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CIA's Now Require Medicaid Exclusion Checks; 60-Day Rule Change May Affect Extrapolation

By Nina Youngstrom

If health care organizations aren't checking state Medicaid exclusion lists, they might want to start now. Corporate integrity agreements (CIAs) now require providers and suppliers to screen employees using both the HHS Office of Inspector General's (OIG) List of Excluded Individuals and Entities (LEIE) and state Medicaid exclusion lists, an OIG official said.

"We have changed the language in our CIAs to require people under CIAs to screen both the LEIE and state Medicaid exclusion lists," said OIG Senior Counsel Laura Ellis. A state may call its Medicaid exclusion list something else, such as a provider suspension list, but whatever the name, "you should check with the same frequency as they're updated and definitely pre-hire," Ellis said at the Health Care Compliance Association's Compliance Institute April 24.

That's one of several recent changes to CIAs, which have implications for voluntary compliance programs and the new OIG compliance program guidances—general and industry-specific—that are due out starting this fall.^[1]

But providers should also consider the prospect of how CIAs—and voluntary compliance programs that mirror CIAs—may change if CMS finalizes a proposed regulation to revamp the Medicare 60-day overpayment refund regulation, according to an attorney, who preferred not to be identified. That change could shake things up now that OIG appears to require extrapolation of all error rates in CIAs, the attorney said. Here's language from a recent CIA: "The findings of the Claims Review Sample shall be used by the IRO [independent review organization] to estimate the actual Overpayment in the Population with the point estimate and a two-sided 90% confidence interval."^[2]

The revised language suggests that any error rate may be extrapolated, the attorney explained. Until about six years ago, OIG used a 5% error rate as the trigger for extrapolating overpayments in CIAs, and more broadly that error rate percentage was relied on as the point at which many providers believed they should extrapolate an overpayment instead of repaying identified claims dollar-for-dollar. "In omitting a specific trigger point, CIAs have pointed to the applicability of CMS regulations implementing the 60-day rule," the attorney said. "Recent OIG audits applied extrapolation even at error rates below 5%."

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