

HEALTH LAW UPDATE

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

ZPICs: The New Kids On The Medicare Audit Block

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While most healthcare providers are by now aware of the Recovery Audit Contractors (RACs) and the Medicare audits that the RACs have launched on behalf of the Centers for Medicare & Medicaid Services (CMS), the array of audit tools available to CMS extends beyond RACs to the Medicare Administrative Contractors (MACs), the Medicaid Program Integrity Contractors (MPICs), and the Zone Program Integrity Contractors ("ZPICs"), which will replace the existing Program Safeguard Contractors ("PSCs"). This Health Law Update will focus specifically on the ZPICs and how they fit into the Medicare integrity landscape.¹

What Will ZPICs Do?

The ZPICs will replace the existing PSCs and the existing Medicare Drug Integrity Contractors (MEDICs).² CMS made this change, in part, because there was no uniformity in the jurisdictions and tasks for the PSCs and MEDICs. For example, while one PSC could be responsible for overseeing the integrity of Part A claims in one state, an entirely different PSC could be responsible for overseeing the integrity of Part B claims in the same state.³

Rather than this piecemeal approach to benefit integrity activities, ZPICs are tasked with ensuring the integrity of *all* Medicare-related claims for the providers in their assigned zones.⁴ CMS will now, for the first time, have one contractor that can obtain a complete picture of a provider's

¹ Portions of this Health Law Update are adapted from Anna M. Grizzle's article entitled ZPICS: Billing Practices Under The Microscope with permission from BNA's Health Care Fraud Report, Vol. 14, No. 04, (Feb. 24, 2010). Copyright 2010 The Bureau of National Affairs, Inc. (800-372-1033) www.bna.com.

² Ultimately, ZPICs will "be responsible for ensuring the integrity of all Medicare-related claims under Parts A and B (hospital, skilled nursing, home health, provider and durable medical equipment claims), Part C (Medicare Advantage health plans), Part D (prescription drug plans) and coordination of Medicare-Medicaid (Medi-Medi)." Press Release, Centers for Medicare & Medicaid Services, CMS Enhances Program Integrity Efforts to Fight Fraud, Waste and Abuse in Medicare (Oct. 6, 2008).

³ See Office of Inspector General, Department of Health and Human Services, Medicare's Program Safeguard Contractor Activities to Detect and Deter Fraud and Abuse (July 2007). Available at <http://www.oig.hhs.gov/oci/reports/oci-03-06-00010.pdf>. See also Brian Petry, Centers for Medicare & Medicaid Services, Transition from Program Safety Contractors (PSCs) to Zone Program Integrity Contractors (ZPICs), 57 Health Care Fraud 46, 47-50, 53 (Jan. 2009).

⁴ See, e.g., Zone Program Integrity Contractors (ZPIC) Task Order, Statement of Work, Zone 1 – Parts A, B, DME and HH + H, at 3; Zone Program Integrity Contractor, Zone 1 Medi-Medi Task Order, Statement of Work, at 2.

relevant Medicare claims data for the purpose of detecting potential fraud and abuse.⁵ The likely outcome of this streamlined process is an increase in provider audits and the ability to identify potentially fraudulent schemes earlier than previously possible.

As they work to identify, stop and prevent fraud and abuse, ZPICs are authorized to conduct audits, interview beneficiaries and providers, initiate administrative sanctions (including suspending payments, determining overpayments, and referring providers for exclusion from Medicare), and refer providers and beneficiaries to law enforcement. The ZPICs also are expected to use "innovative data analysis methodologies for the early detection and prevention of abusive use of services, as well as possible fraud, waste and abuse schemes."⁶ The ZPICs are paid by CMS, but unlike the RACs, reimbursement to a ZPIC is not contingent upon any overpayment amounts recovered by the ZPIC.

How Will ZPICs Be Organized?

The ZPIC transition is taking place at the same time as CMS consolidates the work of Fiscal Intermediaries and Carriers into Medicare Administrative Contractors (MACs). The alignment of ZPIC and MAC jurisdiction serves to streamline the claims review and benefit integrity processes. Seven ZPICs will replace the seventeen PSCs and eight MEDICS. These seven ZPIC zones will coincide with one or more complete jurisdictions of the MACs. A chart outlining the seven ZPIC zones is set forth below.

Zone	Geographic Area
1	American Samoa, California, Guam, Hawaii, Mariana Islands, Nevada
2	Alaska, Arizona, Idaho, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming
3	Illinois, Indiana, Kentucky, Michigan, Minnesota, Ohio, Wisconsin
4	Colorado, New Mexico, Oklahoma, Texas
5	Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia
6	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont
7	Florida, Puerto Rico, U.S. Virgin Islands

In creating the zones, CMS purposefully has targeted areas in which fraud and abuse have been more prevalent. For instance, Zone 7 is devoted almost solely to Florida, considered a "hot zone" because of a high incidence of Medicare fraud. In particular, Miami-Dade, Broward and Palm Beach counties have been designated as high risk areas by CMS.⁷ Comparatively, Zone 2 covers a vast territory of largely western and southwestern states where there has not historically been a high prevalence of Medicare.⁸ Other "hot zones" include California (particularly, Los Angeles, Kern, Orange, Riverside, San Bernadino and San Diego counties) and Texas (Houston and Dallas) among other locations.⁹

⁵ See Petry, *supra* note 3.

⁶ See, e.g., Zone Program Integrity Contractors (ZPIC) Task Order, Statement of Work, Zone 1 – Parts A, B, DME and HH + H, at 3; Zone Program Integrity Contractor; See also Zone 1 Medi-Medi Task Order, Statement of Work, at 2.

⁷ See Zone Program Integrity Contractors (ZPIC) Task Order, Statement of Work, Zone 7 – Parts A, B, DME and HH + H, at 4.

⁸ See Petry, *supra* note 3, at 52.

⁹ See Zone Program Integrity Contractors (ZPIC) Task Order, Statement of Work, Zone 1 – Parts A, B, DME and HH + H, at 3; See also Zone Program Integrity Contractors (ZPIC) Task Order, Statement of Work, Zone 1 – Parts A, B, DME and HH + H, at 4.

When Will ZPIC Audits Begin?

ZPIC audits have begun in certain zones, although implementation is running slightly behind schedule. Zones 4, 5 and 7 were scheduled to be fully operational by November 2008, but only Zones 4 and 7 have been operational since February 1, 2009. The contracts for Zones 2 and 5 have been awarded, both to AdvanceMed Corporation. However, separate contractors protested the awards in Zones 2 and 5. Both contestants claim that CMS unreasonably concluded that AdvanceMed proposed an adequate strategy to mitigate its "impaired objectivity" regarding organization conflicts of interest. Essentially, they argued that AdvanceMed would be required to audit services of its parent corporation CSC, which holds Medicare Part D contracts. On January 25, 2010, the U.S. Comptroller General, in separate decisions, sustained both protests and recommended that CMS reconsider its determination that AdvanceMed is eligible for the Zones 2 and 5 awards.¹⁰ To date, no contracts have been awarded for Zones 1, 3, or 6.

What Should I Expect During A ZPIC Audit?

ZPIC audits may arise in a number of ways. First, an audit may be initiated from the ZPIC's proactive work through data analysis. For example, a ZPIC could use data analysis to detect high frequency of certain services as compared to local and national patterns, trends of billing, or other information that may suggest the provider is an outlier. ZPIC audits are also triggered by complaints, such a report to the OIG hotline, Fraud Alerts, or even directly to the ZPIC. ZPICs also receive referrals from the MACs or other contractors and law enforcement. Other examples of red flags that can prompt an audit include improper or inaccurate billing, a mismatch of the claim with physician record, or lengths of stay outside the industry norm, for example.

ZPIC audits typically are unannounced or with very little notice. The ZPIC's review of claims may be pre-payment or post-payment. It may request a small number of records to review to determine if there is a fraud concern. Alternatively, the ZPIC might review a sample set of claims before contacting a provider, and may ultimately use statistical sampling to extrapolate the amount of any overpayment(s) made on claims based on the error rate within the sample claims. In addition to requesting records, the ZPICs may conduct interviews with beneficiaries and the provider's employees.

There are a number of potential outcomes of a ZPIC audit. First, the ZPIC can refer the case to law enforcement for criminal, civil monetary penalty (CMP) or other sanction, in which case the provider may subsequently hear from the Office of Inspector General of the Department of Health and Human Services (OIG) or a US attorney preparing to bring a False Claims Act claim. Notably, if an investigation was initially triggered by a complaint made by the provider's current or former employee, the ZPIC is required to immediately advise the OIG, which could then request that the ZPIC perform only a limited internal investigation and immediately refer the case to the OIG. Second, the provider might receive an overpayment demand that is referred to MAC for recoupment. Third, the ZPIC may determine that education is appropriate. In this instance, the ZPIC will inform the provider of questionable or improper practices, the correct procedure to be followed, and notify the provider that continuation of the improper practice may result in administrative sanctions.

With regard to determinations of overpayments, a provider has the right to appeal through the Medicare appeals process. Although expensive, most providers typically choose to appeal due to the large overpayment amounts being sought for extrapolated overpayment demands. If a provider is successful in reversing the denial of even a few claims, the provider can undermine

¹⁰ See US Government Accountability Office (GAO), Decision re: Matter of Cahaba Safeguard Administrators, LLC, Jan. 25, 2010 and GAO, Decision re: C2C Solutions, Inc., Jan. 25, 2010.

the basis for the ZPIC's ability to extrapolate an overpayment amount based on a sample of claims, thus significantly reducing the provider's damages.

How Should I Prepare for a ZPIC Audit?

Given the potential consequences of a ZPIC audit, providers should take steps now to prepare for a ZPIC audit. In preparing for a ZPIC audit, providers should consider the following:

- Ensuring that the compliance program is active and functioning appropriately. Providers should ensure that they are facilitating a culture of open communication for the reporting of any billing concerns. Providers also should be conducting regular training on coding and billing practices and should consider the use of internal audits focused on ZPIC risk areas.
- Designating a point person, such as the Compliance Officer or other administrator, for responding to the ZPICs records request. After this point of contact is designated, personnel should be instructed to immediately direct all ZPIC audit requests to this designated individual.
- Developing a multi-disciplinary committee (with representation across departments including, but not limited to, medical records, billing, medical staff, nursing administration, case management, utilization review, compliance and legal) to assist in drafting policies and procedures and in responding to audit requests. Such a committee can help the provider think of all possible records that may be needed to support a claim, and where and how such records may be quickly located.
- Establishing specific policies and procedures for responding to a ZPIC audit. This procedure should include notification of legal counsel because of the potential implications of a ZPIC audit.
- Creating an intake and tracking system. Because there are multiple types of audits with different time frames for response, it is important to have a tracking mechanism to ensure that the designated deadlines are met. For small organizations, this can be as simple as a spreadsheet. Larger organizations may want to consider investing in software designed to manage the intake and tracking of audit requests.

Conclusion

Responding to and appealing a ZPIC audit is a lengthy, time-consuming, and expensive process. Providers should take a hard look at their compliance programs and claims processing practices now to minimize their risk of becoming the target of a ZPIC audit. If you have any questions, please contact one of the attorneys in our Healthcare Practice Group listed below.

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