CMS ON THE CUTTING EDGE OF INNOVATION: RFI ON THE USE OF ADVANCED TECHNOLOGY IN PROGRAM INTEGRITY

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U.S. Health Care Alert

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On October 21, 2019, the Centers for Medicare & Medicaid Services ("CMS") issued a Request for Information ("RFI") on using advanced technology to further CMS's program integrity efforts. [1] The RFI seeks to implement President Trump's Executive Order "Protecting and Improving Medicare for Our Nation's Seniors," which directs CMS to address waste, fraud, and abuse in the Medicare program. [2] As part of this effort, and in recognition of dramatic changes to the U.S. health system and to the Medicare program since its inception in 1965, CMS is seeking input on how to use emerging technologies, such as artificial intelligence ("AI") and machine learning ("ML") tools, to promote proper claims payment. CMS's goal is to identify the next generation of technologies that can help the agency protect program integrity by anticipating, assessing, and acting in real time, rather than "chasing" recovery, and that better serves changing reimbursement models from traditional fee-for-service ("FFS") to Value-Based Payment Systems. [3] Comments are due by November 20, 2019.

AI MEDICAL RECORD REVIEW IN MEDICARE

Medicare processes and pays over 900 million FFS claims annually. [4] To protect program integrity, CMS utilizes pre-payment review, including computer auto-denials and prior authorization for some items and services, as well as post-payment review and analytics. However, most FFS claims — approximately 99 percent — are processed without medical review. [5] While CMS understands that increasing the number of claims reviewed before payment could help reduce improper payments, it also recognizes the tremendous burden of having clinicians review medical records.

Accordingly, CMS is seeking information regarding the potential impact of AI medical record review, including whether AI tools exist that can read a medical record and determine whether it is in compliance with a set of coverage guidelines for a given item or service. To that end, CMS poses several questions for AI vendors, including details regarding current AI capabilities, licensure, and use. Assuming such tools are available, CMS also is looking for information from providers and suppliers on whether they would use these tools and what conditions would influence that decision, who should access such tools, and which items and services would benefit most from these tools. More generally, CMS is seeking information on the benefits and drawbacks of using AI in this context.

DOCUMENTATION REQUIREMENT REPOSITORIES

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As part of its drive to create a central repository of documentation for all programs and payers that would be accessible within the electronic health record ("EHR"), CMS is developing a prototype Medicare FFS Documentation Requirements Lookup Service ("DRLS"). The DRLS would allow providers and suppliers to identify Medicare FFS prior authorization and documentation requirements within their EHR or practice management system. Through the RFI, CMS is now seeking input on whether and how such look-up services and repositories could be used by Medicare providers, Medicare Advantage plans, Medicaid Managed Care Organizations, and Qualified Health Plans. Specifically, CMS requests information on whether a phased implementation is preferred and, if so, what services could be implemented first, as well as whether there are consumer-facing smartphone apps that give patients greater exposure into pre-authorization requirements for certain items or services.

ADVANCED TECHNOLOGIES FOR MEDICARE ADVANTAGE

To protect program integrity in Medicare Advantage, CMS relies primarily on contract-level risk adjustment data validation ("RADV") audits to confirm that the medical record substantiates the diagnoses that plans submit through the claims process. CMS recognizes that these audits are burdensome for not only the agency but also for the plans and the providers and suppliers who must submit voluminous patient records. Accordingly, CMS is seeking information on ways to improve the transfer of medical records from Medicare Advantage organizations for purposes of these audits. Specifically, CMS is seeking input on whether it is feasible to retrieve records directly from a provider's EHR and whether such approach would be less burdensome for providers and suppliers. In addition, CMS is seeking information on ways to use AI and ML tools in its contract-level RADV audits to review risk-adjustment data prior to payment.

TOOLS TO PROTECT PROVIDER ENROLLMENT

CMS manages approximately 2.5 million Medicare provider and supplier enrollments through the Provider Enrollment Chain Ownership System. [6] Given the importance of ensuring that the agency only enrolls legitimate providers and suppliers, CMS is exploring how new technology could improve access to data sources that would help identify potentially improper affiliations. As an example, CMS described technology that would allow seamless access to state and local business ownership and registration information. Through the RFI, CMS seeks information on which data sources are available to enhance the Advanced Provider Screening System, which continually pulls information from multiple sources to check the eligibility of providers.

DATA ANALYTICS AND DATA SYSTEMS

CMS uses a number of data systems and repositories to try to reduce the number and value of improper payments. For example, the Fraud Prevention System analyzes FFS claims to target investigative resources, identify suspect claims, and facilitate investigations. CMS is looking for ways to leverage existing data systems and repositories but move beyond current capabilities by integrating new data analytic tools and technologies to stay "on the cutting edge of data innovation." [7] In addition, CMS acknowledged that it has a number of disparate

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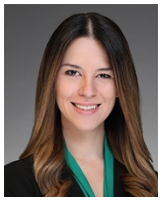
and disconnected legacy data systems that contain current or historic data, and it believes existing private-sector tools would allow these systems to be integrated and enhanced to further program integrity efforts.

Stakeholders should consider submitting comments to help CMS identify the opportunities and vulnerabilities that advanced technology presents for program integrity. K&L Gates' multidisciplinary team of lawyers is uniquely positioned to advise stakeholders on a broad spectrum of health care, life sciences, and technology matters, including Medicare program integrity initiatives, and to facilitate stakeholder engagement with CMS through the development and submission of public comments.

NOTES:

[1] *See* CMS, *Request for Information on Using Advanced Technology in Program Integrity*, CTR. FOR PROGRAM INTEGRITY (Oct. 21, 2019), https://www.cms.gov/About-CMS/Components/CPI/Downloads/Center-for-Program-Integrity-Advanced-Technology-RFI.pdf.
[2] *See* White House, *Executive Order on Protecting and Improving Medicare for Our Nation's Seniors* (Oct. 3, 2019), https://www.whitehouse.gov/presidential-actions/executive-order-protecting-improving-medicare-nations-seniors/.
[3] *See* CMS, *Request for Information on Using Advanced Technology in Program Integrity,* CTR. FOR PROGRAM INTEGRITY (Oct. 21, 2019), https://www.cms.gov/About-CMS/Components/CPI/Downloads/Center-for-Program-Integrity-Advanced-Technology-RFI.pdf.
[4] *See id.*
[5] *See id*.
[6] *See id.*
[7] *See id.*

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