

Center for Medicaid, CHIP, and Survey & Certification

CMCS Informational Bulletin

DATE: July 13, 2010

FROM: Cindy Mann
Director
Center for Medicaid, CHIP and Survey & Certification (CMCS)

SUBJECT: **New Developments in Medicaid, CHIP and Survey & Certification Policy**

I am writing to inform you about two CMS publications in the Federal Register yesterday and the release today of a letter to State Medicaid Directors. On July 12, we formally published a survey titled Current State Practices Related to Payments to Providers for Health Care-Acquired Conditions in conjunction with section 2702 of the Affordable Care Act and also published a notice of proposed rulemaking implementing Section 6111 regarding Civil Money Penalties for Nursing Homes. Today, CMS is releasing a letter to States regarding section 6506 of the Affordable Care Act regarding the period for collection of overpayments made to Medicaid providers.

In addition, as you may have seen, HHS released today the final rule regarding Meaningful Use of Electronic Health Records. More information about the regulation can be found at <http://www.hhs.gov/news/press/2010pres/07/20100713a.html>

State Survey Regarding Health Care-Acquired Conditions

The Affordable Care Act, enacted March 23, 2010, includes a provision prohibiting payments to States under Section 1903 of the Social Security Act for any amounts expended for providing medical assistance for health care-acquired conditions (HCACs). CMS is required to issue regulations, effective July 1, 2011, implementing this provision. Section 2702(a) of the Affordable Care Act, *Payment Adjustment for Health Care-Acquired Conditions*, requires that the Secretary identify current State practices that prohibit payment for HCACs and incorporate into the implementing regulations those practices or elements of such practices which the Secretary deems appropriate for application to the Medicaid program. The survey is being made available for public comment.

CMS is issuing this State survey to obtain information on existing State practices limiting or prohibiting reimbursement for health care-acquired conditions and related payment policies. CMS will hold an **all State call on July 22, 2010** to discuss the survey and the requested data,

and to give States an opportunity to provide feedback. Information regarding the conference call will follow later in the week.

Together, the survey and the call will help us obtain information and advice as we develop our policy in this area. The survey is available for viewing at:

<http://www.cms.gov/PaperworkReductionActof1995/PRAL/list.asp>.

Proposed Rule Regarding Civil Money Penalties for Nursing Homes

In addition, on July 12, 2010, CMS published a proposed rule entitled *Civil Money Penalties for Nursing Homes* in the Federal Register. Sections 6111 of the Affordable Care Act amended sections 1819(h) and 1919(h) of the Social Security Act to incorporate specific provisions pertaining to the imposition and collection of civil money penalties (CMPs) when facilities do not meet Medicare and Medicaid participation requirements. These new provisions are intended to improve efficiency and effectiveness of the nursing home enforcement process, particularly as it relates to civil money penalties imposed by CMS. The public has 30 days to comment on the proposed regulatory document.

Guidance Regarding the Extended Period for Collection of Provider Overpayments

Today, CMS is releasing a letter to State Medicaid Directors that provides guidance related to the period of time that is available for States to collect overpayments made to Medicaid providers. Under section 6506 of Affordable Care Act, States now have up to one year from the date of discovery of an overpayment for Medicaid services to recover, or to attempt to recover, such overpayment before making an adjustment to refund the Federal share of the overpayment. Except in the case of overpayments resulting from fraud, the adjustment to refund the Federal share must be made no later than the deadline for filing the quarterly expenditure report (Form CMS-64) for the quarter in which the one-year period ends, regardless of whether the State recovers the overpayment. Previously, States were allowed up to 60 days from the date of discovery of an overpayment to recover such overpayment before making the adjustment to the Federal share.

Thank you for your continued commitment to the Medicaid program and we look forward to our ongoing work together as we implementing this critical legislation. Questions regarding the health care acquired infections survey can be directed to Venesa Day, Financial Management Group, Division of Reimbursement and State Financing, at 410-786-8281 or via email at Venesa.day@cms.hhs.gov. Questions regarding the Civil Money Penalties proposed rule may be directed to Thomas Hamilton, Director, Survey and Certification Group, at 410-786-9493. And inquiries regarding the guidance letter on overpayments may be directed to Ron Perkins, Director of the Division of Financial Operations, Financial Management Group, at Ronald.perkins@cms.hhs.gov; or 410-786-8669.