McDermott Will & Emery

AHLA Medicare and Medicaid Institute, March 2011

Risk Adjustment and RADV Audits

Lauren N. Haley
McDermott Will & Emery

Agenda

McDermott Will & Emery

- Overview of Payments to MAOs
- Basics of Risk Adjusted Payments
- Risk Adjustment Data Validation (RADV) Audits
- Current RADV Audit Initiatives
- Some Key Considerations

McDermott Will & Emery

Risk Adjusted Payments

Payments to Medicare Advantage Organizations (MAOs)

McDermott Will & Emery

- Capitated Payments to MAOs are adjusted by:
  - Budget Neutrality Factor (phased out between 2007 and 2010)
  - FFS Normalization Adjustment
  - Coding Intensity Adjustment
  - Risk Adjustment Factors

Risk Adjusted Payments – High-Level Basics

McDermott Will & Emery

- Capitated payments to MAOs are "risk adjusted" to account for health status.
- MAOs submit data to CMS in order to receive these risk-adjusted payments.
- CMS conducts "risk adjustment data validation" (RADV) audits of the data submitted by MAOs.

Risk Adjusted Payments HCCs

McDermott Will & Emery

- Risk Adjustment is required by statute, but the methodology is not prescribed by statute or regulation.
- CMS has implemented the CMS Hierarchical Condition Category Model ("CMS-HCC model") that groups medical conditions with similar costs of treatment into Hierarchical Condition Categories (HCCs) to establish a "risk score" for each enrollee.
  - Developed using Medicare fee-for-service (FFS) claims data.
  - Classifies each of over 15,000 ICD-9 codes into 804 diagnostic groups. Diagnostic groups are further aggregated into 189 Condition Categories, and hierarchies are imposed among related Condition Categories, creating HCCs.
  - There are currently 70 HCCs.
- Each HCC is assigned a coefficient. Each coefficient represents the incremental predicted expenditures associated with assigned demographic and disease components.

Risk Adjusted Payments
HCCs

McDermott Will & Emery

- The risk model is *prospective.* Medical conditions from a given year are used to predict expenditures in the next year.
- Diagnoses from hospital inpatient, hospital outpatient, and physician offices are used.
- The risk factors are additive when the diseases are not closely related.
- The groups may be in hierarchies when related.
  - An enrollee is assigned the most severe manifestation among related diseases. (e.g., Diabetes with complications vs Diabetes without complications)

Risk Adjusted Payments
Statutory Authority

McDermott Will & Emery

The Social Security Act

- **1997:** The Balanced Budget Act (BBA) established Medicare+Choice and Risk Adjustment Payments.
- **1999**: The Balanced Budget Refinement Act of 1999 (BBRA) adopted CMS's (then HCFA) phase-in approach to risk-adjusted payments based on health status.
- **2000**: The Benefits and Improvements Protection Act (BIPA) of 2000 expanded the allowable data sources from which M+C plans could collect diagnosis data to include inpatient hospital and ambulatory settings.
  - Revised the timeline to phase-in risk-adjusted payments based on health status:
    - 2003 – 10%
    - 2004 – 30%
    - 2005 – 50%
    - 2006 – 75%
    - 2007 – 100%

Risk Adjusted Payments
Statutory Authority (cont'd)

McDermott Will & Emery

- **2003**: The Medicare Modernization Act (MMA)
  - "Medicare+Choice" plans became known as "Medicare Advantage" (MA) plans.
  - Established a bidding process that requires plans to submit monthly aggregate bid amounts "for the provision of all items and services under the plan, which amount shall be based on average revenue requirements … for an enrollee with *a national average risk profile* …. (as specified by the Secretary)."
- **2010**: Patient Protection and Affordable Care Act (ACA)
  - CMS must periodically evaluate and revise its risk adjustment system "to, as accurately as possible, account for higher medical and care coordination costs associated frailty, individuals with multiple, comorbid chronic conditions, and individuals with a diagnosis of mental illness, and also to account for costs that may be associated with higher concentration of beneficiaries with those conditions."

Risk Adjusted Payments
Regulatory Authority - 42 C.F.R. § 422.308

McDermott Will & Emery

- "CMS will adjust the payment amounts […] for age, gender, disability status, institutional status, and other factors CMS determines to be appropriate, **including health status**, in order to ensure actuarial equivalence. CMS may add to, modify, or substitute for risk adjustment factors if those changes will improve the determination of actuarial equivalence."
- "To adjust for health status, CMS applies a risk factor based on data obtained in accordance with §422.310."

Risk Adjusted Payments
Regulatory Authority - 42 C.F.R. § 422.310

McDermott Will & Emery

- Governs risk adjustment data submitted by MAOs.
  - "Risk Adjustment Data" is "all data that are used in the application of a risk adjustment model."
  - Requires MAOs to "submit data that conform to CMS' requirements for data equivalent to Medicare fee-for-service data, when appropriate."
  - "MAOs must obtain the risk adjustment data required by CMS from the provider, supplier, physician, or other practitioner that furnished the item or service."

Risk Adjusted Payments
Subregulatory Guidance

McDermott Will & Emery

- CMS Notices and Memoranda
  - 45-Day Advance Notice
  - Annual Notice
- Call Letters
- Bid Pricing Tool
- Risk Adjustment Data Technical Assistance for Medicare Advantage Organizations Participant Guide (the "Participant Guide")

Risk Adjusted Payments Subregulatory Guidance

McDermott Will & Emery

- The Participant Guide lays out the data elements CMS uses for risk adjustment:
  - Health Insurance Claim (HIC) Number
  - ICD-9- Diagnosis Code
  - Service Date
  - Provider Type
    - Hospital Inpatient
    - Hospital Outpatient
    - Physician services

McDermott Will & Emery

Risk Adjustment Data Validation Audits

RADV Audits

McDermott Will & Emery

- CMS issues "improper payment" reports for government programs
- For Medicare Advantage, CMS focuses on risk adjustment errors
- Risk adjustment data validation (RADV) audits are the process CMS uses to audit HCCs
- CMS reviews the "One Best Medical Record" for each audited HCC

RADV Audits

McDermott Will & Emery

- CMS is currently conducting RADV audits of CY 2007 payments, and intends to extrapolate discrepancies to the contract level.
  - *Pilot audits.* In July 2008, CMS initiated a pilot program for CY 2007.
  - *Targeted audits.* In 2009, CMS expanded its RADV audit activity for CY 2007. These audits are being conducted on a separate timeline from the pilot audits.
  - CMS has indicated that it "will continue conducting contract-level Risk Adjustment Data Validation audits on Medicare Advantage (MA) organizations in 2012."
- CMS has not previously extrapolated results.

RADV Audits
Authorities and Guidance

McDermott Will & Emery

- Limited information in CMS regulations governing RADV audits.
- In April 2010, CMS finalized regulations, effective for CY 2011, that established an RADV appeal process, a document dispute process, and a procedure for obtaining physician-signature attestations. (42 C.F.R. § 422.311)

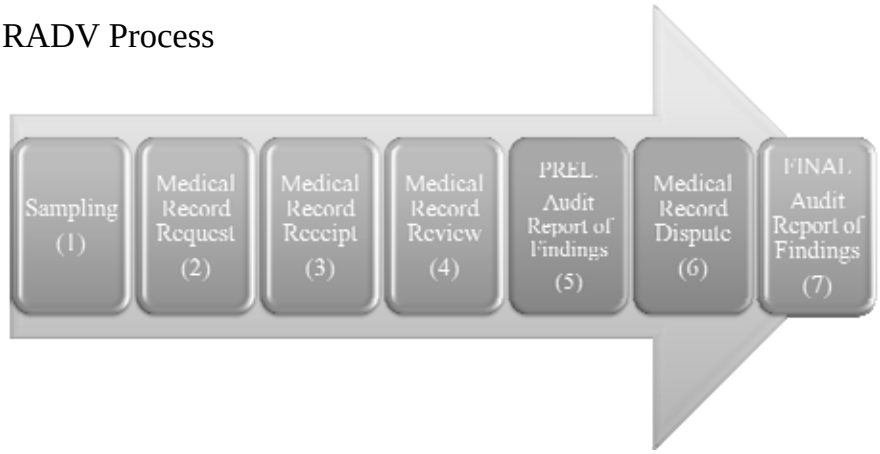
RADV Audits
Authorities and Guidance

McDermott Will & Emery

- CMS has released subregulatory guidance documents that provide information about RADV audits, for example:
  - The Participant Guide
  - 2009 Call Letter for MAOs
  - Announcement of CY 2009 Medicare Advantage Capitation Rates and MA and Part D Payment Policies
  - MA RADV Notice of Payment Error Calculation Methodology
  - Correspondence with audited plans

McDermott Will & Emery

RADV Process



CMS, MA Plan Payment Data Initiatives, *CMS Priorities for 2011*, 2010

McDermott Will & Emery

RADV Audits Sampling

- CMS selects MAOs to participate in an audit based on a number of criteria
  - Targeted selection (e.g., based on how the growth in the plans' risk adjustment score compared to that of FFS Medicare)
  - Random selection

RADV Audits
Medical Record Submission

McDermott Will & Emery

- CMS' Contractors request medical record documentation to support each HCC identified for validation
- CMS has allowed only "One Best Medical Record" to support each such HCC
  - If multiple records are submitted, CMS reviews only the first record received

RADV Audits
Medical Record Submission (cont'd)

McDermott Will & Emery

- In addition:
  - Only hospital inpatient, hospital outpatient, and physician medical records are accepted
  - Medical records must have provider signatures and credentials
    - If medical records are missing a signature or credentials, MAOs may submit CMS-generated attestations from physicians/practitioners
  - Dates of service within the medical records must fall within the data collection period
  - CMS will not review any medical records submitted after the deadline set by CMS (generally 12 weeks)

RADV Audits
Medical Record Dispute Process

McDermott Will & Emery

- RADV audit process includes a Medical Record Dispute Process
  - MAOs may dispute the result of CMS' coding review
  - No new medical record documentation is allowed

RADV Audits
Payment Errors

McDermott Will & Emery

- CMS intends to recover alleged "overpayments" identified during the RADV audit that result from diagnosis data that is not supported in the medical record documentation ("discrepancies"), extrapolated to the contract level
- The payment error calculation methodology has not yet been finalized
- There is substantial debate over whether RADV audits properly measure payments under the risk adjustment methodology.

RADV Audits
Notice of Payment Error Calculation Methodology

McDermott Will & Emery

- **December 21, 2010:** CMS posted the proposed "sampling and error calculation methodology" on its website for public comment.
  - The proposed methodology provided more technical information in four areas: (1) sampling; (2) sample stratification; (3) payment error calculation; and (4) payment error extrapolation calculation.
- **January 21, 2011**: Deadline for industry comments on methodology
- **February 3, 2011**: CMS issued a memo acknowledging it had received comments on a variety of topics, including a proposed FFS adjuster and RADV audit documentation standards. CMS further indicated that it is "thoroughly evaluating all comments" submitted in response to the issuance of the proposed sampling and payment error-calculation methodology, and "anticipate[s] making changes to [its] draft, based on input it received." The memo states that the final revised methodology paper will be issued "in the near future."

RADV Audit
Appeal Processes

McDermott Will & Emery

- 42 C.F.R. § 422.311 establishes two appeal processes:
  - Medical record review determination appeals
  - Payment error calculation appeals

RADV Audits
Medical Record Review Determination

McDermott Will & Emery

- CMS provides MAOs with a list of HCC errors that are eligible for appeal
- MAOs may only submit for review the one best medical record and attestation previously submitted
- Appeal levels
  - Hearing by CMS designated officer
  - Review by CMS Administrator at his/her discretion

RADV Audits
Payment Error Calculation Appeals

McDermott Will & Emery

- MAOs may appeal the calculation of RADV payment error
- MAOs may not appeal:
  - RADV payment error calculation methodology
  - Methodologies that CMS applies during the RADV audit
- Appeal levels
  - Reconsideration by CMS or CMS contractor
  - Hearing by CMS hearing officer
  - Review by CMS Administrator at his/her discretion

McDermott Will & Emery

Risk Adjustment Payments and RADV Audits

Key Issues

McDermott Will & Emery

- CMS continues to move forward with RADV audits and plans to make contract-level adjustments
  - Previously, CMS applied payment adjustments only at the enrollee level (i.e., a payment adjustment was made only to the enrollee for whom an HCC was determined to be discrepant).
  - The President's 2012 Budget includes a legislative proposal that would require the extrapolation of the error rate found in an RADV Audit sample to the entire MA contract, with a corresponding contract-level repayment obligation.
  - The President's 2011 Budget included a similar legislative proposal.

Risk Adjustment Payments and RADV Audits Key Issues

McDermott Will & Emery

- Fundamental question raised regarding RADV consistency
  - The Risk Adjustment Payment Model (HCCs) is built on unaudited diagnoses from Medicare FFS claims data.
  - RADV audits, however, are based on medical record review.
  - MAOs argue this inconsistency creates a significant problem that must be addressed in order to properly audit payments to MAOs.
    - "An underlying principle of risk-adjustment systems is that there needs to be consistency in the way the model was developed and how it is used." American Academy of Actuaries, *Comment on RADV Sampling and Error Calculation Methodology*, January 21, 2011
    - "This type of data inconsistency not only creates uncertainty, it also may create systematic underpayment." *Id*.

Risk Adjustment Payments and RADV Audits Key Issues

McDermott Will & Emery

- The One Best Medical Record
  - MAOs must select the "One Best Medical Record" to support the diagnosis for each CMS-HCC being validated for enrollees in the audit sample.
  - MAOs argue that the "One Best Medical Record" does not provide a sufficient basis for confirming an HCC.
  - Limiting the review of documentation to only one record could result in an incomplete evaluation of the extent to which diagnoses for enrollees may be both over-reported and under-reported.

Risk Adjustment Payments and RADV Audits Key Issues

McDermott Will & Emery

- On the Horizon
  - Final RADV Payment Error Calculation Methodology
  - The ACA-required CMS analysis of the risk adjustment system (to be included in the 2012 Rate Announcement)
  - Transition to ICD-10
    - Risk adjustment diagnoses must be based on clinical medical record documentation, and coded according to the ICD-9-CM Guidelines for Coding and Reporting.
    - CMS has indicated that it will not begin implementation of ICD-10 diagnosis codes until October 2013, and that CMS will provide plans with an opportunity for testing with ICD-10 diagnoses.
    - This will require a revision to the current risk adjustment payment methodology. Technical issues will need to be addressed to ensure a seamless transition.

Questions

McDermott Will & Emery

Lauren Haley
McDermott Will & Emery
(202) 756-8170
Lhaley@mwe.com