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PAGE 14

Feature Focus:

**Medicare's new
mandatory reporting
requirements for
liability insurers**

PAGE 20

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PAGE 36

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Medicaid integrity enforcement initiatives: New York State issues its second Work Plan

By Asha Scielzo and Keri Tonn

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On April 24, 2009, New York State's Office of the Medicaid Inspector General (OMIG) issued its State Fiscal Year 2009-2010 Medicaid Work Plan (the Work Plan).¹ This is the OMIG's second annual plan of this type. The Work Plan is similar to the one issued annually by the Office of Inspector General of the US Department of Health and Human Services.

This year's Work Plan is almost twice as long as last year's plan, and is much more extensive. The Work Plan begins with an introduction containing "An Open Letter from the Medicaid Inspector General," which describes the Work Plan as a "roadmap" and a "detailed public summary of its intended areas of audit and investigative emphasis for the upcoming year."² The Open Letter is followed by a new section entitled "Executive Initiatives." The remainder of the Work Plan describes the initiatives for each of the OMIG divisions: Division of Medicaid Audit, Division of Medicaid Investigations, Division of Technology and Business Automation, and Division of Administration.

Although the Work Plan is specific to the New York State Medicaid Program, compliance professionals elsewhere would be well advised to review the Work Plan and stay abreast of

New York's enforcement activities and initiatives. Compliance professionals should "stay tuned" for the open letter to New York State health care providers that OMIG is expected to post on its website³ in May 2009. (At the time this article went to press in May, the open letter had not yet been posted.) According to the New York Medicaid Inspector General, James G. Sheehan, New York was the most successful state in Medicaid program integrity last year (as measured by fraud and abuse recoveries reported to the Centers for Medicare and Medicaid Services), with over \$550 million in recoveries.⁴ OMIG is at the forefront of Medicaid integrity enforcement initiatives, has seen results, and continues to press forward. The momentum building in New York with respect to these initiatives is spurring action in other states. In addition, other states may use the Work Plan as a model when developing their own Medicaid integrity enforcement agendas.

This article provides an overview of the key aspects of the Work Plan and discusses their relevance in the broader compliance context.

Executive initiatives

The "Executive Initiatives" section is new to this year's Work Plan and identifies nine key areas of OMIG focus for the coming year:

1. Bureau of Allegations and Complaints

OMIG will develop this bureau to review and track allegations and complaints made to OMIG regarding Medicaid providers. The Bureau of Allegations and Complaints

will codify processes and policies (regarding reviewing and tracking allegations) into a written manual.

2. Compliance guidance

OMIG will publish compliance guidance for hospitals and managed care organizations. OMIG intends to convene advisory committees to "solicit best practices to facilitate provider adoption and implementation of effective compliance programs . . ." This compliance guidance will likely prove instructive for hospitals and managed care organizations outside of New York as well. In this Executive Initiative, OMIG also discusses the role of compliance officers. In the words of the Work Plan, "compliance officers serve as the cornerstone of an organization's efforts in establishing, facilitating and coordinating effective compliance programs." As such, OMIG fully expects that compliance officers will be "placed at senior management positions within organizations and be afforded the support and assistance of the governing board, the chief executive officer and fellow senior management . . ." Many federal and state politicians, regulators, and enforcers have enhanced this perspective.

3. Corporate Integrity Agreements (CIAs)

OMIG expects to implement CIAs at the state level to a greater extent over the next year. OMIG intends to post executed CIAs on its website. As with CIAs executed on the federal level, these state CIAs may be useful as a point of reference for all providers.

4. Ordering physicians

OMIG will review a variety of factors related to the role of physicians in overseeing and managing patient care. For example, OMIG will review relationships between ordering physicians and the providers of the ordered service or good. There is currently a corresponding trend toward scrutinizing such

relationships at the federal level. OMIG will also review orders placed by physicians where there is no evidence of a physician-patient relationship.

5. Audit assessment survey

In an effort to improve the OMIG's audit process and evaluate interactions between OMIG staff and providers, OMIG will send audit assessment surveys to providers within 30 days of the issuance of final audit reports. The survey will be voluntary and anonymous, and is intended to create a forum for providers to send feedback to OMIG.

6. Marketing and ordering of prescription drugs and devices

OMIG will review the medical and scientific literature related to potential adverse effects of off-label uses of drugs, and determine the extent of off-label use within Medicaid. OMIG will also review Medicaid claims data to analyze relationships between physicians and drug and device companies, and review information relating to the receipt of payments by physicians from drug and device manufacturers. This is particularly noteworthy in light of the considerable focus that is being placed by media, legislators, and the industry alike on these relationships. For example, in January 2009, Senators Charles Grassley (R-Iowa) and Herb Kohl (D-Wisconsin) introduced the Physician Payments Sunshine Act of 2009 (the 2009 Sunshine Act).⁵ The proposed legislation would require manufacturers to annually report to the United States Department of Health and Human Services all payments of more than \$100 per year that are made to physicians.⁶ Further, in February 2009, drug manufacturer Pfizer issued a press release stating that by early 2010, it plans to publish an annual report of certain payments it makes to health care providers, institutions, and principal investigators.⁷

7. Monitoring New York State's share of the federal stimulus funds for Medicaid

As part of the recently enacted American Recovery and Reinvestment Act (ARRA), according to the Work Plan, New York will receive approximately \$11 billion over a 27-month period through an increase in the Federal Medicaid Assistance Percentages. To promote accountability and transparency regarding use of the ARRA funds, OMIG will work with the US Government Accountability Office to help monitor the use of these ARRA funds. Notably, the whistleblower provisions in ARRA are very expansive. Organizations that receive stimulus funds should become well-acquainted with those provisions and take steps to monitor use of stimulus funds.

8. External communications

OMIG will work on ways to improve and extend its external communications. One of the ways OMIG intends to do this is through renovation of its website. OMIG is also investigating the feasibility of adding legal postings, such as the results of administrative law judge proceedings, on its website. This additional information posted on the OMIG website could provide additional insight into Medicaid integrity enforcement priorities.

9. Off-line Medicaid expenditures

Some Medicaid claims cannot be processed with the Medicaid Management Information System that New York's Medicaid program's fiscal agent uses to process claims. These types of claims are handled as "off-line" payments. OMIG will review these claims, including reviewing the "past and current internal and external audit activity." Areas that signal high rates of risk will be incorporated into the Work Plan.

Initiatives by division

In the Work Plan, OMIG also sets forth

initiatives for the upcoming year by division. Below are some highlights for each division.

■ Division of Medicaid Audit

The stated purpose of the Division of Medicaid Audit is to conduct "audits and reviews of Medicaid providers to ensure compliance with program requirements and, where necessary, to recover overpayments."⁸ The Work Plan summarizes the audit process. As compliance professionals are aware, the use of analytical and data mining tools are the "state of the art" form of identifying providers for audits, and OMIG is no different in its approach. After an audit target is identified, OMIG sends a notification letter to the provider. During the following on-site audit, OMIG conducts an entrance conference with the provider to discuss the audit. In the Work Plan, OMIG sets forth generally accepted sampling techniques for audits. Also, as part of OMIG's efforts to communicate with providers, it will provide preliminary findings to providers as part of its field work. Finally, upon the completion of a field audit, OMIG will conduct an exit conference and issue a draft audit report. The provider will have 30 days to respond to the draft audit report before OMIG issues a final report.

Within the Division of Audit, the Work Plan also summarizes OMIG's key initiatives for the coming year, broken down by type of Medicaid provider or category of service, such as assisted living facilities, hospitals, laboratory services, and home health services, among others. For hospitals, for example, the Work Plan expands on the initiatives identified last year and also adds new categories for review. Themes carried forward from last year include a review of Medicaid patient accounts with credit balances and a review of ambulatory surgical services provided in a hospital to determine whether it was necessary to

Continued on page 40

perform the procedure in an ambulatory surgery setting. One of the new hospital-focused initiatives relates to duplicate clinic claims. Also, OMIG plans to audit instances where providers inappropriately bill Medicaid for Medicare coinsurance and deductible amounts.

Another new focus area set forth in the Work Plan relates to out-of-state providers. According to the Work Plan, in 2008, New York State paid approximately \$290 million to out-of-state providers for 35 different types of medical services. With respect to out-of-state providers, OMIG will review:

- ❑ the necessity for services to be provided in ambulatory surgery centers;
- ❑ inpatient medical charts to determine if the documentation supported the DRG code used;
- ❑ laboratory services to determine if all the tests were ordered and if the results were appropriately conveyed; and
- ❑ nursing home services and add-on ancillary services to determine if the rate calculations were appropriate.

This demonstrates the considerable reach of the Work Plan in that OMIG anticipates reviewing and auditing the activities of out-of-state providers.

OMIG will also focus on some new practices related to physicians. In last year's plan, OMIG indicated that it would review claims by physicians who ordered high volumes of controlled substances that are reimbursable by Medicaid. In this year's Work Plan, OMIG states that it will review claims of physicians who order a high volume of any goods or services, thereby expanding last year's focus. OMIG expects to send letters to physicians who are "high-ordering" to inform them of their rankings compared to other physicians. If OMIG does not see any changes with

respect to a "high-ordering" physician, it will audit the physician's records.

■ Division of Medicaid Investigations

This division is comprised of various units to investigate potential instances of waste, fraud, and abuse.⁹ Investigators in one of the units, the Provider Investigations Unit, make unannounced visits at provider locations to review records, documentation, and systems. The investigators are also trained to identify deceptive behavior and uncover financial schemes. They also use an Undercover Shopper Unit to help identify fraud and assist investigators; OMIG expects to extend the work of the Undercover Shopper Unit in the upcoming year. Further, in last year's plan, OMIG stated that it would focus on forged prescriptions, and this year it expects to build on those efforts through enhanced data mining and attempts to intercept forgeries before they spread to other communities.

■ Division of Technology and Business Automation

This division allows OMIG to detect potential fraud, waste, and abuse without necessarily having to notify providers. Data mining and prospecting continues to be one of the primary vehicles to identify potential instances of fraud, waste, and abuse. As set forth in the Work Plan, OMIG is exploring new relationships and procurements to enhance its data mining capabilities. A few of the many examples provided in the Work Plan include:

- ❑ a project to identify cross-over claims for hospital-based clinics and emergency rooms that are for the same date of service as an inpatient stay;
- ❑ a project to identify laboratory and ambulatory services that are delivered with a clinic visit and are inappropriately billed separately; and
- ❑ identification of claims submitted by

physicians for office visits when the services were performed in a clinic setting.

Another focus of the Division of Technology and Business Automation relates to prepayment reviews. This was a focus in last year's plan, but it appears to be expanded in the newly issued Work Plan because OMIG has set forth new areas of concentration. OMIG expects that prepayment reviews will generate cost savings, because of the associated cost avoidances, and will allow for provider education and possible behavior modification.

■ Division of Administration

This division includes the Bureau of Collections Management, which aims to "establish a proactive approach to collections to enable accounts to be liquidated in an expeditious manner."¹⁰ OMIG established a recoupment of overpayment protocol to minimize disruptions to the state's cash flow and to streamline its obligation to repay the federal government its proportionate share of recoveries within the required 60-day time frame. The "recoupment of overpayment protocol" requires providers to make full repayment or enter into a repayment agreement with OMIG within 20 days from the date of OMIG's final report or notice.

Implications for the broader compliance landscape

Compliance professionals should recognize that the New York State Medicaid integrity enforcement efforts signal a trend of growing scrutiny and enforcement. As other states begin to develop similar fraud, waste, and abuse prevention programs, compliance professionals should position themselves in the forefront of the development process and act proactively rather than reactively. It is likely that other states will use the OMIG Work Plan as a model for developing their own enforcement agenda, at least in part.

Compliance professionals should continue to track Medicaid integrity enforcement initiatives on both the federal and state levels, and be poised to respond quickly and decisively. There is growing momentum of Medicaid integrity enforcement efforts and, in turn, compliance professionals should educate their organization's employees, executives, and board members about the necessary role of compliance within their organization. Finally, as health care organizations face continued financial pressures to reduce costs, compliance officers must proactively seek out the necessary resources and position themselves strategically within their organizations. ■

1 Available at http://www.omig.state.ny.us/data/images/stories/work_plan/omig_work_plan_2009_2010.pdf.
2 Work Plan, page 2.
3 OMIG's website is <http://www.omig.state.ny.us/data/>
4 Statement before Committee on Homeland Security and Governmental Affairs Subcommittee on Federal Financial Management, Government Information, Federal Services and International Security on April 22, 2009.
5 S. 301, 111th Congress (2009)
6 The legislation has been referred to the Committee on Finance. (At the time this article went to press, no additional action had occurred.)
7 See Pfizer press release, "Pfizer to Publicly Disclose Payments to U.S. Physicians, Healthcare Professionals and Clinical Investigators." Available at www.medicalnewstoday.com/articles/138525.php.
8 Work Plan, page 10
9 Work Plan, page 45
10 Work Plan, page 65

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