AMA
AMERICAN MEDICAL ASSOCIATION

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The Honorable Kathy Campbell
Chair, Health and Human Services Committee
PO Box 94604
Lincoln, NE 68509

Re: AMA support for LB 315 relating to Medicaid recovery audit contractors

Dear Chair Campbell:

On behalf of the American Medical Association (AMA) and our physician and medical student members, I am writing to express support for Legislative Bill (LB) 315, which will make needed changes to the Medicaid recovery audit program.

The AMA supports efforts to identify improper or fraudulent activity, but cautions that physicians have been unjustly and negatively affected by many of the program's features. It is no secret that Medicaid pays substantially less than Medicare and private insurers. Medicaid recovery audit contractors (RACs) impose an additional regulatory burden on physicians who treat Medicaid patients. To ensure Medicaid patients continue to have access to care, states must establish safeguards that make the RAC program fair and not unduly burdensome for physicians.

Reduce onerous administrative requirements

Passage of LB 315 will ease many of the unnecessary burdens RACs place on physicians. The bill will require medical record demand letters to clearly identify the information sought and place a reasonable limit on the number of medical records a RAC may request from a provider. Complying with a request for medical records takes time and money. RACs typically require physicians to collect and send myriad documents including physician orders and progress notes, diagnostic test results, history, operative reports, and certificates of medical necessity even when the documentation requested is housed in a multitude of different locations and facilities. Since a physician can receive letters from multiple auditing entities, it is important that demand letters clearly identify the medical records of interest. This will limit any miscommunication, and unnecessary delays. Further, since the charge of the RACs should be to conduct targeted audits in good faith for claims that are likely to be erroneous, medical record request limits are appropriate and equitable. Without medical record request limits, physicians are unjustly burdened by unlimited "fishing expeditions" for medical records that may be erroneous. LB 315 also sets important limits on the time in which records may be inspected. The bill limits the look back period to three years and the determination period to 90 days, and requires 10-day notice of a site visit.

Ensure a fair appeals process

LB 315 also affords physicians with a just appeals process. Lengthy and divergent appeals processes can be burdensome and costly for physicians, effectively discouraging equitable adjudication of RAC determinations. The appeals process set forth by this bill includes a clear structure, reasonable time frame and adequate due process for physicians. Importantly, under LB 315, RACs will receive their fee only after any and all appeals have been fully exhausted or the time frame for filing an appeal has lapsed. This will reduce any incentive for RACs to identify claims that will likely be overturned on appeal and reduce the administrative burden on the state Medicaid program to identify and collect fees already paid to RACs for claims which were subsequently overturned on appeal.

Create equitable payment incentives

The AMA has long maintained that the contingency fee structure for identified overpayments is inappropriate for any RAC program, as it perversely incentivizes RACs to engage in bounty hunting, which leads to increased expenses and administrative burdens for physicians. To adequately incentivize RACs to identify all types of billing errors, LB 315 requires that the fees set for underpayments mirror those for overpayments. Further, RACs are intended to identify and correct improper billing, not to identify fraudulent activity which falls under the jurisdiction of other state entities. When the underlying claim in a RAC audit for which reimbursement was sought was proper, it is imperative that the physician receive or retain appropriate reimbursement for the services rendered. To permit otherwise is inappropriately punitive and beyond the intent of the RAC program. LB 315 would ensure physicians are compensated for necessary services provided to Medicaid patients.

Focus on education, outreach, and transparency

Finally, the AMA firmly believes that the best way to reduce improper coding and billing errors is through robust provider education and outreach. Medicaid RACs are in a unique position to identify program vulnerabilities, including system vulnerabilities and common billing errors, and LB 315 rightly requires RACs to inform physicians about these vulnerabilities and common billing errors through education and outreach. With passage of the bill, RACs must also electronically report to Medicaid important information for physicians. The RAC program should be transparent, including information about the number of audits conducted by the RAC, appeals, and amount of recoveries. This information is critical to assessing the effectiveness of the RAC and educating physicians, and we applaud the commitment to transparency in LB 315.

The AMA thanks you for your consideration and respectfully asks for support of LB 315. If you have any questions, please contact Annalia Michelman, JD, Senior Legislative Attorney, Advocacy Resource Center, at annalia.michelman@ama-assn.org or (312) 464-4788.

Sincerely,

James L. Madara, MD

cc: Nebraska Medical Association