Medicaid Recovery Audit Contractor (RAC)
Issue Summary

Problem

Over the past several years, providers have identified significant transparency, accountability, and efficiency failures that have led to considerable administrative burden, unwarranted recoupments, and considerable litigation activity – all of which increases health care costs and jeopardizes provider participation in the Medicaid program.

CHA believes Medicaid payment reviews and audits have value to ensure the state's resources are safeguarded from fraud, but also that these reviews and audits should be warranted, effective, and efficient. While doctors and hospitals are steadfastly committed to compliance and stewardship of Medicaid dollars, audits are incredibly time consuming and are often driven by "bounty hunting" financial incentives, not patient needs.

Through HCPF R-11, the Department is seeking to expand RAC audit activity. **CHA does not believe the current program is working as intended, and the entire program should be reviewed to ensure transparency, accountability, and efficiency.**

RAC Program Background & Current Challenges

The federal government required states to develop Medicaid RAC programs (which mirror Medicare RAC programs) beginning in 2010, but due to the significant burden and effectiveness of other program integrity efforts have allowed significant flexibility for states. In fact, the federal oversight agency for Medicare effectiveness recommended making Medicaid programs optional due to the burdens placed on providers and states.[1] Despite this policy shift and the fact that 28 states have approval from the feds not to conduct RAC audits (see Appendix), Colorado has one of the most aggressive Medicaid RAC programs in the nation, and the program lacks transparency and accountability.

In 2013, the Colorado General Assembly authorized the creation of the state's current RAC framework through bipartisan legislation (SB 13-137). As outlined below, the current program is out of step with the guiding principles of the enabling legislation. SB 13-137 noted several principles by which Medicaid audits should be guided:

- Reviews and audits should not delay or improperly deny payment of legitimate claims to providers;
- Providers should be engaged through education and provided the opportunity to review and correct problems:
- Providers should be afforded the opportunity to weigh in on implementation; and
- An appeal process for providers that minimizes the administrative burden placed on providers, limits the numbers of medical records requests, and provides adequate time for providers to respond to inquiries.

CHA's assessment is that the RAC audit program is failing to abide by these principles. In addition to several streams of ongoing litigation acknowledged in the accompanying narrative to HCPF R-11, which appear to admit flaws in the RAC audit program,[2] CHA has been actively engaged for the past

six months on at least two ongoing audits that we believe conflict with either Colorado law or industry-standard coding procedures.[3]

Recommendations

CHA is interested in engaging our legislative partners in conducting a review of the RAC audit program and requiring HCPF to implement best practices for state Medicaid RAC audits. Some opportunities based on programs from other states include:

1. **Conduct an independent review of recent audits to ensure compliance with coding practice standards and Colorado law.**
    - For one series of audits CHA has been engaged in to-date regarding "same-day, same service" audits for specialty providers providing care to hospital inpatients, HCPF has been unable to articulate the coding logic behind the audit, which appears to conflict with standard coding practice.
    - For another series of audits regarding hospital "observation" visits, HCPF's audit appears to conflict with the state's own rules regarding the definition of observation status and the qualification of auditors to conduct state-based audits.
2. **Reduce the length of the lookback period to three years and limit the number of records the RAC contractor may request**
    - Federal law provides for a limited lookback of three years (compared to seven years for HCPF RAC audits) and limits the frequency and number of records that may be requested from providers.
3. **Place a limit on the RAC Audit contractor's "bounty-hunting" contingency payments**
    - RAC audit fees are paid out on a contingency fee basis, which means the more aggressive HMS is against providers, the higher their recoveries and subsequent commission and creates a perverse incentive for the contractor to pursue aggressive, unfounded audits. For reference, the federal maximum contingency rate is 12.5% for all services except for durable medical equipment.
4. **Prohibit "nonpayment" for legitimate care provided and ensure reimbursements are sufficient to enable access to care.**
    - Currently, when RAC audits identify that a service could have been provided in a lower cost setting, they recoup the entire cost of the service, rather than the difference between high- and low-cost.
5. **Improve engagement with providers, transparency, and accountability.**
    - CHA recommends HCPF create a provider advisory group for RAC audits in order to provide some accountability for the Department's decision-making. The legislature may wish to consider whether such a group have oversight authority for RAC audits or the opportunity to escalate complaints to another oversight entity.
    - CHA recommends HCPF routinely publish summary information regarding audits, findings, appeals, overturned decisions, and efficacy.
6. **Allow appeal decisions made by the Office of Administrative Courts to have precedential value.**
    - Currently, appeals must be pursued on each incident, and decisions of OAC do not have precedential value that extends to other appeals. This significantly increases burdens on providers and increases health care costs.

7. **Take an "education first" continuous improvement approach to engaging providers and provide clear and transparent coding guidance when errors are identified.**
    - When HCPF identifies billing errors, they must publish and promote the "correct" coding construction to encourage compliant billing practice among providers.

Appendix

Federal law sets the requirements for Medicaid RAC audits (42 CFR § 455.508(f)) specifies that states cannot extend the lookback period beyond three years unless they receive express approval from CMS. For unclear reasons, Colorado is one of only six states that requested an extended lookback period, and one of only two states that a) has the most aggressive 7-year lookback and b) did so without providing any justification. The other four states' lookback periods relate to pre-existing record retention laws in their state.

Colorado obtained an unwarranted exception to federal regulation to lookback further than three years.

Of the 28 states with exemptions to the RAC audit process entirely, 13 (AK, ID KS, KY, LA, ME, MA, MD, MO, NJ, WA, WI, WY) indicated that their current program integrity work is more than enough to replace the RAC audit.

State	Status/ Lookback Period
Alabama	Exception in place, no Medicaid RAC audit
Alaska	Exception in place, no Medicaid RAC audit
Arizona	Aligned with federal law, three-year lookback
Arkansas	Aligned with federal law, three-year lookback
California	Aligned with federal law, three-year lookback
Colorado	Exception granted, seven-year lookback period No justification provided
Connecticut	Aligned with federal law, three-year lookback
Delaware	Aligned with federal law, three-year lookback
Florida	Aligned with federal law, three-year lookback
Georgia	Aligned with federal law, three-year lookback
Hawaii	Aligned with federal law, three-year lookback
Idaho	Exception in place, no Medicaid RAC audit
Illinois	Aligned with federal law, three-year lookback
Indiana	Aligned with federal law, three-year lookback
Iowa	Exception in place, no Medicaid RAC audit
Kansas	Exception in place, no Medicaid RAC audit
Kentucky	Exception in place, no Medicaid RAC audit
Louisiana	Exception in place, no Medicaid RAC audit
Maine	Exception in place, no Medicaid RAC audit

Maryland	Exception in place, no Medicaid RAC audit
Massachusetts	Exception in place, no Medicaid RAC audit
Michigan	Exception in place, no Medicaid RAC audit
Minnesota	Exception granted, five-year lookback period MN notes that a three-year alignment was not in alignment with current State post-payment review and recovery practices.
Mississippi	Exception in place, no Medicaid RAC audit
Missouri	Exception granted, no Medicaid RAC audit
Montana	Exception in place, no Medicaid RAC audit
Nebraska	Exception in place, no Medicaid RAC audit
Nevada	Aligned with federal law, three-year lookback
New Hampshire	Exception in place, no Medicaid RAC audit
New Jersey	Exception in place, no Medicaid RAC audit
New Mexico	Aligned with federal law, three-year lookback
New York	Exception granted, six-year lookback NY notes that the three-year lookback does not comply with their record retention requirements.
North Carolina	Aligned with federal law, three-year lookback
North Dakota	Exception in place, no Medicaid RAC audit
Ohio	Exception in place, no Medicaid RAC audit
Oklahoma	Exception in place, no Medicaid RAC audit
Oregon	Exception in place, seven-year lookback OR notes that the three-year lookback does not comply with OR record retention laws.
Pennsylvania	Exception in place, no Medicaid RAC audit
Rhode Island	Exception in place, no Medicaid RAC audit
South Carolina	Aligned with federal law, three-year lookback
South Dakota	Exception in place, no Medicaid RAC audit
Tennessee	Exception in place, no Medicaid RAC audit
Texas	Exception granted, five-year lookback TX notes that the three-year lookback does not comply with TX record retention laws.
Utah	Aligned with federal law, three-year lookback
Vermont	Exception in place, no Medicaid RAC audit
Virginia	Exception in place, no Medicaid RAC audit
Washington	Exception in place, no Medicaid RAC audit
West Virginia	Exception granted, five-year lookback

	No justification provided
Wisconsin	Exception in place, no Medicaid RAC audit
Wyoming	Exception in place, no Medicaid RAC audit

[1] Medicaid and CHIP Payment and Access Commission (MACPAC), Improving the Effectiveness of Medicaid Program Integrity. Their chief recommendation was for Congress to change the statute to make participation in RAC optional to ensure that "program integrity efforts are efficient and do not place an undue burden on states or providers."

[2] In HCPF R-11, the Department notes that increased audits have "led to an increase in formal appeals… [which] has caused Department staff to shift its activities from fraud detection to managing increased litigation." Interestingly, HCPF's audit staff has acknowledged that increased appeals and litigation is their key indicator for whether an audit has design and/or implementation problems. As such, **the Department's request for 2.0 FTEs due to increased litigation is an admission that the audits are flawed**.

[3] CHA has had an ongoing dialogue with HCPF staff regarding audit policies and procedures. Importantly, our dialogue is independent from ongoing litigation involving hospital-based providers, HCPF, and the Attorney General's Office, and focuses on general policies and procedures for RAC audits, as opposed to any particular dispute between a provider and the RAC auditor. CHA would be happy to provide additional material or correspondence upon request.