

February 25, 2011

## IN THIS SPECIAL REGULATORY REPORT...

1. AAFP responds to creation of Recovery Audit Contractors for Medicare Part C and D
2. Letter sent in response to creation of Medicaid adult quality measures
3. Coalition letter sent on proposed insurance rate increase review process
4. Office of Inspector General urged to work with Medicare on creation of safe harbors
5. Medicaid Recovery Audit Contractors implementation date delayed
6. Final provider conscience protection regulation released
7. Additional regulatory news

### NEXT WEEK IN WASHINGTON...

- \* Dr. Goertz speaks at a Congressional briefing sponsored by the Partnership for Primary Care Workforce on Tuesday, March 1
- \* On Tuesday, March 1, the House Energy and Commerce Committee will hold a hearing entitled, "The Consequences of Obamacare: Impact on Medicaid and State Health Care Reform."
- \* On Wednesday, March 2, the Oversight Subcommittee of the House Ways and Means Committee will hold a hearing titled "Improving Efforts to Combat Health Care Fraud."
- \* On Wednesday, March 2, the Senate Finance Committee will hold a hearing on preventing health care fraud.
- \* CMS is expected to release its draft regulations of Accountable Care Organizations sometime this week.
- \* Funding for the federal government expires on Friday, March 4 unless Congress acts on a Continuing Resolution to fund the government until the end of the fiscal year on September 30.

## 1. LETTER SENT ON RECOVERY AUDIT CONTRACTORS FOR PARTS C AND D

The AAFP sent the Centers for Medicare & Medicaid Services (CMS) a [letter](#) on February 23 in response to their proposed [request for comments](#) regarding the development of a Recovery Audit Contractor (RACs) program for the Medicare Part C (Medicare Advantage) and Part D (Prescription Drug Plan) programs. The letter strongly reminded CMS that the *Affordable Care Act* only gives these RACs the authority to review payments CMS makes to these plans and that they have no authority to review payments made by the plans to physicians.

## 2. AAFP COMMENTS ON MEDICAID ADULT QUALITY MEASURES

In a February 23 [letter](#) to the Agency for Healthcare Research and Quality (AHRQ), the AAFP provided comments to specific quality measures proposed for use in the Initial Core Set of Health Quality Measures for Medicaid- Eligible Adults [regulation](#). The letter urged AHRQ to use measures developed by the National Committee for Quality Assurance instead of government created measures and pointed out that several measures are not appropriate for providers,

because they are focused on community or inpatient admission policies outside the purview of a physician.

### **3. COALITION LETTER SENT TO HHS ON RATE INCREASE REVIEW REGULATION**

The AAFP joined 20 national organizations and 5 representative members of the National Association of Insurance Commissioners in a [letter](#) to the U.S. Department of Health and Human Services' (HHS) Center for Consumer Information and Insurance Oversight in response to the proposed rate increase disclosure and review regulation. The coalition letter offers detailed suggestions on how to prevent unjustified health insurance premium increases, improve the rate review capacity in states, and make the rate review process more transparent.

Related to the oversight of insurance rate increases, on February 24, HHS [announced](#) the availability of \$200 million in grant funds for states to help make health insurance premiums more transparent and to give states the power to stop unreasonable premium increases.

### **4. REGULATORY COMMENT LETTER SENT ON SAFE HARBORS**

On February 21, the AAFP sent the U.S. Department of Health & Human Services' Office of Inspector General (OIG) a comment [letter](#) in response to the [solicitation](#) of new safe harbors and special fraud alerts. The AAFP urged the OIG to collaborate closely with the Centers for Medicare & Medicaid Services to identify changes to antitrust regulations and to Stark self-referral regulations that will be needed to allow physicians to fully participate in accountable care organizations.

### **5. MEDICAID RECOVERY AUDIT CONTRACTORS DELAYED**

The Centers for Medicare & Medicaid Services (CMS) recently posted a [letter](#) online that announces that states will not be required to implement their Medicaid Recovery Audit Contractor programs, which must identify improper payments made through the Medicaid program and recoup overpayments, by the proposed implementation date of April 1, 2011. Citing concerns over state operational issues, CMS indicated the new implementation deadline will be announced when a final rule is issued later in 2011. On February 16, the CMS posted a new [webpage](#) that tracks the implementation status of each state's Medicaid RAC.

### **6. FINAL RULE RELEASED ON PROVIDER CONSCIENCE PROTECTION**

On February 23, the U.S. Department of Health and Human Services published a final [rule](#) titled, "Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws." This final rule rescinds unclear and potentially overbroad portions of the "conscience rights" regulation that sought to protect health care workers who refused to provide healthcare because of moral or religious reasons. As part of the final rule, HHS shifted enforcement to the HHS Office for Civil Rights. These changes are effective March 25.

### **7. REGULATORY SUMMARY**

- The Centers for Medicare & Medicaid Services [announced](#) an "eligibility clarification" that affects children under the age of 19 in 23 states and the District of Columbia that wish to enroll in the federally administered Pre-Existing Condition Insurance Plan (PCIP). The clarification states that the PCIP will accept documentation from a physician dated within the past 12 months that states the patient had a condition present before enrollment.
- On February 22, the Department of Veterans Affairs published a final [rule](#) that freezes co-payments for certain medications until Jan. 1, 2012. Beginning in 2012, the co-payment amounts will increase based on the prescription drug component of the Medical Consumer Price Index.
- On February 22, the U.S. Department of Health & Human Service (HHS) [announced](#) the first ever civil penalty for HIPAA privacy violations, specifically fining Cignet Health \$4.3 million for failing to provide copies of medical records to 41 patients who requested them

from September 2008 to October 2009. Then on February 24, HHS [announced](#) that the General Hospital Corporation and Massachusetts General Physicians Organization Inc. agreed to pay the U.S. government \$1,000,000 to settle potential violations of HIPAA.

- On February 23, the Centers for Medicare & Medicaid Services issued a [press release](#) indicating that four [states](#) made payments totaling \$20,425,550 to physicians and providers as part of the Medicaid electronic health record (EHR) incentive program. In addition, CMS noted that 21,000 physicians and providers initiated [registration](#) into the Medicare and Medicaid EHR incentive [programs](#), and that over 45,000 providers requested information or assistance from 62 Regional Extension Centers.
- On February 24, the U.S. Department of Health & Human Services [announced](#) the availability of \$100 million as part of the Medicaid Incentives for Prevention of Chronic Diseases ([MIPCD](#)) Program. States may apply for these funds to use for programs to offer Medicaid beneficiaries incentives to adopt healthy behaviors such as losing weight or quitting smoking.
- The Centers for Medicare & Medicaid Services will host a national provider conference call and webinar on the 2011 Physician Quality Reporting System and Electronic Prescribing (eRx) Incentive Program on Tuesday, March 8, 2011 from 1:30 p.m. – 3:00 p.m., EST. Educational [materials](#) will be posted prior to the call. [Registration](#) is required one day prior to the call.