COMMONWEALTH of VIRGINIA

Department of Medical Assistance Services

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November 1, 2022

MEMORANDUM

TO: The Honorable Barry D. Knight
Chair, House Appropriations Committee

The Honorable Janet D. Howell
Chair, Senate Finance and Appropriations Committee

FROM: Cheryl J. Roberts
Director, Virginia Department of Medical Assistance Services

SUBJECT: Annual Contingency Fee-Based Recovery Audit Contractors Report Due November 1, 2022

This report is submitted in compliance with item 304.N. of the *2022 Appropriations Act*, which states:

"*The Department of Medical Assistance Services shall have the authority to pay contingency fee contractors, engaged in cost recovery activities, from the recoveries that are generated by those activities. All recoveries from these contractors shall be deposited to a special fund. After payment of the contingency fee any prior year recoveries shall be transferred to the Virginia Health Care Fund. The Director, Department of Medical Assistance Services, shall report to the Chairmen of the House Appropriations and Senate Finance and Appropriations Committees the increase in recoveries associated with this program as well as the areas of audit targeted by contractors by November 1 each year.*"

Should you have any questions or need additional information, please feel free to contact me at (804) 786-6147.

CJR

Enclosure

Pc: The Honorable John Littel, Secretary of Health and Human Resources

Annual Report: Contingency Fee-Based Recovery Audit Contractors (RACs) – FY2022

A Report to the Virginia General Assembly

November 1, 2022

Report Mandate:

2022 Appropriation Act, Item 304.N.,The Department of Medical Assistance Services shall have the authority to pay contingency fee contractors, engaged in cost recovery activities, from the recoveries that are generated by those activities. All recoveries from these contractors shall be deposited to a special fund. After payment of the contingency fee any prior year recoveries shall be transferred to the Virginia Health Care Fund. The Director, Department of Medical Assistance Services, shall report to the Chairmen of the House Appropriations and Senate Finance and Appropriations Committees the increase in recoveries associated with this program as well as the areas of audit targeted by contractors by November 1 each year.

Background

Recovery Audit Contractor (RAC) is a term used to describe auditing firms who review medical claims and are paid a contingency fee based on actual recoveries resulting from their audits. Section 6411 of the Patient Protection and Affordable Care Act (PPACA) expanded the RAC program to Medicaid and required states to enter into a contract with a Medicaid RAC. Virginia's 2010 Appropriation Act (Item 297 VVVV) and all subsequent appropriations authorized the Virginia Department of Medical Assistance Services (DMAS) to employ RAC auditors and pay them a contingency fee based on the recoveries generated by their audit activities.

Actions Taken To Date

Nationally, the Medicaid RAC program has had limited success. RAC contractors in Virginia and other states have a narrow volume of overpayment opportunities that can be identified through data analysis without intensive medical record review. Audits that require medical record review are generally cost-prohibitive for vendors because the contingency fee on the RAC contract cannot exceed 12 percent of collected overpayments. For Virginia Medicaid, the completed migration to 90% managed care in FY2018 has narrowed the fee for service claims base to carved-out, state-specific waiver programs.

A successful RAC project will require novel approaches to detect and recover improper payments. The Centers for Medicare and Medicaid Services (CMS) granted DMAS an exception to the federal requirement to maintain a RAC while DMAS procures another vendor for these activities. In FY2019, DMAS issued a Request for Information (RFI) to gain industry knowledge. The three vendor responses to the RFI confirmed limited success without structural changes in the program.

About DMAS and Medicaid

DMAS's mission is to improve the health and well-being of Virginians through access to high-quality health care coverage.

DMAS administers Virginia's Medicaid and CHIP programs for more than 2 million Virginians. Members have access to primary and specialty health services, inpatient care, behavioral health as well as addiction and recovery treatment services. In addition, Medicaid long-term services and supports enable thousands of Virginians to remain in their homes or to access residential and nursing home care.

Medicaid members historically have included children, pregnant women, parents and caretakers, older adults, and individuals with disabilities. In 2019, Virginia expanded the Medicaid eligibility rules to make health care coverage available to more than 400,000 newly eligible, low-income adults.

Medicaid and CHIP (known in Virginia as Family Access to Medical Insurance Security, or FAMIS) are jointly funded by Virginia and the federal government under Title XIX and Title XXI of the Social Security Act. Virginia generally receives an approximate dollar-for-dollar federal spending match in the Medicaid program. Medicaid expansion qualifies the Commonwealth for a federal funding match of no less than 90 percent for newly eligible adults, generating cost savings that benefit the overall state budget.

Vendors proposed the use of longer lookback periods as well as the use of extrapolation. Vendors also stated a successful RAC vendor would have access to all claim/service types across both Fee for Service and Manage Care programs.

DMAS determined that a RAC auditor is not a fiscally viable option for Virginia Medicaid. In FY2020, Virginia Medicaid followed fellow states like South Carolina and Vermont, by submitting a state plan amendment (SPA) seeking an exemption to establishing a recovery audit contractor based on limited claims in non-managed care programs. In FY2022, CMS granted Virginia Medicaid its second SPA exemption from establishing a recovery audit contractor. This exemption is stated in SPA 22-019 dated August 29, 2022. It expires July 1, 2024.