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## ***CPI-CMCS INFORMATIONAL BULLETIN***

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**SUBJECT:** **Affordable Care Act Program Integrity Provisions – Guidance to States--  
Section 6411(a) - Expansion of the Recovery Audit Contractor (RAC)  
Program to Medicaid**

This informational bulletin is part of a series of bulletins intended to provide guidance regarding implementation of certain provisions of the Patient Protection and Affordable Care Act, Pub. L. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152, together called the “Affordable Care Act.” Specifically, this bulletin provides further guidance on Section 6411(a), the program integrity provision of the Affordable Care Act that was addressed in the final rule titled “Medicaid Program; Recovery Audit Contractors” (CMS-6034-F).

Section 6411(a) of the Affordable Care Act, Expansion of the Recovery Audit Contractor (RAC) Program amends section 1902(a)(42) of the Social Security Act (the Act) and requires States to establish a RAC program to enable the auditing of claims for services furnished by Medicaid providers. Pursuant to the statute, these Medicaid RACs must: (1) identify overpayments; (2) recoup overpayments; and (3) identify underpayments. On September 16, 2011, the Centers for Medicare & Medicaid Services (CMS) published the final rule implementing this provision, with an effective date of January 1, 2012. See <http://www.gpo.gov/fdsys/pkg/FR-2011-09-16/pdf/2011-23695.pdf>.

## **Enhanced Contingency Fee**

In the final rule at 42 C.F.R. § 455.510(b)(4), we stated that the contingency fee paid to the Medicaid RAC may not exceed that of the highest fee paid to a Medicare Recovery Auditor, unless the State submits, and CMS approves, an exception to the specified maximum rate, as specified in the *Federal Register*.

On June 1, 2011, CMS increased the contingency fee by 5% for the recovery of improper payments associated with durable medical equipment (DME) claims that were identified by the Medicare Recovery Auditors. The modification, therefore, increases the maximum contingency fee paid to a Medicare Recovery Auditor to 17.5% for DME claims only.

As a result of this modification, CMS now authorizes States to pay their respective Medicaid RACs a contingency fee up to 17.5%, the current highest contingency fee paid to Medicare Recovery Auditors, for the recovery of improper payments made for “medical supplies, equipment and appliances suitable for use in the home” found within the home health services benefit authorized by section 1905(a)(7) of the Social Security Act. This policy is consistent with the Affordable Care Act, which requires States to contract with Medicaid RACs “in the same manner as the Secretary enters into contracts” with the Medicare Recovery Auditors. The policy is also consistent with guidance reflected in the Medicaid RAC final rule which aligns the Medicare Recovery Audit Program and Medicaid RAC program, to the extent possible.

CMS intends to issue future guidance on updates associated with the Medicaid RAC final rule as well as the Medicare Recovery Audit Program Statement of Work when the Medicaid RAC program is impacted.

## **Frequently Asked Questions**

We look forward to continuing to work with States to successfully implement the requirements of Section 6411(a) of the Affordable Care Act. We have published guidance in the form of “Frequently Asked Questions” regarding the Medicaid RAC program. The FAQs address questions about various sections of operational aspects in the final rule that States have posed such as conflicts of interest, appeals, contingency fee structure, State reporting, and program exceptions. The FAQs can be found here:

[http://www.cms.gov/MedicaidIntegrityProgram/04\\_What%20is%20New.asp#TopOfPage](http://www.cms.gov/MedicaidIntegrityProgram/04_What%20is%20New.asp#TopOfPage)

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