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## Medicaid Enforcement: Everyone in the Pool

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## Medicaid Enforcement

- Overview:
  - Medicaid is a partnership program funded by both the federal government and the states
  - Historically, administration and oversight of Medicaid left almost entirely to the states
  - State Agency and Medicaid Fraud Control Unit (MFCU) were key players
  - Little to no coordination of Medicaid enforcement activities at the national level
  - CMS had only a handful of employees dedicated to Medicaid oversight
  - While the feds were leaving oversight to the states, Medicaid funding was steadily increasing



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## GAO Reports

- In 2005 GAO issued reports critical of government's oversight of the Medicaid Program
- GAO reports pointed out both failures at the state level and a serious lack of federal resources devoted to oversight
- "Budget busting" predictions for Medicaid added fuel to the fire
  - Medicaid growing faster than Medicare
  - \$330 Billion in 2007
  - Within 5 years Medicaid will be the largest line item in Federal Budget
  - Medicaid often largest line item in States' budgets



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## Deficit Reduction Act

- DRA
  - Proof of Congress' dissatisfaction with the status quo
- Dramatic increase in federal funding and oversight of State Medicaid Programs
- Medicaid Integrity Program created
  - Mirror image to Medicare Integrity Program
- States encouraged to enact false claims acts
- Medicaid Providers required to adopt policies relating to FCA and whistleblower protections



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## Deficit Reduction Act

- DRA represents BIG increase in Integrity Funding



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## Medicaid Integrity Program

- Medicaid Integrity Program (MIP)
  - Created by DRA Section 6034
- New approach to oversight of Medicaid
- No longer the treated as the domaine of the states
- \$160 million in federal funding
  - All funding given to federal not state agencies
- 100 new CMS employees
- 5 year Work Plan focusing on Medicaid issues



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## Medicaid Integrity Program

- DRA calls for establishment of a new category of auditor--Medicaid Integrity Contractors (MICs)
- MICs will
  - Review providers
  - Audit claims
  - Identify overpayments
  - Educate providers and MCOs regarding program integrity and quality of care
- First MIC Contracts recently awarded



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## Medicaid Integrity Program

- David Frank, Director of CMS Medicaid Integrity Group
  - MIP audits will go “full-steam ahead” nationally by Spring 2008
- CMS Strategic Plan: “Return on Investment”
  - “MIP expects to identify significant overpayments through a carefully crafted audit program.”



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## DRA: PERM

- Payment Error Rate Measurement (PERM) program
  - Designed to target improper Medicaid and State Children’s health insurance program payments
  - PERM auditors in CMS Office of Financial Management, Medicare Integrity Group



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## DRA: PERM

- Payment Error Rate Measurement (PERM) program – cont.
  - PERM audits based on sample of claims extrapolated to universe
  - Appears that State but not Provider has appeal rights
  - DRA boosts funding for PERM

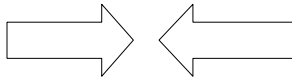


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## DRA: Medi-Medi

- Medi-Medi Program started in 2001
- Matches Medicare and Medicaid claims data
- Started as pilot in CA; now in 9 states
- DRA provides funding to take the program national: \$60 Million/year
- CMS establishing One Program Integrity Data Repository (ODR)



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## ZPICS and RRTs: Part of Medicare Integrity but . . .

- Zone Program Integrity Contractors (ZPICS) for “hotspots” to replace program safeguard contractors (PSCs)
  - Focus: CA, FL, IL, NY, TX
- Rapid Response Teams (RRTs)
  - Can be contracted to any government entity and used for Medicaid “flare-ups”



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## Recovery Audit Contractors

- Medicare Modernization Act of 2003 (MMA) directed CMS to investigate Medicare claims payment using Recovery Audit Contractors (RACs)
- RACs paid on contingency basis
- Demonstration in FL, NY, CA



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## Recovery Audit Contractors

- RAC mission to reduce Medicare improper payments
- But includes investigation of claims for dual eligibles like the Medi-Medi program
- Currently 3 RACs for claims payment; 3 for Medicare Secondary
- While RACs required to look for both overpayments and underpayments they are paid on a contingency basis
  - Value of overpayments identified greatly exceeds underpayments



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## RACs

- Tax Relief and Health Care Act of 2006 (TRHCA)
  - makes the RAC Program permanent
  - expands the program to all 50 states by no later than 2010
- Early 2008: Hospital Groups object to RAC tactics
  - Overpayments based on lack of medical necessity
  - Perception of unfairness
  - Legislation imposing moratorium?



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## Medicaid Integrity: MFCU

- MFCUs were established in 1977 by the Medicare-Medicaid Anti-Fraud and Abuse Amendments
  - federally funded, generally at 75%
- 42 USC §1396b(q) and 42 CFR 1007 explain what the MFCU must do and how it must operate
- OIG reviews MFCU performance annually
  - 2006 MFCU Annual Report: \$1.1 billion in court-ordered restitution, fines, civil settlements and penalties



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## Four General Areas of MFCU authority

- Investigate and Prosecute Fraud in billing products/services to the Medicaid Program
  - State agency must refer suspected fraud to MCFU
- Investigate and Prosecute Abuse/Neglect of patients in all types of long term care facilities
- Investigate and Prosecute Theft of Patient Funds in all types in Medicaid-funded facilities
- Investigate and Prosecute Fraud in the Administration of the Medicaid Program



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## MCFU in Practice

- The level of activity of the MCFU will vary from state to state and administration to administration
- Focus may be on patient safety rather than billing fraud
- Some MCFUs focus on national cases– i.e. Medicaid Drug Rebate cases
- Unclear whether the rise in federal enforcement activity will spur MCFUs to focus more on billing and coding problems or if it will have the opposite effect



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## State Medicaid Integrity Models

- Several States have created an Inspector General's Office for Medicaid Integrity
  - Texas, New York, Kentucky, Florida
- New York: Jim Sheehan hired as the state's first Medicaid IG
  - Cut a deal with the feds regarding the amount of recoveries its fraud control program will generate over the next 5 years
- Other states have enhanced their Integrity Programs within the State Medicaid Agency

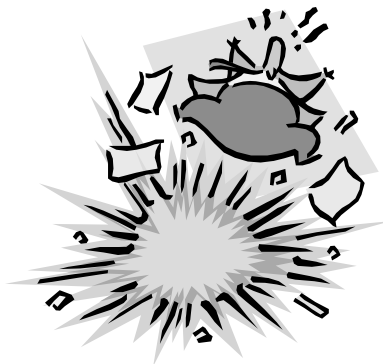


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## Practical Implications?

- **More enforcement activity focused on Medicaid**



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## Responding to Audits: A Few Rules

- **Rule No. 1: Knowledge is power**
- Develop a system within your organization to ensure that when an audit request is received it is recognized and handled appropriately
- Employee Education
  - Not only audit department but whoever in the organization is likely to receive a notice should be trained in how to respond
- Compliance Office should be informed of audit
- Maintain a list of pending and recent audits
  - this will enable the organization to spot trends, anticipate government concerns and take action at an earlier stage
- Find out what agency is involved, that agency's charge and whether others providers have received similar requests



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## Audit Response

- **Rule No. 2: RESPOND in a timely manner**
- If you receive an audit request or other request for records start a dialogue with the auditor as soon as possible
  - It may be possible to narrow the scope of the request or clarify terms
- Do not ignore deadlines
  - Request an extension if you need one
- Gather as much of the requested information as possible
  - Try to avoid piece meal production
- Deliver the data when and where requested



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## Audit Response

- **Rule No. 3: Strive to be a step ahead**
- Try to figure out whether you have exposure, why and to what extent before the government does
- Undertake a critical review of the audit request
  - What is the focus of the audit? Why these claims? Why this provider?
- Evaluate the responsive documents
  - Determine if documentation complete
  - Assess whether the information provided to the government was accurate and in compliance with applicable regulations
- Immediately fix problems you identify (at least on a going forward basis)
- Determine how best to spin or package your audit response in light what you know about your exposure



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## Audit Response

- **Rule No. 4: Be Vigilant**
- An audit may be an isolated event or part of a larger investigation
  - Be on the lookout for signs of other activity
- Carefully review draft audit findings
- Do not assume that the auditor is knowledgeable or that the correct standards were applied
- If not obvious, press the government to articulate the bases for its findings
- If findings are extrapolated consider sample size, statistical validity, etc.



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## Audit Response

- **Rule No. 5: Know your appeal rights**
- At the beginning of the process determine what rights you will have if the audit findings are adverse
  - If your appeal rights are unclear ask for help
- Structure your response to the audit and other communications with an eye to preserving and enhancing your chances on appeal
- DEADLINES Matter



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