DHS, MEDICAL SERVICES

SUBJECT: Official Notice ON-001-11 and Sec V-1-11; Dental Providers' Acceptance of New Medicaid or CHIP Patients

DESCRIPTION: CHIP legislation requires that states post information regarding whether or not dental providers are accepting new Medicaid or CHIP patients. Information will be collected through the Arkansas Medicaid Website or the enrollment application and may be updated at any time. Dental providers will be required to answer "yes or no" as to whether they will be accepting new Medicaid or CHIP patients and whether they are equipped to handle special needs. If a provider fails to answer "yes or no" to either question, they will be defaulted to "yes" at the time of enrollment. Providers will also be required to indicate an accepted age range. If a provider fails to enter an age range, they will be defaulted to 0-99 at the time of enrollment.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on March 8, 2011. No public comments were submitted to the agency. The proposed effective date is May 1, 2011.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code § 20-76-201 authorizes the Department of Human Services to administer programs for the indigent and to "make rules and regulations" pertaining to the administration of those programs. Arkansas Code § 20-77-107 specifically authorizes the department to "establish and maintain an indigent medical care program."

DHS, MEDICAL SERVICES

SUBJECT: Assisted Living Facilities Level I

DESCRIPTION: Assisted living facilities are intended to provide an alternative form of long-term care. As such facilities receive no state or federal funding, it is necessary that requirements for the construction and operation of such facilities are sufficient to meet residents' needs while still being affordable. Accordingly, the intent of the regulations included the use of "universal workers." The term universal works refers to direct care staff that can meet all resident needs, including laundry, meal preparation, and housekeeping. The current regulations have a requirement that if an Assisted Living Facility Level I has an Alzheimer's Special Care Unit that direct care staff not be permitted to perform non-direct care duties. This requirement was an error and increased costs. The needs of residents can be met without this requirement. Therefore, the proposed rule removes the requirement.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on February 28, 2011. No public comments were submitted to the agency. The proposed effective date is April 1, 2011.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT:

Economic Impact Statement:

1. The type or types of small businesses that will be directly affected by the proposed rule, bear the cost of the rule, or directly benefit from the proposed rule.

Assisted Living Facilities Level I.

2. A description of how small businesses will be adversely affected.

No negative impact. The proposed rule will reduce costs for Assisted Living Facilities Level I that choose to operate an Alzheimer's Special Care Unit as part of the Assisted Living facility by removing a requirement that direct care staff cannot perform non-direct care duties in the Alzheimer's Special Care Units.

3. A reasonable determination of the dollar amounts the proposed rule will cost small businesses in terms of fees, administrative penalties, reporting, recordkeeping, equipment, construction labor, professional services, revenue loss, or other costs associated with compliance.

No cost to businesses.

4. A reasonable determination of the dollar amounts of the costs to the agency of implementing the proposed rule, as well as the financial benefit to the agency of implementing the rule.

No cost to the agency.

5. Whether and to what extent alternative means exist for accomplishing the objectives of the proposed rule that might be less burdensome to small businesses and why such alternatives are not being proposed.

No other alternatives exist.

6. A comparison of the proposed rule with federal and state counterparts.

No state or federal counterparts exist.

LEGAL AUTHORIZATION: The Department of Human Services shall establish an assisted living program for adults and shall promulgate rules and regulations not inconsistent with the Arkansas Assisted Living Act as it shall deem necessary or desirable to properly and efficiently carry out the act's purpose. Ark. Code Ann. § 20-10-1704.

DHS, MEDICAL SERVICES

SUBJECT: Assisted Living Facilities Level II

DESCRIPTION: Assisted living facilities are intended to provide an alternative form of long-term care. As such facilities receive no state or federal funding, it is necessary that requirements for the construction and operation of such facilities are sufficient to meet residents' needs while still being affordable. Accordingly, the intent of the regulations included the use of "universal workers." The term universal workers refers to direct care staff that can meet all resident needs, including laundry, meal preparation, and housekeeping. The current regulations have a requirement that if an Assisted Living Facility Level II has an Alzheimer's Special Care Unit that direct care staff not be permitted to perform non-direct care duties. The inclusion of this requirement was an error, and it increased costs. The needs of residents can be met without this requirement. Therefore, the proposed rule removes the requirement.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on February 28, 2011. No public comments were submitted to the agency. The proposed effective date is April 1, 2011.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT:

Economic Impact Statement:

1. The type or types of small businesses that will be directly affected by the proposed rule, bear the cost of the rule, or directly benefit from the proposed rule.

Assisted Living Facilities Level II

2. A description of how small businesses will be adversely affected.

No negative impact. The proposed rule will reduce costs for Assisted Living Facilities Level II that choose to operate an Alzheimer's Special Care Unit as part of the assisted living facility by removing a requirement that direct care staff cannot perform non-direct care duties in the Alzheimer's Special Care Units.

3. A reasonable determination of the dollar amounts the proposed rule will cost small businesses in terms of fees, administrative penalties, reporting, recordkeeping, equipment, construction labor, professional services, revenue loss, or other costs associated with compliance.

No cost to business.

4. A reasonable determination of the dollar amounts of the costs to the agency of implementing the proposed rule, as well as the financial benefit to the agency of implementing the rule.

No cost to the agency.

5. Whether and to what extent alternative means exist for accomplishing the objectives of the proposed rule that might be less burdensome to small businesses and why such alternatives are not being proposed.

No other alternatives exist.

6. A comparison of the proposed rule with federal and state counterparts.

No state or federal counterparts exist.

LEGAL AUTHORIZATION: The Department of Human Services shall establish an assisted living program for adults and shall promulgate rules and regulations not inconsistent with the Arkansas Assisted Living Act as it shall deem necessary or desirable to properly and efficiently carry out the act's purpose. Ark. Code Ann. § 20-10-1704.

DHS, MEDICAL SERVICES

SUBJECT: State Plan Amendment #2011-001; Recovery Audit Contractors (RAC) Audit Requirement

DESCRIPTION: Under Section 1902(a)(42)(B)(i) of the Act, states and territories are required to establish programs to contract with one or more Medicaid Recovery Audit Contractors (RACs) for the purpose of identifying underpayments and overpayments and recouping overpayments under the state plan and under any waiver of the state plan with respect to all services for which payment is made to any entity under such plan or waiver. States must establish these programs in a manner consistent with state law, and generally in the same manner as the secretary contracts with contingency fee contractors for the Medicare RAC program.

States may not supplant existing state program integrity or audit initiatives or programs with Medicaid RACs. States must maintain those efforts uninterrupted with respect to funding and activity.

Sections 1902(a)(42)(B)(ii)(I) and (II) of the Act provide that payments to Medicaid RACs are to be made only from amounts "recovered" on a contingent basis for collecting overpayments and in amounts specified by the State for identifying underpayments. CMS will not dictate contingency fee rates, but has established a maximum contingency rate (12.5%) for which Federal Financial participation (FFP) will be available. This rate will be the highest contingency fee rate that is paid by CMS under the Medicare RAC program.

A state must refund the Federal Medical Assistance Percentage (FMAP) share of the net amount of overpayment recoveries after deducting the fees paid to Medicaid RACs. In other words, a state must take a Medicaid RAC's fee payments "off the top" before calculating the FMAP share of the overpayment recovery owed CMS. Overpayments are to be reported on the amount remaining after the fees are paid to the Medicaid RAC. This treatment of the fees and expenditures is linked directly to the specific statutory language implementing the Medicaid RAC requirements. It does not apply to any other provisions of Medicaid overpayment recoveries. Section 1902(a)(42)(B)(ii)(IV)(aa) of the Act also provides that amounts spent by a state to carry out the administration of the program are to be reimbursed at the 50 percent administrative claiming rate. CMS will share in States' expenditures through both the contingency fee with respect to payments to the Medicaid RACs and the administrative match for qualified administrative costs associated with the State's implementation and oversight of the Medicaid RAC program.

The total fees paid to a Medicaid RAC include both the amounts associated with (1) identifying and recovering overpayments, and (2) identifying underpayments. Due to the statutory limitations, total fees must not exceed the amounts of overpayments collected. The department anticipates this will be a problem for states. The department's experience with Medicare RAC contractors is that overpayment recoveries exceed underpayment identification by more than a 9:1 ratio. Therefore, a state will not need to maintain a reserve of recovered overpayments to fund RAC costs associated with identifying underpayments. However, the state must maintain an accounting of amounts recovered and paid. The state must also ensure that it does not pay in total Medicaid RAC fees more than the total amount of overpayments collected.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on February 8, 2011. Public comments were as follows:

DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES

SUBJECT: Official Notice #ON-007-10; Prior Authorization for Procedure Codes 87901, 87903 and 87904

DESCRIPTION: Effective for claims with dates of service on or after March 1, 2011, the PA requirement for the following drug treatments will no longer be required when the primary diagnosis is Human Immunodeficiency Virus Disease.

- 87901 Infectious agent genotype analysis by nucleic acid (DNA or RNA); HIV-1, reverse transcriptase and protease regions
- 87903 Infectious agent phenotype analysis by nucleic acid (DNA or RNA) with drug resistance tissue culture analysis, HIV-1; first through ten drugs tested
- 87904 Each additional drug tested (list separately in addition to code)

PUBLIC COMMENT: No public hearing was held in this matter. The public comment period expired on January 11, 2011. No public comments were submitted to the agency. The proposed effective date is March 1, 2011.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code § 20-76-201 authorizes the Department of Human Services to administer programs for the indigent and to "make rules and regulations" pertaining to the administration of those programs. Arkansas Code § 20-77-107 specifically authorizes the department to "establish and maintain an indigent medical care program."

DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES

SUBJECT: Physician Update 5-10 and Hospital 6-10

DESCRIPTION: This rule removes the prior authorization requirement for the procedure codes 93980 and 93981. Utilization for these codes is minimal and they are monitored under the lab and x-ray benefit limit; therefore, there is no need for prior authorization.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on February 8, 2011. No public comments were submitted to the agency. The proposed effective date is April 1, 2011.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code § 20-76-201 authorizes the Department of Human Services to administer programs for the indigent and to "make rules and regulations" pertaining to the administration of those programs. Arkansas Code § 20-77-107 specifically authorizes the department to "establish and maintain an indigent medical care program."

DEPARTMENT OF HEALTH, CENTER OF PUBLIC HEALTH PRACTICE

SUBJECT: Hospital Discharge Data Submittal Guide

DESCRIPTION: Statewide data collection was approved in Act 670 of 1995. The data guide is the document supplied to all Arkansas hospitals that instructs them on the timing, required data and method of transmission, addresses, and all other information regarding the statutory requirements of submitting hospital discharge data to the state.

PUBLIC COMMENT: A public hearing was held on December 10, 2010, and the public comment period expired on that date. There were some comments concerning typographical errors and other minor corrections. The comments pertained to the following items: (1) Admitting Diagnosis in the Definition Section under general comments had the word "primary" when it should be "admitting"; (2) FTP server submission instructions were incorrect – The instructions changed since the release of the initial draft; and (3) "Cryptext" was misspelled in Section 5.2. These minor corrections were made. The proposed effective date is February 15, 2011.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code § 20-7-305(a) generally authorizes the State Board of Health to "prescribe and enforce such rules and regulations as may be necessary to carry out [the State Health Data Clearinghouse Act] including the manner in which data are collected, maintained, compiled, and disseminated, and including such rules as may be necessary to promote and protect the confidentiality of data reported under [the Act]."