

# EXHIBIT P

## DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES

**SUBJECT:** State Plan Amendment #2012-007 and Section I 4-12; 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 Recover Audit Contractors (RACs) for identifying underpayments and underpayments and recouping overpayments. 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.

Section 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%).

The state must take a Medicaid RAC’s fee payments “off the top” before calculating the federal share of the overpayment recovery owed CMS. 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.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on July 31, 2012. No public comments were submitted. The proposed effective date is October 1, 2012.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** If funds are recovered, the state will benefit by retaining a majority of funds under RAC audits. Fees will only be paid to contractors on recovered funds under the contingency fee rate schedule. This will become part of normal requirements for all providers of Medicaid, which is federally mandated.

The state will establish a program under which it will contract with one or more recovery audit contractors (RACs) for identifying underpayments and overpayments of Medicaid claims under the state plan and under any waiver of the state plan. The state will make payments to the RACs on a contingency fee basis for collecting overpayments. Arkansas Medicaid will benefit in the amount of the state share of any recoveries. Arkansas Medicaid is unable to project the dollar amount of any recoveries at this time, if any. However, RAC audits are mandated by federal partners.

**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.**

Medicaid Providers.

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

The state will establish a program under which it will contract with one or more recovery audit contractors (RACs) for identifying underpayments and overpayments of Medicaid claims under the state plan and under any waiver of the state plan. Medicaid providers may incur some additional administrative cost as a result of these additional RAC activities. RAC audits are mandated by our federal partners.

- 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 way to determine. Providers are currently required to provide documentation of paid claims. Any additional effort required of the provider would be handled by existing staff.

- 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.**

Arkansas Medicaid will make payment to the RAC's on a contingent basis for collected overpayments. Arkansas Medicaid will retain the state portion of any recouped overpayment.

- 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.**

Not applicable.

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

The proposed rule is the result of a federal requirement.

**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."

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS**  
**WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

**DEPARTMENT/AGENCY** Department of Human Services  
**DIVISION** Division of Medical Services  
**DIVISION DIRECTOR** Andrew Allison, PhD  
**CONTACT PERSON** Robin Raveendran  
**ADDRESS** P.O Box 1437, Slot S295, Little Rock, AR 72203  
**PHONE NO.** 682-8173 **FAX NO.** 682-2480 **E-MAIL** robin.raveendran@arkansas.gov  
**NAME OF PRESENTER AT COMMITTEE MEETING** Marilyn Strickland  
**PRESENTER E-MAIL** marilyn.strickland@arkansas.gov

**INSTRUCTIONS**

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
Room 315, State Capitol  
Little Rock, AR 72201

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- 1. What is the short title of this rule?  
  
Arkansas Medicaid State Plan Amendment #2012-007 and Section 1 4-12 – Recovery Audit Contractors (RAC) Audit Requirement
- 2. What is the subject of the proposed rule?  
  
To add Recovery Audit Contractors (RAC) to the Medicaid Program.
- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes X No \_\_\_\_.  
If yes, please provide the federal rule, regulation, and/or statute citation.  
  
42 CFR 455 (Section 6411 and PPACA) PL 111-148
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?  
Yes \_\_\_\_ No X.  
  
If yes, what is the effective date of the emergency rule?  
  
When does the emergency rule expire?  
  
Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes \_\_\_\_ No \_\_\_\_

5. Is this a new rule? Yes  No  If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes  No  If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes  No  If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."

6. Cite the state law that grants the authority for this proposed rule? If codified, please give Arkansas Code citation.

Arkansas Statute 20-76-201

7. What is the purpose of this proposed rule? Why is it necessary?

The purpose of the proposed rule is to perform audits of all Medicaid claims. The proposed rule is necessary to comply with the Federal requirement.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

<https://www.medicaid.state.ar.us/InternetSolution/general/comment/comment.aspx>

9. Will a public hearing be held on this proposed rule? Yes  No  .  
If yes, please complete the following:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

July 31, 2012

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

October 1, 2012

12. Do you expect this rule to be controversial? Yes  No  If yes, please explain.

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

We have been in consultation with the AHA, AMS and other stakeholder groups.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT Department of Human Services**

**DIVISION Division of Medical Services**

**PERSON COMPLETING THIS STATEMENT Randy Helms**

**TELEPHONE NO. 682-1857 FAX NO. 682-3889 EMAIL: randy.helms@arkansas.gov**

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE – Arkansas Medicaid State Plan Amendment #2012-007 and Section 1 4-12 – Recovery Audit Contractors (RAC) Audit Requirement**

1. Does this proposed, amended, or repealed rule have a financial impact?  
Yes X No \_\_\_\_\_. (If funds are recovered, State will benefit by retaining majority of funds under RAC Audits. Fees will only be paid to contractor(s) on recovered funds under contingency fee rate schedule.)
2. Does this proposed, amended, or repealed rule affect small businesses?  
Yes X No \_\_\_\_\_. (Will become part of normal requirements for all providers of Medicaid, which is Federally mandated.)

If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

See above; expected to be minimal impact.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

The State will establish a program under which it will contract with one or more recovery audit contractors (RACs) for the purpose of identifying underpayments and overpayments of Medicaid claims under the State plan and under any waiver of the State plan. The State will make payments to the RAC(s) on a contingency fee basis for collecting overpayments. Arkansas Medicaid will benefit in the amount of the State share of any recoveries. Arkansas Medicaid is unable to project the dollar amount of any recoveries at this time, if any. However, RAC Audits are mandated by Federal partners.

4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program.

DMS does not anticipate adding any additional staff; impact is expected to be minimal.

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue \_\_\_\_\_

General Revenue \_\_\_\_\_

Federal Funds \_\_\_\_\_

Federal Funds \_\_\_\_\_

Cash Funds \_\_\_\_\_

Cash Funds \_\_\_\_\_

Special Revenue \_\_\_\_\_

Special Revenue \_\_\_\_\_

Other (Identify) \_\_\_\_\_

Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

Total \_\_\_\_\_

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule and explain how they are affected.

**Current Fiscal Year**

**Next Fiscal Year**

Minimal; see above

6. What is the total estimated cost by fiscal year to the agency to implement this rule? Is this the cost of the program or grant? Please explain.

**Current Fiscal Year**

**Next Fiscal Year**

Minimal; see above

**ECONOMIC IMPACT STATEMENT**  
**(As Required under Arkansas Code § 25-15-301)**

**Department:** Arkansas Department of Human Services  
**Division:** Medical Services  
**Person Completing this Statement:** Randy Helms  
**Telephone Number:** 501-682-1857      **Fax Number:** 501-682-3889  
**EMAIL:** Randy.Helms@Arkansas.gov

**Short Title of this Rule: SPA #2012-007 and Section 1 4-12 Recovery Audit Contractors (RAC) Audit Requirement**

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

**Medicaid Providers**

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

**The State will established a program under which it will contract with one or more recovery audit contractors (RACs) for the purpose of identifying underpayments and overpayments of Medicaid claims under the State plan and under any waiver of the State plan. Medicaid providers may incur some additional administrative cost as a result of these additional RAC activities. RAC Audits are mandated by our Federal partners.**

(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 way to determine. Providers are currently required to provide documentation of paid claims. Any additional effort required of the provider would be handled by existing staff.**

(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.

**Arkansas Medicaid will make payment to the RAC's on a contingent basis for collected overpayments. Arkansas Medicaid will retain the state portion of any recouped overpayment.**

(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.

**Not Applicable**

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

**Propose rule is the result of a federal requirement.**

**Summary for**  
**Arkansas Medicaid State Plan Amendment #2012-007**  
**and Section 14-12**  
**Recovery Audit Contractors (RAC) Audit Requirement**

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 Recover Audit Contractors (RACs) for the purpose of identifying underpayments and overpayments and recouping overpayments. 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%).

State must take a Medicaid RAC's fee payments "off the top" before calculating the federal share of the overpayment recovery owed CMS. 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.

Revision: October 1, 2012

State Arkansas

SECTION 4 – GENERAL PROGRAM ADMINISTRATION

4.5 Medicaid Recovery Audit Contractor Program

PROCESSED

Citation

X

The State **is in the process of establishing** a program under which it will contract with one or more recovery audit contractors (RACs) for the purpose of identifying underpayments and overpayments of Medicaid claims under the State plan and under any waiver of the State plan.

Section 1902(a)(42)(B)(i) of the Social Security Act

X

The State is seeking an exception to establishing such program for the following reasons:

**Arkansas is currently in the RFP stage of the procurement process, it expects to have a contract in place no later than October 1, 2012.**

Section 1902(a)(42)(B)(ii)(I) of the Act

X

The State/Medicaid agency will contract of the type(s) listed in section 1902(a)(42)(B)(ii)(I) of the Act. All contracts meet the requirements of the statute. RACs are consistent with the statute.

Place a check mark to provide assurance of the following:

X

The State will make payments to the RAC(s) only from amounts recovered.

X

The State will make payments to the RAC(s) on a contingent basis for collecting overpayments.

Section 1902 (a)(42)(B)(ii)(II)(aa) of the Act

The following payment methodology shall be used to determine State payments to Medicaid RACs for identification and recovery of overpayments (percentage has not been determined):

X

The State attests that the contingency fee rate paid to the Medicaid RAC will not exceed the highest rate paid to Medicare RACs, as published in the Federal Register.

The State attests that the contingency fee rate paid to the Medicaid RAC will exceed the highest rate paid to Medicare RACs, as published in the Federal Register. The State will only submit for FFP up to the amount equivalent to that published rate.

The contingency fee rate paid to the Medicaid RAC that will exceed the highest rate paid to Medicare RACs, as published in the Federal Register. The State will submit a justification for that rate and will submit for FFP for the full amount of the contingency fee.

STATE	ARKANSAS
DATE REC'D	4-23-12
DATE APPV'D	5-30-12
DATE EFF	10-1-12
HLEFA 179	10-07

A

Revision: October 1, 2012

State Arkansas

**SECTION 4 - GENERAL PROGRAM ADMINISTRATION**

**4.5 Medicaid Recovery Audit Contractor Program (continued)**

Section 1902  
(a)(42)(B)(ii)(II)(bb)  
of the Act

— The following payment methodology shall be used to determine State payments to Medicaid RACs for the identification of underpayments (e.g., amount of flat fee, the percentage of the contingency fee):

Section 1902  
(a)(42)(B)(ii)(III)  
of the Act

X The State has an adequate appeal process in place for entities to appeal any adverse determination made by the Medicaid RAC(s).

Section 1902  
(a)(42)(B)(ii)(IV)(aa)  
of the Act

X The State assures that the amounts expended by the State to carry out the program will be amounts expended as necessary for the proper and efficient administration of the State plan or a waiver of the plan.

Section 1902  
(a)(42)(B)(ii)(IV)(bb)  
of the Act

X The State assures that the recovered amounts will be subject to a State's quarterly expenditure estimates and funding of the State's share.

Section 1902  
(a)(42)(B)(ii)(IV)(cc)  
of the Act

X Efforts of the Medicaid RAC(s) will be coordinated with other contractors or entities performing audits of entities receiving payments under the State plan or waiver in the State, and/or State and Federal law enforcement entities and the CMS Medicaid Integrity Program.

**PROPOSED**

STATE	<u>ARKANSAS</u>	<b>A</b>
DATE REC'D	<u>1-23-12</u>	
DATE APPV'D	<u>5-30-12</u>	
DATE EFF	<u>10-1-12</u>	
WFA 179	<u>12-07</u>	



Division of Medical Services
Program Development & Quality Assurance

P.O. Box 1437, Slot S-295 · Little Rock, AR 72203-1437
501-682-8368 · Fax: 501-682-2480



TO: Arkansas Medicaid Health Care Providers -- All Providers
DATE: October 1, 2012
SUBJECT: Provider Manual Update Transmittal Sect-4-12

PROPOSED

Table with columns: REMOVE Section, Date, INSERT Section, Date. Rows show updates for sections 143.000, 143.100, and 143.200 on 10-1-12.

Explanation of Updates

Sections 143.000, 143.100, and 143.200 are added to include information on Recovery Audit Contractors (RACs), staffing requirements for RACs and additional requirements for RACs.

The paper version of this update transmittal includes revised pages that may be filed in your provider manual. See Section I for instructions on updating the paper version of the manual. For electronic versions, these changes have already been incorporated.

If you have questions regarding this transmittal, please contact the HP Enterprise Services Provider Assistance Center at 1-800-457-4454 (Toll-Free) within Arkansas or locally and Out-of-State at (501) 376-2211.

If you need this material in an alternative format, such as large print, please contact our Americans with Disabilities Act Coordinator at 501-682-6453 (Local); 1-800-482-5850, extension 2-6453 (Toll-Free) or to obtain access to these numbers through voice relay, 1-800-877-8973 (TTY Hearing Impaired).

Arkansas Medicaid provider manuals (including update transmittals), official notices, notices of rule making and remittance advice (RA) messages are available for downloading from the Arkansas Medicaid website: www.medicaid.state.ar.us.

Thank you for your participation in the Arkansas Medicaid Program.

Handwritten signature of Andrew Allison

Andrew Allison, PhD
Director

*TOC required***143.000 Recovery Audit Contractors (RACs)**

10-1-12

Pursuant to 42 C.F.R. §§455.502 - .516, each state Medicaid program must contract with recovery audit contractors (RACs). Pursuant to these federal regulations, the Arkansas Medicaid program will coordinate the following activities:

- A. RAC review of claims submitted by providers to identify overpayments or underpayments;
- B. Coordination between Arkansas Medicaid and the RAC for recoupment of overpayments;
- C. Coordination of recovery audit efforts of RAC and other auditing entities;
- D. Referral of suspected fraud and/or abuse to the Medicaid Fraud Control Unit (MFCU) or other appropriate law enforcement agency; and
- E. Limitation of the number and frequency of medical records to be reviewed by the RAC
- F. Coordination of the administrative reconsideration and appeal process as set forth in Section 160.000 of this manual.

**PROPOSED**

Mark Up

TOC required

**143.000 Recovery Audit Contractors (RACs)**

**10-1-12**

Pursuant to 42 C.F.R. §§455.502 - .516, each state Medicaid program must contract with recovery audit contractors (RACs). Pursuant to these federal regulations, the Arkansas Medicaid program will coordinate the following activities:

- A. RAC review of claims submitted by providers to identify overpayments or underpayments;
- B. Coordination between Arkansas Medicaid and the RAC for recoupment of overpayments;
- C. Coordination of recovery audit efforts of RAC and other auditing entities;
- D. Referral of suspected fraud and/or abuse to the Medicaid Fraud Control Unit (MFCU) or other appropriate law enforcement agency; and
- E. Limitation of the number and frequency of medical records to be reviewed by the RAC
- F. Coordination of the administrative reconsideration and appeal process as set forth in Section 160.000 of this manual.

