

# HEALTH LAW UPDATE

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

## **Report from CMS Special Open Door Forum: Update on Medicaid Integrity Provider Audit Program**

**November 4, 2010**

Continued refinement of the audit process and a need for further improvement of the available audit claims data were the main themes at the recent Special Open Door Forum (the "Forum") hosted by the Centers for Medicare & Medicaid Services ("CMS") on November 3, 2010. CMS held the Forum to provide an update on the Medicaid Integrity Program ("MIP") Provider Audit Program. The Forum gave healthcare providers an opportunity to hear from Medicaid Integrity Group ("MIG") representatives<sup>1</sup> on lessons learned from the initial 18 months of the Medicaid audit program and potential opportunities for improvement. The Forum also allowed healthcare providers to offer feedback on the MIP through a Question and Answer session.

### **Recent Policy Changes**

At the outset, MIP representatives noted two recently announced significant policy changes to the Medicaid Integrity Contractor ("MIC") audit process.<sup>2</sup> In particular, CMS has now developed national standards for the audit look-back period and the time frame for responding to document requests. As noted in the Informational Bulletin announcing the new policies, CMS implemented these changes because it "believes that having a consistent national policy on look-back and record production will allow States and providers to know exactly what to expect from our contractors."<sup>3</sup> Both of these changes are considered positive developments for Medicaid providers.

***Audit Look-Back Period.*** When the Medicaid Integrity Program was first implemented, CMS directed the Audit MICs to follow the look-back period, or time period for which the contractor may review claims, under the applicable State law. This direction led to significant uncertainty among providers regarding the applicable look-back period, particularly in states where the look-back period is not explicitly established. Additionally, providers expressed concerns that the Audit MICs may apply a look-back period that was longer than the time period for which providers were required to maintain medical records. These concerns, among others, led CMS to establish a consistent national audit look-back period for the Audit MICs.

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<sup>1</sup> The MIG is responsible for implementing the MIP program.

<sup>2</sup> These changes were first announced in CPI-Informational Bulletin, CPI-B 10-02 (Sept. 29, 2010), which can be found at <http://www.cms.gov/MedicaidIntegrityProgram/Downloads/auditlookback.pdf>.

<sup>3</sup> *Id.*

Under its new guidance, CMS now has established a five-year audit look-back period for the Audit MICs. This new policy was effective on October 1, 2010. The five-year look-back period begins on the date that the audit Notification Letter is issued to the provider. CMS also retained the right to adjust the look-back period on a case-by-case basis if it determines that the facts warrant such an adjustment.

***Documentation Requests.*** One area of significant concern to providers who have undergone MIC audits has been the very short time frame to respond to Audit MIC requests. Providers faced short deadlines of 10 business days to submit requested records. These tight time frames made it extremely difficult for providers to locate and submit documents responsive to the Audit MIC requests. In response to this concern, CMS expanded the provider's response time frame and now allows a provider 30 business days to submit the requested documentation. CMS' revised policy also allows the Audit MICs to grant a 15-day extension to the medical record submission time period if the extension request is appropriately justified by the provider. Providers facing difficulty in responding within 45 days may obtain additional time with CMS approval.

***Development of Medicaid Integrity Manual.*** In its Informational Bulletin announcing the changes described above, CMS also announced that it is developing an Internet-based Medicaid Integrity Manual ("MIM") that is similar to the Medicare Program Integrity Manual. The MIM will serve as a comprehensive guide to the MIP and will assist various stakeholders, including Medicaid providers, in the following areas:

- Understanding the MIP's goals and objectives;
- Improving the MIP's communication and transparency; and
- Educating outside entities of the MIP's evolving functions.

The MIM is intended to provide additional guidance on the standards and processes used by the Audit MICs, which should assist providers in preparing for these audits.

### **Recent Activities**

MIG representatives also reviewed the MIP organizational structure. The Division of Medicaid Integrity Contracting is responsible for the procurement and oversight of Medicaid integrity contracts to conduct reviews, provider audits, and provide education, as well as other program support contracts (e.g., conference planning, training, and data support) as needed. The Division of Fraud Research and Detection provides statistical and data support for MIG activities (including those of its contractors), identifies emerging fraud trends, and conducts special studies. The Division of Field Operations conducts State Medicaid program integrity reviews, and provides technical assistance and training to States. And finally, the Division of Auditing and Accountability, the newest MIP division, finalizes audit reports for the States and leads policy development for Medicaid integrity provisions under the Patient Protection and Affordable Care Act.

***Identification of Targets.*** The MIP continues to use a data driven approach to identify audit targets. The MIG's Division of Fraud and Detection is responsible for developing the algorithms used to analyze the claims data for these targets. During the last year, the MIG's Division of Fraud and Detection developed 328 state-specific fact algorithms in support of 69 state independent concepts.

These algorithms were organized into four main areas: pharmacy, inpatient, professional services, and long term care.

***Continued Coordination to Reduce Overlapping Audits.*** MIG representatives assured listeners that the MIG continues to work with states to ensure coordination of audit activity. The MIG's Division of Field Operations works closely with the States and other government stakeholders when audit targets are identified to avoid duplication of effort. Through these efforts, the MIG is working to avoid overburdening the provider community with duplicative audit requests.

***Tailored Provider Questionnaire.*** As part of the audit process, the Audit MICs typically request that providers complete intake questionnaires requesting background and other information related to the providers. Providers had expressed concerns that these questionnaires often would ask questions that were not applicable to the specific providers. The MIG's Division of Field Operations has now instructed the Audit MICs to tailor these questionnaires to the specific provider.

### **Room for Improvement**

The prepared remarks and responses to provider questions highlighted several areas where improvements can be made. MIG representatives acknowledged the difficulties providers have faced in obtaining sufficient information from the Audit MICs to locate requested records. MIG representatives also encouraged providers to contact the MIP if the providers are unable to resolve these problems with the Audit MICs.

Pediatric records have presented unique challenges. Several providers of pediatric services noted that they were given insufficient information from the Audit MICs to identify the claims selected for audit. As an example, Audit MICs may provide only the patient's date of birth and social security number, but the providers may not have the pediatric patient's social security number as part of the record. MIG representatives were aware of these situations and have discussed this issue with the Audit MICs. The MIG is continuing to work with the States in obtaining additional data to assist the providers in identifying the specific medical records. MIG representatives also noted that they will remind the Audit MICs of their ability to contact CMS to request additional information.

MIG representatives also acknowledged that providers may not receive audit results within the time frames previously provided. While the Audit MICs are required to complete audits within a timely manner, results may be delayed. This delay is caused by the "back and forth" between the States and Audit MICs in finalizing the audits.

### **On the Horizon**

The Forum participants also discussed the addition of Medicaid RACs to the list of contractors that may audit Medicaid providers. Under the Patient Protection and Affordable Care Act, States are required to establish a RAC program. States must contract with a Medicaid RAC by December 31, 2010 with a targeted implementation date of April 1, 2011. The Medicaid RAC program will be administered by the States and will be separate from the MIP.

While the Medicaid RAC program is yet another auditor that they will face, providers should breathe at least a temporary sigh of relief related to the use of extrapolation in the MIP. The Audit MICs do not plan to use extrapolation to calculate overpayments in the immediate future. However, a CMS

representative noted that the MIG is looking into its use and stated that it would communicate with providers “when” the MIG decides to begin the use of extrapolation.

### **Additional Information Available to Providers**

In the past, providers had expressed concerns about the lack of available information on the MIP. Providers now have available several sources and should expect to have access to additional information in the future. The Forum highlighted several ways that providers can access this information.

Under the “What’s New” section of the MIG Web site<sup>4</sup>, providers can now access the Statements of Work for the Audit MICs through the “Federal Business Opportunity” link. Previously, providers had difficulty finding these Statements of Work, which outline the basic tasks that the Audit MICs must perform.

Additionally, the MIG’s Division of Fraud Research and Detection is working with the Education MICs to develop a Web site that will house all MIG-related educational training. This Web site also will contain “sanitized results” of claims data to show utilization and trends. This Web site will be open to all States and the provider community.

Finally, if providers are unable to obtain the information they need or experience problems in working with the Audit MICs, MIG representatives encouraged providers to contact the program via e-mail at [Medicaid\\_Integrity\\_Program@cms.hhs.gov](mailto:Medicaid_Integrity_Program@cms.hhs.gov).

An audio recording and transcript of the Forum will be posted to the Special Open Door Forum Web site on November 17 and will be available for 30 days.<sup>5</sup>

If you have any questions on this issue of *Health Law Update*, please contact any of the attorneys in our Healthcare Practice Group listed below.

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<sup>4</sup> [http://www.cms.gov/MedicaidIntegrityProgram/02\\_whatsnew.asp#TopOfPage](http://www.cms.gov/MedicaidIntegrityProgram/02_whatsnew.asp#TopOfPage)

<sup>5</sup> A link to the Web site is [http://www.cms.hhs.gov/opendoorforums/05\\_odf\\_specialodf.asp](http://www.cms.hhs.gov/opendoorforums/05_odf_specialodf.asp).

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