Stakeholders’ First-Year Score Card: Medicaid RAC Program Gets Mixed Reviews

The Centers for Medicare & Medicaid Services Medicaid Recovery Audit Contractor (RAC) program has been underway for eight months, and provider and state officials’ reactions so far have been mixed, with some industry stakeholders questioning potential overlap and duplication between the RACs and other federal and state audit programs.

While most experts interviewed by BNA said it was too early too pass judgment on the entire program, they agreed that CMS needs to make some changes, mainly ensuring that Medicaid RAC vendors coordinate with state and federal authorities to avoid any overlapping audits.

Andrea Maresca, director of federal policy and strategy for the National Association of Medicaid Directors, told BNA that many states have questioned the need for Medicaid RACs, due to the presence of pre-existing state audit programs.

“So far, states have been pretty neutral toward the Medicaid RACs, and everyone is doing what they need to do,” she said. “The implementation of the Medicaid RAC program is probably being done in the best way possible, but some states think the program could lead to overlap and duplication.”

“\textit{The implementation of the Medicaid RAC program is probably being done in the best way possible, but some states think the program could lead to overlap and duplication.}”

—Andrea Maresca, National Association of Medicaid Directors

Maresca also said the Medicaid RAC program is focused on auditing fee-for-service Medicaid claims, at the same time as many states are moving toward a managed care Medicaid model.

All of these issues will come to forefront by late 2012, early 2013, Maresca said.

“Hopefully, CMS and the contractors will share what’s working, and what’s not,” she said. “States need to learn from other states about best practices.”

Texas Medicaid Director Billy Millwee told BNA that Texas has been concerned that the Medicaid RAC program might lead to overlapping audits, a problem that previously occurred in the state with respect to CMS Medicaid Integrity Group (MIG) audits, which have been underway since 2006.

Millwee, deputy executive commissioner of health services operations for the Texas Health and Human Services Commission, is retiring Aug. 31. He said “the concern that we have had has been that CMS MIG audits have posed problems in the past. The problem with the CMS MIG audits is that there is very little coordination between the states and the federal government.”

CMS created the MIG to oversee Medicaid program integrity efforts that were authorized by the Deficit Reduction Act of 2005, such as Medicaid Integrity Contractors (MICs).

Three types of MICs work together, including:

- review MICs, which analyze Medicaid claims data and identify potential overpayments;
- audit MICs, which perform provider audits and identify actual overpayments; and
- education MICs, which offer providers and beneficiaries educational sessions on Medicaid fraud.

Millwee said Texas has operated a state audit program, run by the Texas Office of Inspector General, similar to the Medicaid RAC program for many years, and that, in the past, the state program has been looking at providers at the same time as the CMS MIG auditor.

Millwee said that, “this of course results in a great deal of provider abrasion and multiple parties laying claim to a particular overpayment.”

\textbf{Modeled After Medicare RACs.} The Medicaid RAC program was established by Section 6411 of the Patient Protection and Affordable Care Act, with the goal of giving CMS the authority to identify underpayments and overpayments within the Medicaid program and recover the overpayments.

Medicaid RACs, much like their counterparts in the Medicare program, operate on a contingency fee basis, meaning that the RACs are only paid if they identify and recover an overpayment.

Unlike the Medicare RAC program, which consists of four RAC vendors covering a specific geographic swath, the Medicaid RAC program requires each state to have its own Medicaid RAC vendor.

CMS released a final rule on the program in September 2011, with an implementation date of Jan. 1, 2012 (15 HFRA 717, 9/21/11).
CMS is collecting performance metrics from Medicaid RAC vendors and expects to release initial program results to the public by this winter.

Maria Perrin, chief business officer for HMS, a Medicaid RAC vendor in 25 states, told BNA that CMS has just started reaching out to states for information on recoveries as well as the name of the medical director that each state Medicaid RAC is supposed to have in place.

**Scope of Medicaid RACs.** As of late August, 32 states have contracted with a Medicaid RAC vendor, and requests for proposals (RFPs) are pending in a number of the remaining 18 states, according to data from individual state Medicaid programs.

For example, Arkansas Aug. 3 issued an "anticipation to award" notice, which said it was prepared to award the Medicaid RAC contract to HMS, pending a legislative review. The original RFP was issued in June.

Nebraska is also close to selecting a Medicaid RAC. The state will be opening its RFP to bids from prospective Medicaid RAC vendors on Aug. 24, and four vendors have already notified the state of their intent to bid.

In Texas, Millwee said the state is just now rewarding the Medicaid RAC contract, with an announcement expected by Aug. 27.

Some states, including South Dakota, have requested exemptions from the Medicaid RAC program. The South Dakota Department of Social Services requested an exemption based on the fact that the state already has an effective audit process for Medicaid claims and because it has experienced a low rate of payment errors as measured by the Payment Error Rate Measurement (PERM) review.

All five U.S. territories (Guam, Puerto Rico, American Samoa, the Northern Marianas Islands, and the U.S. Virgin Islands) requested and received exemptions from the Medicaid RAC program.

**Waiting for Results.** Perrin told BNA the program will not generate significant recovery amounts until the second half of 2013 into the beginning of 2014.

"With so much recent controversy over the Patient Protection and Affordable Care Act, many states were tentative and uncertain whether the law would survive, and that translated into hesitancy over moving forward with their Medicaid RAC program," Perrin said.

"With so much recent controversy over the Patient Protection and Affordable Care Act, many states were tentative and uncertain whether the law would survive, and that translated into hesitancy over moving forward with their Medicaid RAC program."

—Maria Perrin, HMS chief business officer

Perrin said that with the U.S. Supreme Court upholding the bulk of the law, more states will complete their procurements for Medicaid RAC vendors and move ahead with implementation.

NAMD’s Maresca also said early Medicaid RAC statistics on recoveries and overpayments to be released by CMS this fall will be very preliminary.

"The numbers CMS releases will be mainly from states that have had pre-existing RAC-like programs," Maresca said. "Early 2013, even 2014, will be the earliest time to assess the success of the Medicaid RAC program."

HMS has worked with states that have previously performed Medicaid recovery audits, as well as with states that have no experience at all and have held back from developing the program, Perrin said.

"For the states that we’re working with, it’s been about a 50/50 split between those that have been uncertain and those that have been moving ahead the whole time," Perrin said.

Perrin said that states with experience in RAC-like work have been successful with the Medicaid RAC program, while for the rest, it has been a slow start.

"Some of the slower states had to change their laws before implementing a Medicaid RAC program," she said. "In some cases, state law prohibited paying vendors on a contingency fee basis."

New York has been a state where HMS has achieved successful results, Perrin said. Since April 2011, when the New York Office of the Medicaid Inspector General designated HMS as the state’s Medicaid RAC, HMS has recovered $61 million for the program, Perrin said.

Perrin said that in New York HMS has focused on "compliance, education, and root cause analysis to prevent future overpayments in a manner that is beneficial to stakeholders."

HMS has provided program integrity services to New York’s Medicaid program since 2002.

**Potential Stumbling Blocks.** Even though the Medicaid RAC program is still relatively new, HMS’s Perrin identified a few components that have been problematic, including the requirement from CMS that every Medicaid RAC vendor hire a medical director to oversee the record review process, maintain quality assurance procedures, and keep in touch with provider associations.

"This doesn’t make sense," Perrin said. "In the Medicare RAC program, there’s one medical director for each of the four Medicare RACs, whereas [for the Medicaid RAC program] CMS wants all 50 states to have a separate medical director."

Perrin said medical directors are not necessary for small states, and she said CMS needs to move beyond the "uniform, one size fits all" mentality.

"Medicaid RACs need to be designed around what the states need. Many states already have existing programs that are reviewing provider Medicaid claims. There can’t be overlap just because of CMS regulations," Perrin said.

Mike Cheek, vice president for Medicaid and long-term care policy at the American Health Care Association (AHCA), told BNA that the Medicaid RAC program presents challenges for providers in terms of receiving assistance from CMS on individual audits.

"With the contractual relationship between the state and the Medicaid RAC audit entity, CMS does not directly oversee these programs, which can be confusing to states and providers alike," Cheek said.

Cheek said he hoped that CMS would become more involved in reviewing Medicaid RAC policy interpreta-
tion, which would help ensure the Medicaid RAC program’s consistency.

The AHCA represents more than 11,000 nursing facility, assisted living, developmentally disabled, and subacute care providers.

Maresca said additional concerns over the program include whether appropriate data are being used to audit Medicaid providers.

“The type of data being used is always a concern, such as whether it is old, or if it’s being pulled from the correct database. This has come up a lot in the MIC program,” Maresca said.

HMS’s Perrin said providers have not been happy with the Medicaid RAC program, seeing it as yet another government burden on their business.

“Providers were certainly upset over the RAC program being expanded to Medicaid,” she said. “Adding another government program was not popular to them.”

Perrin said HMS has tried to alleviate provider concerns by increasing transparency and offering training on the Medicaid RAC process. HMS has also created a secure-access online provider portal, where providers can discover if any of their claims are being reviewed as well as submit questions to HMS regarding the audit process.

While Texas has not begun its Medicaid RAC program, Millwee said “a strong recommendation would be that when a state implements a RAC audit, the CMS MIG audits in that state cease, unless the state demonstrates some lack of competency in managing the RAC process.”

BY JAMES SWANN