what opportunities to pursue and which ones to pass up.

So, Millennials, go out there and make a difference, but keep your own sanity in mind as you conquer the healthcare world.