How to Deal Effectively With Recent Legal Developments

November 10, 2017

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Agenda

- Legislative, Administrative and Regulatory Developments
  - Repeal/Replace/Reform/Remain
- Regulatory and Enforcement Trends
  - Physician Relationships
  - Payer audits and statistical modeling
  - NPP Enrollment
- Burgeoning Challenges for Compliance Professionals
- Practical and Effective Approaches

Legislative and Administrative Developments

October 12, 2017 Executive Order

- De-fund premium subsidies to insurance companies (CSRs).
- Association health plans selling/purchasing insurance across state lines. *See e.g.,* Sen. Rand Paul (R-KY).
- Note: Association health plans have been opposed in the past by many stakeholders, like governors, insurance commissioners, attorneys general because they could undermine a state's ability to regulate its insurance market.
- Ex: Healthy people → states that allow skinny/cheap plans disrupts market.

CHIP Program

- Program authorized through 2019, funding expired Oct. 1.
- Leeway because states won't start running out of funding until December.
- Cancellation/freeze notices may have to be sent in October.
- States could shift funding around.
- Push to do separate funding, but could be coupled with more controversial items.
- Policy colleagues indicate delay until as late as December.

When CHIP Funds Run Out

TABLE 1. Projected Exhaustion of Federal CHIP Funds in Fiscal Year 2018

Quarter of fiscal year	Number of states	States
First quarter (October–December 2017)	4	Arizona, District of Columbia, Minnesota, and North Carolina
Second quarter (January–March 2018)	27	Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, Montana, Nevada, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, and Washington
Third quarter (April–June 2018)	19	Alabama, Georgia, Illinois, Indiana, Iowa, Maine, Michigan, Maryland, Nebraska, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, South Carolina, Tennessee, Texas, West Virginia, and Wisconsin
Fourth quarter (July–September 2018)	1	Wyoming

Note: CHIP is the State Children's Health Insurance Program.
Source: MACPAC 2017 analysis using June 2017 Medicaid and CHIP Budget and Expenditure System data from the Centers for Medicare & Medicaid Services, including quarterly projections provided by states in May 2017.

Mounting Challenges for Health Care Providers

- More pressure on Medicaid Programs, many of which are broken
- More state control
- MCOs with an inefficient state overlay
- More pressure on states → more pressure on Medicaid providers
- Instability of insurance markets
- Rising premiums, deductibles
- Fewer people insured → fiscal burdens on providers

Regulatory and Enforcement Trends

Physician Relationships – What We See

- Valuation firms tightening up
- Cookie cutter approaches
- Data disconnects
- Wrong data
- Invalid assumptions
- Lack of communication
- Side deals different from contract
- Practices become different from original assumptions
- Physician expectations set in advance of analysis
- No review of draft reports
- No separation of duties

Physician Relationships – What Not to Do

- Trust existing processes
- Trust what people are telling you
- Rely on old advice
- Fail to question evaluators and counsel
- Fail to document rationales
- Proceed without role definition
- Allow unfortunate email chains to propagate
- Involve too many stakeholders when there is an issue
- Go it alone – you need safety valves

Physician Relationships Best Practices

- Updated contracts
- Contracts signed
- Contracts tracked
- Consistent contracting standards
- Services well-defined
- Keep track of services
- Qualified and informed people running valuation process
- Meet with evaluators
- Develop data protocols
- Separation of duties
- Sign-offs by key stakeholders
- Curtail informal physician communications
- Maintain backup
- Watch unfortunate emails

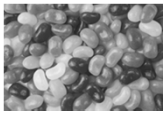
NPP Enrollment

- Affordable Care Act requires APRN enrollment in Medicaid programs (42 CFR 455.410):

  The State Medicaid agency must require all ordering or referring physicians or other professionals providing services under a State plan or under a waiver of the plan to be enrolled as participating providers.
- Treating
- Ordering, prescribing, referring
- Consequences: Direct and third party claim denials, scripts not filled

Payor Audits and Statistical Modeling

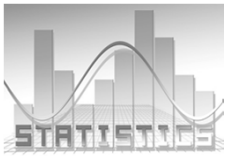
Statistical Modeling Applications



- Payors and contractors use it.
- Providers use it.
- Government uses and accepts it.
- Courts generally uphold it to calculate FCA damages.
- Most courts also require additional, non-statistical evidence of liability (overpayments do not always mean fraud).
- Some courts have refused to allow sampling when the claims require highly unique determinations of medical necessity.

What is the General Statistical Modeling Process?

- Question to be answered
- Universe of claims to be examined
- Sampling protocol
- Statistical tolerances
- Review tool
- Probe sample
- Comprehensive sample
- Financial estimation ("Extrapolation")



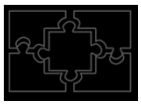
Legal, Regulatory and Other Guidance

- CMS Program Integrity Manual ("PIM")
- Office of Inspector General/Office of Audit Reports
- CMS Medicare Financial Management Manual
- CMS Program Memoranda
- GAO Reports
- Office of Inspector General's Self-Disclosure Protocol
- Generally accepted statistical principles
- Federal court decisions
- ALJ decisions

Government Conventions

- RAT-STATS
- Probe Sample (30 or 50)
- Precision (10-25%)
- Confidence (90%)
- Lower Limit of Confidence Interval
- Mean Point Estimate
- Underpayments can offset (or not)
- 5% or lower overpayment, stop
- One size fits all

Designing Solid Statistical Modeling



- Key initial decisions impact future viability.
- Develop an entire plan before commencing.
- Use specialized statistician, reviewer, counsel.
- Generate an appropriate review tool.
- Timeline and accountability.
- Make sure every step is documented, mainstream, and replicable.
- Don't vary from the playbook.
- Connect the dots: legal arguments and statistical findings.

What Should We Do?

Practical Approaches

- Double-up on Medicaid expertise, diligence.
- Address NPP roles, status, enrollment.
- Focus on physician relationships.
- Relationship with professionals who understand statistical modeling.
- Assessment as an infomercial.
- Leverage organizational resources.
- Thoughtful and achievable work plans.
- Get/stay in front of Senior Leaders and Board.

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