Submitter : **Mr. John Chappuis** **Date: 12/19/2007**

Organization : **MT Dept. Public Health and Human Services**

Category : **State Government**

Issue Areas/Comments

GENERAL

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See Attachment

CMS-2271-P-1-Attach-1.DOC

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

#1

BRIAN SCHWEITZER
GOVERNOR

JOAN MILES
DIRECTOR

STATE OF MONTANA

www.dphhs.mt.gov

PO Box 4210
HELENA, MT 59604-4210

December 19, 2007 .

To Whom It May Concern:

The Montana Department of Public Health and Human Services is submitting the following comments on the Proposed Rule for Medicaid Integrity Program; Eligible Entity and Contracting Requirements for the Medicaid Integrity Audit Program as published in the Federal Register, Friday, November 23, 2007.

We have the following concern with the proposed regulation and we would like to comment on the following areas of the proposed rule.

42 CFR Parts 445 (File Code CMS-2271-P)
RIN 0938-A097
Medicaid Integrity Program; Eligible Entity and Contracting Requirements for the Medicaid Integrity Audit Program

PROVISIONS OF THE PROPOSED REGULATIONS
C. Contractor Functions - 65688 Top of Third Column

There is no requirement that the contractor consults with or work with the State Medicaid Agency. A collaborative effort between the states and the federal government contractor will help to ensure that the federal/state nature of Medicaid is accommodated and that duplication and confusion are minimized.

Recommendation:

A new bullet needs to be added to Section C: Contractor Functions that reads:

- Coordinate any provider specific action outlined above including but not limited to, claim audits, other audits, overpayment recoveries and provider education with appropriate State Medicaid agency, before, during and after the action.

PART 455 – PROGRAM INTEGRITY; MEDICAID
Section 450.232 – Medicaid integrity audit program contractor functions – 65691 Bottom of First Column.

There is no requirement that the contractor consults with or work with the State Medicaid Agency. A collaborative effort between the states and the federal government contractor will help to ensure that the federal/state nature of Medicaid is accommodated and that duplication and confusion are minimized.

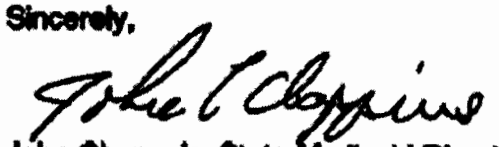
Recommendation:

A new heading, e) needs to be added to Section 450.232: Medicaid integrity audit program contractor functions that reads:

e) Coordinate any provider specific action outlined above including but not limited to, claim audits, other audits, overpayment recoveries and provider education with appropriate State Medicaid agency, before, during and after the action.

Thank for your consideration of these comments. Please feel free to contact me if you have any further questions.

Sincerely,



John Chappuis, State Medicaid Director
Montana Department of Public Health and Human Services
jchappuis@mt.gov

CMS-2271-P-2 **Medicaid Integrity Program; Eligible Entity and Contracting**

Submitter : **Kathleen Snider** **Date & Time: 12/21/2007**

Organization : **South Carolina Department of Health and Human Serv**

Category : **State Government**

Issue Areas/Comments

Basis and Scope

This Section states that part of the Medicaid Integrity Program□s scope is to carry out the Medicaid integrity audit functions, but makes no mention of the audit functions already conducted by the States under both federal and state mandates. The proposed rule fails to recognize the respective roles of State Medicaid Agencies and State Medicaid Fraud Control Units. Indeed, the background to this proposed rule states, □The (Medicaid Integrity) Program would provide CMS with the ability to more directly (emphasis added) ensure the accuracy of Medicaid payments and to deter those who would exploit the program.□ The use of contractors, as outlined in the proposed rule, appears to be duplicative of existing State Medicaid integrity programs. The proposed rule is silent on the respective roles of the State and the new contractors and silent on any coordination of effort between the eligible entities and the State. We recommend that the rule be expanded to clarify the relationship between the States and any contracted entities, including the plan for coordination of effort and addressing individual State plan provision variations.

Competitive Procedures and Requirements

No comment

Conflict of Interest Resolution

No comment

Conflicts of Interest

No comment

Contractor Functions

Section 455.232: The section describes the scope of the activities the Medicaid Integrity contractors may engage in, but again contains no directions for how contractors should coordinate with existing State Medicaid integrity programs and Medicaid Fraud Control Units. We believe this will result in duplication of efforts and possible interference with State program integrity investigations mandated under 455 Subpart A. The proposed rule does not address coordination with States□ surveillance and utilization review (SUR) functions, which functions are required by CMS in the State Medicaid Manual Part II, Chapter 3, ?11300 □ 11375. SUR activities are a fundamental part of Medicaid program integrity. On a practical level, will the contractors initiate their own integrity cases, or will States be allowed (or mandated) to refer cases? What will be the source of data used by the contractors to determine audit targets? Will they be allowed access to individual States□

Medicaid Management Information Systems (MMIS) data? Will States be required to perform data analysis for them? How will the CMS contractors interact with State Medicaid Fraud Control Units, which are established under 45 CFR Part 1007? The CFR also requires State program integrity units, upon suspicion of fraud, to refer cases to the MFCU. The proposed rule does not address to whom the contractors will refer cases. Does CMS anticipate these referrals going to State program integrity or to Medicaid Fraud control units?

The proposed rule includes in the functions the contractor will perform a review of individuals and entities furnishing items or services for payment under a State Plan approved under title XIX of the Act, to determine whether □fraud, waste, or abuse has occurred, is likely to occur, or whether such actions have the potential for resulting in an expenditure of funds under title XIX in a manner which is not intended under the provisions of title XIX.□ The rule does not include any guidance by which the intent of the provisions of title XIX can be determined. This broad and ambiguous language appears to place the contractors in a policy-making situation. We recommend that this language either be removed or modified to make clear what the contractors□ responsibility is. Will there be standard criteria for these contractors to use to determine that an action is □likely□ to result in fraud, waste or abuse? Are there specific audit standards that must be followed?

The proposed rule is silent on the qualifications of potential contractors, other than a demonstrated capability to carry out the activities described in the proposed rule. Will there be minimum education and training requirements? How will their performance be measured? Will they be required to show a better return on investment than States are currently achieving? Will their evaluations and the criteria on which they are based be made public?
Any identified overpayment must have sufficient documentation and legally defensible action in the event a provider appeals the determination. The proposed rule is silent on who is responsible for the actual collection of overpayments determined by these new contractors as well as who is responsible for the defense of the determination. Moreover, there are no provisions in this rule for determining whether an appeal would be handled through the existing State appeals process or through some other method.

Definition of Eligible Entity

Section 455.230: This Section describes eligibility requirements for entities seeking to perform Medicaid integrity audit functions. SCDHHS supports these requirements, especially the requirement under 455.230 (d): □The entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement.□ However, SCDHHS recommends clarifying the categories of entities eligible to perform the audit functions, including whether or not State Medicaid agencies would qualify, and addressing the potential conflict of interest that arises if an entity seeking to be a contractor under this program already acts as a fiscal agent in one or more States and/or performs key Medicaid administrative functions including, but not limited to, claims adjudication, provider enrollment, pharmacy benefits management, and information technology systems management and security.

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The South Carolina Department of Health and Human Services (SCDHHS) submits the following

comments to the Centers for Medicare & Medicaid Services (CMS) about the proposed rule regarding Eligible Entity and Contracting Requirements for the Medicaid Integrity Audit Program. The proposed rule will add a new section under Part 455 □ Program Integrity, of 42 CFR chapter IV. SCDHHS generally supports the provisions of the proposed rule, but this rule is silent on the most important aspects of the new Medicaid integrity audit function and how this function would be carried out by potential contractors. In conclusion, the proposed rule fails to sufficiently establish requirements for the Medicaid program integrity audit contractors that will ensure their work is carried out in an efficient, effective, and defensible fashion. It does not address any method of assuring coordination between the new CMS Medicaid integrity audit functions and existing programs already on-going in the States. It does not address how to prevent duplication of effort, nor what safeguards will exist for providers to prevent multiple audits related to the same time period or same claims.

Renewal of Contracts

No comment