Idaho Medical Association

April 14, 2016

Lori Stiles, Investigation Supervisor
Idaho Department of Health and Welfare
650 W State Street; Suite B-17
P.O. Box 83720
Boise, Idaho 83720-0036

Medicaid Program Integrity Civil Monetary Penalties (CMP)

Dear Ms. Stiles,

On behalf of the 2,500-plus physician and other healthcare provider members of the Idaho Medical Association (IMA), I am writing to provide input on several concerns regarding the Department of Health and Welfare's proposed rules for applying civil monetary penalties (CMP). As Idaho ranks nearly last in the nation in the ratio of physicians to population, we are concerned with any new rules that could have the unintended consequence of limiting access to care for Idaho's Medicaid population. We believe that the proposed CMP rule changes will cause that result.

Our concerns are as follows:

- As a rural state, there are many areas of Idaho that are designated as healthcare professional shortage areas. Currently, citizens in these areas must travel significant distances for specialized care and, in some cases, primary care. If the healthcare professionals in rural Idaho begin to question whether the benefit of serving an underserved population is outweighed by the risk of financial harm to their practice, they could consider of no longer seeing Medicaid patients. This is especially true for specialty services, like dermatology, cardiology and endocrinology. Even in Ada County there is a shortage of endocrinologists. New patient appointments are often made with a wait time of two months or more.

- "Examples of Findings." Findings can be highly subjective as they are based on the auditor's opinion. What one auditor sees as "No performing provider credentials," which is a minor rule violation, may be interpreted by another auditor as "No required physician or practitioner signature," under Health, Safety, Treatment Risks, which is a significant risk. The difference in CMP between those two categories is 10 percent to 25 percent in the Minor Rule Violation Category, versus 20 percent to 35 percent in the Health, Safety, Treatment Risks. That's a ten percent difference based on the auditor's interpretation of the rule violation. While we appreciate the current auditors varied backgrounds, someone with experience in nursing or mental health will not interpret the rule violations the same way as a certified professional coder would. Many categories can overlap or have different interpretations based on one's experiences with documentation and rule violations. What one analyst sees as a non-covered service another one

may see as an unbundling code issue. When the penalty was assessed evenly across the board, the categories or different rule violations did not matter because they were equally assessed and the penalties were the same. A violation was a violation.

- State Healthcare Innovation Plan or SHIP. Medicare is moving towards a quality of care model over fee for service reimbursement. Idaho Medicaid is using SHIP to move towards the same goal for Medicaid clients. Will providers be penalized again, if they are audited and found to have incurred a repeated penalty or CMP for intentional billing errors? If so, this could become another barrier to access for Medicaid clients. Providers billing Medicare are subject to quality indicators directly tied to quality of care issues. Will this be seen as a quality of care issue since the sliding fee includes a type of conduct titled, “Health, safety, treatment risks?”

- Combination of the error rate and multiple violations. The Department has not explained if multiple violations are identified with one-line item, such as incorrect dates of service AND billed incorrect code/modifier would carry a stacked penalty or would even double the error rate assessed to the provider. Two distinct violations in two different “Type of Conduct” categories could mean that providers face a potential 60 percent CMP if the Medicaid Integrity Unit is allowed to stack perceived violations.

- Definition of “Knowingly” in Senate Bill 1295. The “Knowingly” designation results in the highest percentage CMP and many errors could potentially be categorized as “Knowingly.” An analyst could determine a provider has knowledge with information published in a previous newsletter (recently or five years ago) even though the provider may not have been in practice at the time it was originally published. The newsletters are available on Molina’s website, however, there is not an index to the newsletters or a searchable process to identify and educate practices. Information releases are available on the Department of Health and Welfare’s website without a searchable option or an index.

  Senate bill 1295 definition: *"Knowingly," "known" or "with knowledge" means that a person, with respect to information or an action:*
  (i) Has actual knowledge of the information or action; or
  (ii) Acts in deliberate ignorance of the truth or falsity of the information or the correctness or incorrectness of the action; or
  (iii) Acts in reckless disregard of the truth or falsity of the information or the correctness or incorrectness of the action.

- Defining “Repeated” to determine the CMP. Would it be a repeated error within the same audit sample? Would a repeated error indicate the provider was previously educated through a previous audit? Or, would it be considered to be “Knowingly”?

- Timeline of audits. In some audits, records are requested and then providers don’t hear again from the Department until a year later. Because of the subjective nature of the findings that are now tied to increasing penalties, additional review may be necessary to ensure correct implementation of the rules leading to an increase in time taken to complete audits. The mental toll the audits take on staff and physicians is already increased by the length of time it takes to complete the process. Now the audits will take longer and be more subjective, leading to an increase in appeals, extending the processes even more. Are there processes in place regarding how long audits should take from start to finish?

- Background Checks. Section 56-209h(8)(b) includes language requiring background checks with associated penalties of five hundred dollars up to a maximum of five thousand dollars per month. The language appears to apply to all provider types, including physicians. Idaho Administrative Rules 16-05-06 section 100, indicates the provider types required to complete background checks. Would it be appropriate to include the additional information specifying which providers must comply with the update?

We ask that you consider the following recommendations:

- Adoption of a standard 15 percent CMP for all violations unless the Department can show "reckless disregard" for Medicaid funding and produce documentation to show the provider has been audited for the same issue and then institute the sliding fee scale with specific rules regarding concrete findings.

- Creation of reasonable timelines for audit processes

Alternately, Idaho Medicaid currently has a process in place that ranks provider types by risk level. Groups of physicians, midlevels and therapists are designated as limited risk providers. *(Idaho MMIS Provider Handbook, General Provider and Participant Information, Pages 13-16.)* This ranking already provides the Medicaid program a basis on which to determine the areas of their providers that pose the most risk to the financial viability of the program and should be subject to increased CMPs.

In conclusion, IMA members already face increased scrutiny and penalties for billing Idaho Medicaid incorrectly in a universe of continuing policy and regulatory changes that makes it difficult for the most informed providers to avoid unintentional billing errors. The proposed changes to the CMP rules increases the financial burden on physicians and makes a fairly straight forward process significantly more subjective to an auditor's experience.

The IMA strongly supports the Department of Health and Welfare's dedication to protecting taxpayers' funding and the solvency of the Idaho Medicaid program. We hope that the Department will recognize the need to protect the access to care that is already so fragile in many rural areas of our state.

Thank you for your consideration. I am available to provide additional information or answer any questions.

Sincerely,

Teresa Cirelli, CPC, CPMC, IMA Reimbursement Director