

## Missouri Medicaid Proposes Its Provider-Preventable Conditions Policy

Missouri's Medicaid agency is proposing to expand the current payment prohibition to include healthcare acquired conditions as defined by Medicare and to require hospitals and ambulatory surgical centers to bill for provider-preventable conditions as the method for reporting such incidents to the state. Providers have 30 days from January 3, 2012, to file comments on the proposed rule.

### **Federal Medicaid Payment Prohibition**

The Patient Protection and Affordable Care Act (PPACA) required the secretary of Health and Human Services to implement regulations that prohibit payments to states under the Medicaid program for any amounts expended to provide medical assistance for "healthcare-acquired conditions." Final Rule, 76 Fed. Reg. 32816 (June 6, 2011).

The final regulations issued by the Centers for Medicare & Medicaid Services (CMS) provide that state Medicaid plans must prohibit payment for "provider-preventable conditions." 42 C.F.R. § 447.26(c)(1). The umbrella term "provider-preventable conditions" (PPCs) includes two separate categories: "healthcare-acquired conditions" (HCACs) and "other provider-preventable condition" (OPPC). HCACs apply to Medicaid inpatient hospital settings and are generally defined to include the full list of Medicare's previous inpatient "hospital-acquired conditions" (HAC), with a few exceptions. OPPCs, on the other hand, cover additional conditions identified and approved by states that are not found on the list of HCACs. States can define OPPCs to apply to Medicaid inpatient and outpatient settings other than hospitals.

CMS adopted this two category scheme to maintain the Medicare criteria for inpatient HACs as the floor for state HCACs and at the same time allow states greater flexibility to expand beyond HACs to include payment prohibitions for additional PPCs and additional settings. For example, states may adopt policies prohibiting reimbursement for OPPCs in rehabilitation facilities, long-term care hospitals, hospital outpatient departments, skilled nursing facilities, ambulatory surgical centers and health clinics.

In addition to prohibiting payment for PPCs, the federal regulations also require that providers report all PPCs. State plans must support provider self-reporting through claims systems. The reporting systems must require that providers report conditions identified for nonpayment regardless of their intention to bill for the treatment. Further, once data are collected at the state level, states must submit the data to CMS as part of their standard procedures for collecting and sharing Medicaid provider claims data.

The effective date of the CMS rule was July 1, 2011; however, CMS delayed compliance action until July 1, 2012.

### **Missouri's Proposed Rule**

The MO HealthNet Division is expanding its current policy in response to the federal law change. Under the proposed rule, hospitals and ambulatory surgical centers will not be paid for the HCACs identified in the Medicare inpatient prospective payment system rules for fiscal year 2011. Likewise, the MO HealthNet Division will continue to prohibit payment for OPPCs defined as preventable, serious adverse events that occurred under the care of the provider and that are included on the National Quality Forum's list of Serious Reportable Events as of December 15, 2008. Even though Medicaid will not reimburse hospitals and ambulatory surgical centers for HCACs or OPPCs, these institutions must utilize the billing system and appropriate codes to report conditions present on admission or provider-preventable mistakes that occurred during the course of treatment. The state will determine whether to deny such claims or pay them in part.

Missouri's proposed rule and the federal regulations are available online.

### **What This Means To You**

The MO HealthNet Division will collect data on HCACs and OPPCs through its billing system. Providers that might previously have chosen not to seek reimbursement when a mistake occurred must report the error. This procedure will allow state and federal oversight agencies to directly monitor the number of incidents at any particular provider. Using the billing system as a reporting system will present compliance challenges for providers. Failure to properly code an event could distort the information being reported to the state, and systemic failures could subject a provider to a

fraud and abuse investigation. Likewise, providers can expect government agencies to scrutinize their HCAC and OPPC experiences. Hospitals and ambulatory surgical centers should proactively monitor these incidents and take timely corrective actions before they are contacted by government investigators.

The state will accept comments on the proposed rule until February 2, 2012.

### **Contact Info**

If you have questions about the proposal, please contact your Husch Blackwell attorney or Curt Chase at 816.983.8254.

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