

### CMS Bars Medicaid Payments for Preventable Conditions

Beginning on July 1, 2011, the Centers for Medicare and Medicaid Services (CMS) will deny all Medicaid reimbursement requests associated with provider-preventable conditions (PPC), known as *never events*. The final rule published June 6, 2011, implements Section 2702 of the Patient Protection and Affordable Care Act (ACA).<sup>1</sup> Section 2702 aims to ensure that measures to increase quality of care and lower costs will not result in Medicaid beneficiaries losing access to medical care and prompts the Secretary of Health and Human Services (HHS) to establish rules restricting Medicaid payments for costs related to *Health Care-Acquired Conditions* (HCAC).<sup>2</sup>

Medical errors have been established as a leading cause of morbidity and mortality in the U.S.<sup>3</sup> In 2002, the National Quality Forum endorsed a list of 28 Serious Reportable Events, or *never events*, which included preventable Hospital Acquired Conditions (HACs) related to medical errors.<sup>4</sup> The Deficit Reduction Act of 2005 established a policy adjusting Medicare payments to hospitals for certain preventable HACs, which included codes with the following characteristics: (1) high cost, high volume, or both; (2) those cases assigned to a MS-DRG that has a higher payment when present as a secondary diagnosis; and, (3) conditions which could have reasonably been prevented through following evidence-based guidelines.<sup>5</sup> In 2008, CMS implemented a non-payment policy for conditions associated with higher reimbursement rates (i.e., HCACs) into the Medicare program.<sup>6</sup>

The final rule reflects several recent legislative initiatives focused on lowering healthcare costs and increasing quality. The new rule categorizes PPCs into HCACs and *Other Provider Preventable Conditions* (OPPCs), expanding the scope of the nonpayment policy beyond the inpatient hospital setting and making it applicable to outpatient facilities participating in the Medicaid program.<sup>7</sup> The preventable conditions list included in the new rule mirrors the Medicare policy CMS implemented in 2008, and includes, among others, the following conditions: foreign object retained after surgery; surgery on the wrong patient, wrong surgery on a patient, and wrong site surgery.<sup>8</sup> States must use the 2008 Medicare rule as a minimum requirement and amend Medicaid plans to include a list of HCACs that will not receive reimbursement from state or federal

funds.<sup>9</sup> Under the final rule, states will also have the authority to increase the number of preventable conditions for which Medicaid payment should be restricted, subject to CMS approval.<sup>10</sup>

Physician organizations, including the American Medical Association (AMA) and American Hospital Association (AHA) have challenged the final rule's denial of Medicaid reimbursement, elaborating that, while unfortunate, many complications related to HCACs and PPCs are not entirely preventable. Additionally, AMA CEO, Dr. Michael Maves, has expressed concern that states may expand the list of denied conditions well-beyond those defined under the 2008 Medicare rule.<sup>11</sup> Some organizations have suggested the 2008 Medicare rule should serve as a ceiling that sets the maximum number of conditions, rather than a base which may be raised by states. These organizations argue that consistency between the two arms of CMS (i.e., Medicare and Medicaid) could help lessen administrative burdens and strategic confusion, especially in large multispecialty health systems.<sup>12</sup> Opposing viewpoints suggest, however, while uniformity between the two federal programs may prove beneficial on a federal level, it may inhibit the flexibility needed to address their state-specific needs.<sup>13</sup>

Of the 21 states that currently prohibit payments for HCACs, most utilize the 2008 Medicare HAC standards, and at least half go beyond the Medicare list. Additionally, 17 states already reduce payment for preventable conditions experienced specifically by Medicaid participants.<sup>14</sup> Starting July 1, 2011, states without a current HCAC-related nonpayment policy have one year from July 1, 2011 to implement such a provision.<sup>15</sup> Although Medicare saves \$20 million a year under the 2008 policy, the final rule estimates Medicaid savings of \$35 million from FY 2011 to 2015 (\$20 million on the federal funding side and \$15 million for the states) for the currently \$364 billion program.<sup>16</sup> As quality-based payment standards and the associated cost-savings gain momentum, providers should remain aware of these developments and begin, or continue, to examine their own quality control policies.<sup>17</sup>

<sup>1</sup> "Patient Protection and Affordable Care Act" Public Law 111-148, Section 2702, 124 STAT 318 (March 23, 2010).

<sup>2</sup> "Medicaid Program; Payment Adjustment for provider-Preventable Conditions Including Health Care-Acquired

- Conditions" Federal Register, Vol. 76, No. 108 (June 6, 2011), p.32816.
- 3 "To Err is Human: Building a Safer Health System," Institute of Medicine, 1999.
- 4 "CMS Issues Proposed Rule Requiring States to Implement Policies for Payment Adjustments for Provider Preventable Conditions" By Conrad Meyer, American Bar Association Newsletter, Vol. 7, No. 8, 2011, [http://www.americanbar.org/content/newsletter/publications/aba\\_health\\_esource\\_home/aba\\_health\\_law\\_esource\\_1104\\_meyer.html](http://www.americanbar.org/content/newsletter/publications/aba_health_esource_home/aba_health_law_esource_1104_meyer.html) (Accessed 6/10/2011).
- 5 "Medicaid Program; Payment Adjustment for provider-Preventable Conditions Including Health Care-Acquired Conditions" Federal Register, Vol. 76, No. 108 (June 6, 2011), p.32817.
- 6 "Medicaid Payment Adjustment for Health-Care Acquired Conditions" By Jane Hyatt Thorpe, Robert Wood Johnson Foundation, Health Reform GPS, June 8, 2011, <http://healthreformgps.org/resources/medicaid-payment-adjustment-for-health-care-acquired-conditions/> (Accessed 6/10/2011).
- 7 "Medicaid Program; Payment Adjustment for Provider-Preventable Conditions Including Health Care-Acquired Conditions" Federal Register, Vol. 76, No. 108 (June 6, 2011), p. 32819.
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- 11 "Medicaid to Stop Paying for Hospital Mistakes" By Phil Galewitz, Kaiser Health News, June 1, 2011, <http://www.kaiserhealthnews.org/Stories/2011/June/01/medicaid-hospital-medical-error-payment-short-take.aspx?p=1> (Accessed 6/10/2011).
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- 15 "Medicaid Program; Payment Adjustment for provider-Preventable Conditions Including Health Care-Acquired Conditions" Federal Register, Vol. 76, No. 108 (June 6, 2011), p. 32819.
- 16 "Medicaid Program; Payment Adjustment for provider-Preventable Conditions Including Health Care-Acquired Conditions" Federal Register, Vol. 76, No. 108 (June 6, 2011), p. 32834.; "Medicaid to Stop Paying for Hospital Mistakes" By Phil Galewitz, Kaiser Health News, June 1, 2011, <http://www.kaiserhealthnews.org/Stories/2011/June/01/medicaid-hospital-medical-error-payment-short-take.aspx?p=1> (Accessed 6/10/2011).
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