THOMSON, RHODES & COWIE, P.C. MANAGED CARE LAW UPDATE

Volume II, Issue 3 March 1999

FEDERAL AGENCY ACTIONS

HCFA publishes changes and clarifications to Medicare+Choice Regulations. On February 17, 1999, HCFA published its final rule for the Medicare+Choice Program, including changes and clarifications of the interim final rules published in June 1998. The final rules address several issues, including (1) provider participation procedures, (2) beneficiary enrollment options, and (3) several access-related issues, e.g., initial care assessment requirements, notification requirements when specialists are terminated, and several coordination of care requirements. The final rules became effective on March 19, 1999, and can be found at 64 F.R. 7967. HCFA plans to address additional issues raised by the comments, such as quality standards, later in 1999.

Department of Justice and Office of the Inspector General set their sights on managed care organizations. Due to the increasing enrollment of Medicare beneficiaries into managed care organizations (MCOs), both the Department of Justice (DOJ) and the Office of the Inspector General (OIG) are focusing on fraud and abuse activities of MCOs. DOJ points to several activities that it views as being potentially fraudulent, including charging inflated rates to some patients over others, bribes used to obtain government-funded managed care contracts, failure to pay providers, arranging kick-backs from parent companies and enrolling deceased beneficiaries. OIG notes other activities for which it has imposed civil money penalties such as failure to provide medically necessary services, screening enrollees on the basis of health status, disenrolling sick members and misrepresenting benefits. OIG emphasizes that its efforts are not intended to punish simple errors or mistakes or to hold MCOs to a higher standard than other providers. It describes three "states of mind" that are required for the False Claims Act to be implicated: actual knowledge of falsity of a claim, reckless disregard for the falsity of a claim, and conscious ignorance of the falsity of a claim. Both organizations encourage MCOs to implement effective compliance programs.

FEDERAL LEGISLATION

Congress considers expansion of liability and reducing decision-making authority of managed care organizations. Numerous bills brought before Congress in 1999 propose expansion of liability of managed care organizations (MCOs) by reducing the likelihood that a claim will be preempted under ERISA. Senate Bill 374 proposes a new definition of "medical necessity" to include services or benefits that are "consistent with generally accepted principles of professional medical practice." Other bills address issues of access to care, grievances and appeals, quality assurance, and greater choice for consumers.

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OTHER JURISDICTIONS

Virginia and Georgia Legislatures consider managed care reform by increasing liability and increasing patient protections. Virginia is reviewing an act that will, among other things, allow patients greater ability to sue their health plans, to use any provider willing to submit to the plan's standard terms, to receive services for mental illness on an equal basis with those for other illnesses, and to appeal plan decisions. Georgia legislators are debating a bill that will require health plans to offer out-of-network coverage, create an external grievance review process for coverage disputes, and expand liability of health plans. To balance the burden of the patient protections, the bill would require patients to pay the additional costs associated with the out-of-network services and to exhaust all internal grievance procedures prior to seeking external review.

Prior issues are available on request. Please direct inquiries to Jerry R. Hogenmiller or L. Jane Charlton, Thomson, Rhodes & Cowie, P.C., Tenth Floor, Two Chatham Center, Pittsburgh, Pennsylvania 15219, (412) 232-3400, TRC_Law@nauticom.net.