

Alerts and Updates

CMS ISSUES PROPOSED RULE PROHIBITING MEDICAID PAYMENTS FOR HEALTHCARE-ACQUIRED CONDITIONS

February 25, 2011

The Centers for Medicare and Medicaid Services (CMS) has issued a [proposed rule](#), published in the *Federal Register* on February 17, 2011, setting forth policies for prohibiting Medicaid payments to states for any amounts spent toward medical assistance for healthcare-acquired conditions (HAC)—including the current list of Medicare HAC and also preventable, adverse conditions identified by states and occurring in any healthcare setting. The proposed rule was mandated by section 2702 of the Patient Protection and Affordable Care Act of 2010 (PPACA) and would go into effect on July 1, 2011. The proposed rule goes beyond the Medicare inpatient nonpayment rule for HACs, which went into effect in October 2007, by extending the nonpayment concept to state Medicaid programs.

Because the Medicare HAC rule did not require state Medicaid programs to implement nonpayment policies for HACs, CMS issued a letter to state Medicaid directors in 2008, encouraging them to adopt payment prohibitions on provider claims for HACs that coordinated with the Medicare HAC rule. In its recent review of existing state practices, CMS found that at least 21 states had adopted some form of nonpayment policy related to HACs. However, CMS found that the nonpayment policies varied greatly, with at least half of existing policies exceeding Medicare's current HAC requirements and rules in the conditions identified, the systems used to indicate the conditions or the settings where the nonpayment policies could be applied. As a result, when section 2702 of PPACA made it mandatory for CMS to implement Medicaid payment adjustments for HACs, CMS attempted to provide uniformity among state nonpayment policies for HACs, including identifying mandatory minimum HACs and provider reporting requirements.

In general, the proposed rule would require states and their Medicaid state plans to describe the rules for reducing provider payments for HACs that would otherwise result in increased payments. States also would be able to identify the portion of a provider's payment directly related to treatment for a HAC. CMS noted that without direct reporting requirements, providers have no incentive to report conditions or adverse events for nonpayment or otherwise. Therefore, the proposed rule would require Medicaid programs to implement systems that identify claims for nonpayment and provider self-reporting. CMS proposes to utilize existing Medicaid claim systems as the platform for collecting and reporting the necessary data.

The proposed rule requires states, at a minimum, to adopt nonpayment provisions for HACs identified as Medicare HACs in Medicare's final annual hospital inpatient prospective payment system (IPPS) rule. Thus, the proposed rule would require states to annually review and, if necessary, update their listing of HACs for consistency with the identified Medicare HACs. In order to provide flexibility, the draft rule would also authorize states to identify a wider category of healthcare-acquired conditions CMS calls "provider-preventable conditions" (PPCs). PPCs are identified by states for nonpayment under their applicable state plans, as approved by CMS through the state plan approval process. PPC is a catch-all term CMS created to signify hospital and nonhospital conditions states would not pay for, such as wrong site, procedure or patient surgery.

CMS will accept public comments through March 18, 2011.

For Further Information

If you have any questions about this *Alert*, please contact [Frederick \(Rick\) R. Ball](#), any [member](#) of the [Health Law Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

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