NCPA's Audit Reform Efforts

Part B

- Recoupment problems
  - Pharmacists are processing DME claims as Part B claims, when the beneficiary is actually a hospice beneficiary or Medicare Advantage beneficiary. However, pharmacists do not have access to real time eligibility files and are unaware that the beneficiary is not a Part B beneficiary. Part B contractors are later trying to recoup these funds.
  - In the last three months, NCPA has complained to CMS regarding this issue and has had 3 or 4 conference calls with CMS on this issue. During the most recent call, CMS representatives seemed to think that pharmacists are not doing enough due diligence to determine patient eligibility. NCPA maintains that the eligibility files are not real-time and that is the source of our recoupment problems. CMS has agreed to further investigate the matter and is reviewing audit examples that we have produced to them.
  - NCPA continues to send follow up communications to CMS urging them to take action and will be urging targeted congressmen to put pressure on CMS to take action. NCPA is asking CMS to either make the eligibility files real-time files or cease recouping the funds from pharmacists.

- Documentation requirements
  - Within the last two years, DME MAC's have begun to require that diabetic testing supply and diabetic shoe suppliers produce medical records from the prescribing physician to match the information on the certifying statement or written order. The genesis for this change appears to be a concern that therapeutic shoes and diabetic testing supplies are being prescribed to patients without proper medical necessity. Physicians resist supplier requests to send their medical records to the suppliers and suppliers must educate providers regarding CMS' documentation requirements. DME MAC's are recouping payment from suppliers where the documentation is inadequate, a situation over which suppliers have no control.
  - Starting in September of 2010, NCPA sent formal correspondence to CMS asking CMS to remove this policy. Recently, CMS Office of Financial Management has finally responded to NCPA's request for action on this issue and NCPA will be meeting with OFM in the very near future to further discuss the issue.

- **Part D RACs**
  - In February, 2011, NCPA submitted comments to a CMS information collection request regarding Part D RACs.
  - In developing a Proposed Rule for Part D RACs, NCPA requested that CMS adopt the following suggestions:
    - Appropriately constrain and place limits on the Part C and D RAC contingency fee arrangements;
    - Prohibit Part C and D RACs from using statistical extrapolation for determining recoupment amounts;

        - Equally incentivize Part C and D RACs to pursue underpayments, as well as overpayments;
        - Require Part C and D RACs to coordinate their auditing efforts with other auditors and for CMS to monitor and provide oversight over such coordination efforts;
        - Adopt a series of audit best practices provisions designed to prohibit audit abuses and ensure a fair audit process for community pharmacies;
        - Slowly phase-in the Part C and D RAC program;
        - Create an oversight board to approve or disapprove of Part C and D RAC proposals to pursue certain complex or borderline auditing cases; and
        - Prohibit Part C and D plans from creating in-house RACs.
    - CMS has yet to issue a Proposed Rule regarding Part D RACs.

- **Medicaid RACs**
    - In January, 2011, NCPA submitted comments on CMS' Proposed Rule for Medicaid RACs.
    - NCPA urged CMS to adopt the following in its Final Rule on Medicaid RACs:
        - Clarify that Medicaid RACs must refund their contingency fee if they lose at any level of the appeal process;
        - Mandate that States establish requirements regarding the documentation of good cause to review a claim;
        - Mandate that States monitor, identify and prevent potential Medicaid RAC conflicts of interest;
        - Provide further clarification on the term "reasonable grounds" for fraud or criminal activity in the context of Medicaid RAC fraud referrals;
        - Vigorously monitor the adequacy of the incentives of States' underpayment Medicaid RAC payment systems;
        - Provide further guidance and clarification on how CMS will monitor coordination of Medicaid RAC audit efforts with other audit efforts;
        - Promulgate regulatory provisions to penalize Medicaid RACs that engage in duplicative wasteful audits and fail to coordinate their efforts with other auditors;
        - Prohibit Medicaid RACs from using statistical extrapolation for determining recoupment amounts; and
        - Adopt additional audit best practices provisions designed to prohibit audit abuses and ensure a fair audit process for independent community pharmacies.
    - CMS has yet to issue a Final Rule on Medicaid RACs and has delayed, without a new deadline, the original April 1, 2011 deadline for states to implement Medicaid RACs.

- **PBM Transparency Bill**
    - NCPA is seeking Congressional sponsors to introduce a PBM transparency and audit reform bill that will reform the auditing practices of Part D and commercial insurance auditors.
    - The bill would require PBMs to do the following:

- Make certain disclosures to plan sponsors in an annual report;
- Include specific contractual provisions within PBM contracts with pharmacies;
- Abide by conflict of interest/ownership requirements;
- Abide by specified auditing parameters; and
- Meet requirements regarding the use of patient data.