Medicaid

OIG Proposes Allowing Fraud Control Units To Use Federal Funding for Data Mining

The Department of Health and Human Services Office of Inspector General would allow state Medicaid Fraud Control Units (MFCUs) to use federal funding to conduct data mining on Medicaid claims, under a proposed rule published in the March 17 *Federal Register* (76 Fed. Reg. 14637).

"We believe that allowing MFCUs the ability to receive funding for use of sophisticated data mining technology would allow them to marshal their resources more effectively and take full advantage of their expertise in detecting and investigating Medicaid fraud," the proposed rule said.

Public comments will be accepted until May 16.

Currently, MFCUs are prohibited from using federal funds for any data mining activities and "are limited to relying on referrals from State Medicaid agencies based on the State agencies' analysis methods, tools, and techniques," the proposed rule said.

Data mining, according to the proposed rule, refers to "electronically sorting Medicaid claims through statistical models and intelligent technologies to uncover patterns and relationships contained within the Medicaid claims activity and history to identify aberrant utilization and billing practices that are potentially fraudulent."

Under the proposed rule, before accessing federal funding, MFCUs would have to delineate the duration of their data mining, as well the amount of time staff would be spending on it, and all MFCU staff engaged in data mining would need to receive technical training.

Kirk Nahra, an attorney with Wiley Rein in Washington, told BNA March 18 that "data mining is a crucial component of the government's overall anti-fraud efforts, and this proposed rule—which will facilitate the efforts by Medicaid agencies to conduct data mining—will expand the opportunities for creative and potentially effective data mining to identify fraud."

Coordinating Activity. MFCUs would have to outline how they would cooperate with the their state Medicaid agency, as well as with any contractors performing data mining for the Centers for Medicare & Medicaid Services' Medicaid Integrity Group.

The OIG, which provides oversight to the MFCU program, would review and approve any agreements between MFCUs and their state Medicaid agencies, in consultation with CMS, to avoid any duplication in data mining efforts.

Kirk Ogrosky, an attorney with Arnold & Porter LLP in Washington, told BNA March 18 that "if administered correctly, federal funding to MFCUs for data analysis will increase fraud and abuse recoveries and help guard vulnerable state Medicaid budgets. Consistent Medicaid data reports provide an ancillary benefit to enforcement counterparts like the FBI and DOJ. Access to Medicaid's pharmaceutical prescribing and utilization data can fill the Medicare Part D information gap that has slowed federal enforcement since 2003."

"Due to the breadth of services provided by the states, Medicaid plans are one of the best sources for all-inclusive data analysis," Ogrosky said.

However, too much reliance on data mining efforts may prove a problem, Laurence Freedman, an attorney with Patton Boggs in Washington, told BNA March 18.

"What is missing is a clear directive that fraud cases must not be premised solely on data mining," Freeman said. "Worse, there is an implicit pressure to maximize recoveries from the data mining alone. Keeping data mining with the Medicaid programs might better ensure the three goals OIG states: knowledge of the program, coordination with all the federal data miners, and training with data mining."

Once federal funding for data mining has been granted, MFCUs will be required to provide information on an annual basis regarding the costs associated with data mining, the total number of fraud cases resulting from data mining, the outcome of the cases, and the amount of recoveries obtained.

MFCUs were created by federal law and are designed to investigate and prosecute Medicaid fraud. They receive 75 percent of their funding from the federal government, with states accounting for the remainder.

In the regulatory impact analysis part of the rule, OIG said: "We believe that the aggregate economic impact of this rule will be minimal and will have no significant effect on the economy or on Federal or State expenditures. However, since MFCUs have until this year not conducted data mining, we have only limited information about costs and benefits at the State level."

The OIG noted that one state MFCU, Florida's unit, "received approval from the Secretary of Health and Human Services to conduct data mining as a demonstration project under section 1115 of the Social Security Act that commenced on August 1, 2010" (14 HFRA 629, 7/28/10).

By James Swann

The proposed rule is available at http://op.bna.com/hl.nsf/r?Open=jcon-8ezqf9.