

New Developments In Medicare Overpayment Audits

Some new developments have been announced by the Centers for Medicare & Medicaid Services (CMS) bearing upon recovery of improper payments by audit contractors. In addition, this article discusses several new trends resulting from recent legislation or issues approved by CMS with respect to overpayment audit contractors.

CMS Initiatives

- Comparative Billing Reports ("CBRs"). CBRs summarize a provider's billing pattern for given codes compared to state and national averages. The reports will be issued initially by CMS to providers other than physicians and hospitals. Providers currently scheduled to receive CBRs include physical therapy and hospice providers.
- Electronic Submission of Medical Documentation ("ESMD"). This initiative potentially affects all providers. Currently, when a provider receives a request for medical records from an audit contractor, the request and the responsive records are generally submitted in hard copy format. As part of the Nationwide Health Information Network (NHIN), which allows secure transmission of health information over the internet, CMS plans to permit providers to submit responsive medical records electronically for review by audit contractors. In Phase 1 of the initiative, providers will work with "health information handlers" (HIHs) to submit medical records electronically to CMS, which will then transmit the records to audit contractors. In Phase 2, providers and HIHs will be permitted to build their own "gateways" to the NHIN for re-transmission to audit contractors. In recognition that not all providers have adopted electronic health records, the ESMD initiative will *not* be mandatory. The ESMD system is anticipated to be available April 2011.

New Audit Trends

Discussed below is a potpourri of new trends in contractor overpayment audits:

- Medical Necessity Reviews. CMS has approved medical necessity reviews for the Recovery Audit Contractor (RAC) program directed at Medicare overpayments. This has implications for hospital providers with respect to chest pain episodes and other vascular procedures (so-called hospital "short stay" cases). The issue is whether the services are properly billed as inpatient services or should have been billed as outpatient (observation) services. If reimbursement is denied for inpatient services, current policy bars re-billing as outpatient services.
- Reporting of Overpayments. Section 6402(d) of the 2010 Patient Protection and Affordable Care Act (PPACA) now requires providers to return *and report* overpayments to CMS within 60 days after the overpayment is identified – merely returning the overpayment is not enough. An overpayment retained after the deadline creates an "obligation" for purposes of the False Claims Act, so that a knowing failure to report and return an overpayment may result in False Claims Act liability (civil monetary penalties and possible exclusion).
- Audit Contractor Developments. The following describes new developments with respect to audit contractors:
 - States are required to establish *Medicaid*RAC programs by January 1, 2011 – in addition to the Medicaid Integrity Contractors (MICs) program that already

exists.

- The RAC program will also be expanded to cover Medicare Part C (Medicare Advantage Plans) and Part D (Prescription Drugs). In the case of Part C, the RAC auditors will audit the MA Plan, but the Plan can contract with the RAC auditors to audit providers
- ZPICs, which have primary authority to identify suspected fraud, have authority to: (i) place providers on pre-payment review; and (ii) to suspend payments if there are credible allegations of fraud.

If you have any questions on Medicare overpayment audits, please contact [Chris Was](#) at 615.744.8527 | cwas@millermartin.com.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

THIS IS AN ADVERTISEMENT.

FOLLOW US ON 

Atlanta | Chattanooga | Nashville
www.millermartin.com

ATLANTA

1170 Peachtree Street,
N.E., Suite 800
Atlanta, GA 30309-
7706

CHATTANOOGA

832 Georgia Avenue,
Suite 1000,
Volunteer Building
Chattanooga, TN 37402-
2289

NASHVILLE

150 Fourth Avenue North,
Suite 1200, One Nashville Place
Nashville, TN 37219

This email was sent to .

To ensure that you continue receiving our emails, please add us to your address book or safe list.

[manage](#) your preferences | [opt out](#) using TrueRemove®

Got this as a forward? [Sign up](#) to receive our future emails.

[Subscribe](#) to our email list