

§ 455.510

records on CD/DVD or via facsimile at the providers' request.

(4) Notifying providers of overpayment findings within 60 calendar days.

(f) The entity must not review claims that are older than 3 years from the date of the claim, unless it receives approval from the State.

(g) The entity should not audit claims that have already been audited or that are currently being audited by another entity.

(h) The entity must refer suspected cases of fraud and/or abuse to the State in a timely manner, as defined by the State.

(i) The entity meets other requirements as the State may require.

§ 455.510 Payments to RACs.

(a) *General.* Fees paid to RACs must be made only from amounts recovered.

(b) *Overpayments.* States must determine the contingency fee rate to be paid to Medicaid RACs for the identification and recovery of Medicaid provider overpayments.

(1) The contingency fees paid to Medicaid RACs must be based on a percentage of the overpayment recovered.

(2) States must determine at what stage in the Medicaid RAC audit process, after an overpayment has been recovered, Medicaid RACs will receive contingency fee payments.

(3) If a provider appeals a Medicaid RAC overpayment determination and the determination is reversed, at any level, then the Medicaid RAC must return the contingency fees associated with that payment within a reasonable timeframe, as prescribed by the State.

(4) Except as provided in paragraph (5) of this section, the contingency fee may not exceed that of the highest Medicare RAC, as specified by CMS in the FEDERAL REGISTER, unless the State submits, and CMS approves, a waiver of the specified maximum rate. If a State does not obtain a waiver of the specified maximum rate, any amount exceeding the specified maximum rate is not eligible for FFP, either from the collected overpayment amounts, or in the form of any other administrative or medical assistance claimed expenditure.

(5) CMS will review and consider, on a case-by-case basis, a State's well-jus-

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tified request that CMS provide FFP in paying a Medicaid RAC(s) a contingency fee in excess of the then-highest contingency fee paid to a Medicare RAC.

(c) *Underpayments.* (1) States must determine the fee paid to a Medicaid RAC to identify underpayments.

(2) States must adequately incentivize the detection of underpayments.

(3) States must notify providers of underpayments that are identified by the RACs.

§ 455.512 Medicaid RAC provider appeals.

States must provide appeal rights under State law or administrative procedures to Medicaid providers that seek review of an adverse Medicaid RAC determination.

§ 455.514 Federal share of State expense of the Medicaid RAC program.

(a) Funds expended by States for the operation and maintenance of a Medicaid RAC program, not including fees paid to RACs, are considered necessary for the proper and efficient administration of the States' plan or waivers of the plan.

(b) FFP is available to States for administrative costs of operation and maintenance of Medicaid RACs subject to CMS' reporting requirements.

§ 455.516 Exceptions from Medicaid RAC programs.

A State may seek to be excepted from some or all Medicaid RAC contracting requirements by submitting to CMS a written justification for the request for CMS review and approval through the State Plan amendment process.

§ 455.518 Applicability to the territories.

The aforementioned provisions in § 455.500 through § 455.516 of this subpart are applicable to Guam, Puerto Rico, U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Authority: Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)