

# Health Headlines

February 27, 2012

## Medicaid Contractor Developments: OIG Issues Report on Review MICs and CMS Publishes Notice of Medicaid RAC Contingency Fees

The U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG) recently issued a report on the Centers for Medicare and Medicaid Services' (CMS's) Review Medicaid Integrity Contractors (Review MICs) – “Early Assessment of Review Medicaid Integrity Contractors” (the OIG Report). Additionally, on February 24, 2012, CMS published a notice in the *Federal Register* regarding Medicaid Recovery Audit Contractor (RAC) contingency fees.

### A. Early Assessment of Review MICs

According to the OIG Report, the purpose of the OIG's review was twofold: (1) to determine the extent to which Review MICs completed assignments, recommended audit leads, and identified potential fraud; and (2) to identify barriers that Review MICs encountered in their program integrity activities. The study examined Review MIC assignments for a six month period—January 1, 2010 through June 30, 2010. The OIG Report provides that while Review MICs completed 81 percent of their assignments, they had limited involvement in identifying potential fraud. In fact, according to the OIG Report, Review MICs did not identify *any* potential fraud leads during the six month review period.

In the report, OIG notes that CMS projected \$22.5 billion in Medicaid improper payments in fiscal year 2010. While the OIG Report specifically provides that the study did not evaluate the effectiveness of the MIC program or CMS's policies and procedures regarding Review MIC assignments, the effectiveness of the MIC program is naturally raised.

According to the OIG Report, CMS makes monthly assignments to the Review MICs to identify potential fraud. For each assignment, CMS specifies the state, type of Medicaid claims data, and the dates of service the Review MICs are to review. After completing these assignments, Review MICs generally transmit their selected samples of potential overpayments to the states for validation, as states are responsible for determining whether the potential overpayments are accurate. Of the potential overpayments identified by the Review MICs during this review period, states invalidated 34 percent of the potential overpayments. The OIG Report suggests that inaccurate data used by the Review MICs largely contributed to the ultimate invalidation of more than one third of the potential overpayments.

OIG recommends that CMS: (1) improve the quality of data that Review MICs can access for conducting data analysis and (2) require Review MICs to recommend specific audit leads. CMS concurred with both recommendations, and stated that it currently has several initiatives underway to improve the quality of data accessible to the Review MICs.

### B. Medicaid RAC Contingency Fees

Pursuant to the Medicaid RAC final rule issued in September 2011, states maintain the authority to determine the contingency fee paid to Medicaid RACs for the recovery of overpayments. However, the Medicaid RAC contingency fee cannot exceed that of the highest Medicare RAC contingency fee, unless a state submits, and CMS approves, a waiver of

the specified maximum contingency fee. On June 1, 2011, CMS increased the contingency fee by 5 percent for durable medical equipment (DME) claims for Medicare RACs—making the current Medicaid RAC maximum contingency fee for DME claims 17.5 percent. The current Medicare RAC maximum contingency fee for all non-DME claims is 12.5 percent. Accordingly, on February 24, 2012, CMS issued a notice that the maximum Medicaid RAC contingency fee for non-DME claims is *12.5 percent* and the maximum contingency fee for DME claims is *17.5 percent*.

To view the OIG Report click [here](#). To view the *Federal Register* notice click [here](#).

Reporters, *Sara Kay Wheeler*, Atlanta, +1 404 572 4685, [skwheeler@kslaw.com](mailto:skwheeler@kslaw.com) and *Stephanie F. Johnson*, Atlanta, +1 404 572 4629, [sfjohnson@kslaw.com](mailto:sfjohnson@kslaw.com).

**Health Headlines – Editor:**

**Dennis M. Barry**  
[dbarry@kslaw.com](mailto:dbarry@kslaw.com)  
+1 202 626 2959

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