

Medicare Audit Bill May Usher In Crackdown On Contractors

By Rachel Slajda

Law360, New York (October 18, 2012, 7:36 PM ET) -- A bill introduced Tuesday that would restrict how Medicare contractors ferret out potential fraud and secure repayments, which the hospital industry has lauded as much-needed relief, may be the beginning of congressional pushback after years of a tough-on-fraud attitude.

The prospects of H.R. 6575, introduced by Rep. Sam Graves, R-Mo., and co-sponsored by three other congressmen, are unclear in a lame-duck session that will be dominated by deficit reduction, tax cuts and the Medicare physician payment rate. But the bill, along with plenty of interest in fraud contractors over the past year from the Medicare oversight committees, may signal that the pendulum is swinging back after several years when hospitals and other providers have felt besieged by contractors.

Hospitals, doctors and other providers have long complained that the contractors, who get a share of the money they recover, are overzealous and operate under few controls. Some say they feel buried under constant audits and fraud claims, most of which are successfully challenged. In a letter of support for Graves' bill, the American Hospital Association said hospitals are under a "deluge of redundant audits, unmanageable medical record requests and inappropriate payment denials."

"We all understand why CMS [the Centers for Medicare and Medicaid Services] and Congress had embraced the use of these contractors ... but now that providers have been living under the regime, so to speak, of the program integrity audits over the last few years, there's a very significant and real cost associated with just responding to these," said Howard Young, a partner at Morgan Lewis & Bockius LLP who represents providers on fraud issues.

"The introduction of this legislation speaks to the fact that there's some recognition of the fact that there's significant cost," he said.

Graves and his co-sponsors don't sit on either the Energy and Commerce Committee or the Ways and Means Committee, which share oversight of the Medicare program, but the committees themselves have lately been questioning whether the contractor system works.

Several lawmakers, citing government audits, have suggested that the contractors are ineffective in finding and recovering actual incidents of fraud. The Energy and Commerce Committee, for example, has an ongoing investigation into the effectiveness of fraud contractors. In July, the bipartisan leaders of the committee asked three major contractors for extensive details about how much fraud they unearth and how much money their investigations recover.

That followed a hearing in June, in which an official from the inspector general's office testified that CMS did not conduct adequate reviews of contractors' performances and that only 7 percent of overpayments reported by contractors in 2007 resulted in recovery.

Likewise, the chairman of the Ways and Means oversight subcommittee in April demanded extensive details on the program from CMS, including a list of all contractors under the anti-fraud program and their performance, how much they were paid and how much they recovered. He said in a statement at the time that lax oversight "raises questions as to whether the program and contractors are meeting the standards that American taxpayers and the seniors that rely on the Medicare program deserve."

Young said the bill has a number of measures that could be particularly effective in helping hospitals.

One provision would tackle a quirk of Medicare billing that has been a thorn in the sides of many hospitals. Contractors can deny expensive inpatient care claims on the grounds that they were medically unnecessary and should have been done as outpatient services.

Currently, there's no simple way for providers to then get paid for the services at an outpatient rate. The bill would do something hospitals have long been calling for, by allowing providers to resubmit rejected inpatient claims as new outpatient claims.

"That would be hugely beneficial," he said. "It's much needed statutory relief."

The bill would bring greater transparency to recovery audit contractors, requiring detailed public reporting on each contractor's audit rates, denials and appeals outcomes. It would also cap how often contractors could ask providers for additional documentation, and void waivers to appeal that some providers sign in order to join demonstration projects.

Notably, however, the bill appears only applies to hospitals, Young said. Other Medicare providers and suppliers are also subject to audits by contractors, and many have expressed similar concerns. It is possible that other provider groups could attempt to expand the bill, or future pieces of legislation, to include them as well, he said.

--Additional reporting by Keith Goldberg. Editing by Elizabeth Bowen and Lindsay Naylor.