

## ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Cigarette Manufacturers, Packagers, and Importers .....	77	1	6.5	501

Kimberly Lane,

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-6034-N]

#### Medicaid Program; Announcement of Medicaid Recovery Audit Contractors (RACs) Contingency Fee Update

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces an increase to the maximum contingency fee, for which Federal financial participation (FFP) will be available, that may be paid to Medicaid Recovery Audit Contractors (RAC) by State Medicaid programs as authorized by section 1902(a)(42)(B) of the Social Security Act (the Act), as amended by the Affordable Care Act, requiring States to establish Medicaid RAC programs. In the September 16, 2011 **Federal Register** (76 FR 57808), we published a final rule that ties the Medicaid RAC contingency fee to the Medicare Recovery Audit Program with an opportunity for the States to request an exception to exceed the highest fee paid to a Medicare Recovery Auditor. Further, we indicated in the final rule that we would make States aware of any modifications to the payment methodology for contingency fee rates and Medicaid RAC maximum contingency fee rates by publishing a notice in the **Federal Register**. Therefore, this notice will inform States that Medicare has increased the maximum contingency fee paid to Recovery Auditors by 5 percent for the recovery of overpayments only for durable medical equipment claims (DME).

**DATES:** *Effective Date:* This notice is effective on March 26, 2012.

**FOR FURTHER INFORMATION CONTACT:** Lori Bellan, (410) 786-2048; or Joanne Davis, (410) 786-5127.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In the September 16, 2011 **Federal Register** (76 FR 57808), we published a final rule entitled: "Medicaid Program; Recovery Audit Contractors." This final rule finalized provisions related to the implementation of a Medicaid Recovery Audit Contractor (RAC) program and provided guidance to States related to Federal/State funding of State start-up, operation and maintenance costs of Medicaid RACs and the payment methodology for State payments to Medicaid RACs. In particular, and as stated in 42 CFR 455.510(b), States must determine the contingency fee rate to be paid to Medicaid RACs for the identification and recovery of Medicaid provider overpayments. We also indicated at 42 CFR 455.510(b)(4):

[T]he contingency fee may not exceed that of the highest Medicare RAC, as specified by CMS in the **Federal Register**, unless the State submits, and CMS approves, a waiver of the specified maximum rate. If a State does not obtain a waiver of the specified maximum rate, any amount exceeding the specified maximum rate is not eligible for FFP, either from the collected overpayment amounts, or in the form of any other administrative or medical assistance claimed expenditure.

The September 16, 2011 final rule contains additional information about the process States must follow to obtain an exception to the specified maximum rate.

##### II. Provisions of the Notice

In the final rule at 42 CFR 455.510(b)(4), we stated that the contingency fee paid to the Medicaid RAC may not exceed that of the highest fee paid to a Medicare Recovery Auditor, unless the State submits, and CMS approves, an exception to the specified maximum rate, as specified in the **Federal Register**.

On June 1, 2011, we increased the contingency fee by 5 percent for the recovery of overpayments associated with DME claims that were identified by the Medicare Recovery Auditors. Therefore, the modification increases the maximum contingency fee paid to a Medicare Recovery Auditor to 17.5 percent for DME claims only. As a result of this modification, we now authorize States to pay their respective Medicaid

RACs a contingency fee up to 17.5 percent of the recovered overpayment, the current highest contingency fee paid to Medicare Recovery Auditors, for the recovery of improper payments made for medical supplies, equipment and appliances suitable for use in the home found within the Medicaid home health services benefit authorized by section 1905(a)(7) of the Act. We note that this increase in the maximum fee for which FFP is available for payments to Medicaid RACs applies only to fees paid for the recovery of improper payments of this subset of claims. The current highest contingency fee paid to Medicare Recovery Auditors for the recovery of improper payments made on all other types of claims remains the same at 12.5 percent; thus, the maximum fee that may be paid to Medicaid RACs for the recovery of improper payments on other types of claims similarly remains at 12.5 percent. This policy is consistent with section 1902(a)(42)(B) of the Act, which requires States to contract with Medicaid RACs "in the same manner as the Secretary enters into contracts" with the Medicare Recovery Auditors. The policy is also consistent with guidance provided in the final rule which aligns the Medicare Recovery Audit Program and Medicaid RAC program, to the extent possible.

##### III. Collection of Information Requirements

This notice does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35). However, it does reference previously approved information collections. As stated in section I of this notice, States must submit justifications to CMS to receive an exception to pay Medicaid RACs a contingency fee that exceeds the highest fee paid to a Medicare Recovery Auditor.

**Authority:** Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program.

Dated: February 8, 2012.

**Marilyn Tavenner,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-1591-N]

#### Medicare Program; Public Meetings in Calendar Year 2012 for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS) Coding and Payment Determinations

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the dates, time, and location of the Healthcare Common Procedure Coding System (HCPCS) public meetings to be held in calendar year 2012 to discuss our preliminary coding and payment determinations for all new public requests for revisions to the HCPCS. These meetings provide a forum for interested parties to make oral presentations or to submit written comments in response to preliminary coding and payment determinations. The discussion will be focused on responses to our specific preliminary recommendations and will include all items on the public meeting agenda.

**DATES:** *Meeting Dates:* The following are the 2012 HCPCS public meeting dates:

1. Tuesday, May 8, 2012, 9 a.m. to 5 p.m. eastern daylight time (e.d.t.)

(Drugs/Biologicals/Radiopharmaceuticals/Radiologic Imaging Agents).

2. Wednesday, May 9, 2012, 9 a.m. to 5 p.m. e.d.t.

(Supplies and Other).

3. Tuesday, June 5, 2012, 9 a.m. to 5 p.m. e.d.t.

(Orthotics and Prosthetics) and (Durable Medical Equipment (DME) and Accessories).

*Deadlines for Primary Speaker Registration and Presentation Materials:* The deadline for registering to be a primary speaker and submitting materials and writings that will be used in support of an oral presentation are as follows:

- April 24, 2012 for the May 8, 2012 and May 9, 2012 public meetings.

- May 22, 2012 for the June 5, 2012 public meeting.

*Deadline for Attendees that are Foreign Nationals Registration:*

Attendees that are foreign nationals (as described in section IV. of this notice) are required to identify themselves as such, and provide the necessary information for security clearance (as described in section IV. of this notice) to the public meeting coordinator at least 12 business days in advance of the date of the public meeting date the individual plans to attend. Therefore, the deadlines for attendees that are foreign nationals are as follows:

- April 20, 2012 for the May 8, 2012 and May 9, 2012 public meetings.

- May 17, 2012 for the June 5, 2012 public meeting.

*Deadlines for all Other Attendees Registration:*

All other individuals who plan to enter the building to attend the public meeting must register for each date that they plan on attending. The registration deadlines are different for each meeting. Registration deadlines are as follows:

- May 1, 2012 for the May 8, 2012 and May 9, 2012 public meeting dates.

- May 29, 2012 for the June 5, 2012 public meeting date.

*Deadlines for Requesting Special Accommodations:*

Individuals who plan to attend the public meetings and require sign-language interpretation or other special assistance must request these services by the following deadlines:

- April 24, 2012 for the May 8, 2012 and May 9, 2012 public meetings.

- May 22, 2012 for the June 5, 2012 public meeting.

*Deadline for Submission of Written Comments:*

Written comments must be received by the date of the meeting at which the code request is scheduled for discussion.

**ADDRESSES:** *Meeting Location:* The public meetings will be held in the main auditorium of the central building of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244-1850.

*Submission of Written Comments:* Written comments may either be emailed to [HCPCS@cms.hhs.gov](mailto:HCPCS@cms.hhs.gov) or sent via regular mail to Jennifer Carver or Laury Jackson, HCPCS Public Meeting Coordinator, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C5-08-27, Baltimore, MD 21244-1850.

*Registration and Special Accommodations:* Individuals wishing to participate or who need special accommodations or both must register by completing the on-line registration

located at [www.cms.hhs.gov/medhpcsgeninfo](http://www.cms.hhs.gov/medhpcsgeninfo) or by contacting one of the following persons: Jennifer Carver at (410)786-6610 or [Jennifer.Carver@cms.hhs.gov](mailto:Jennifer.Carver@cms.hhs.gov); or Laury Jackson at (410) 786-9222 or [Laury.Jackson@cms.hhs.gov](mailto:Laury.Jackson@cms.hhs.gov).

#### FOR FURTHER INFORMATION CONTACT:

Jennifer Carver at (410) 786-6610 or [Jennifer.Carver@cms.hhs.gov](mailto:Jennifer.Carver@cms.hhs.gov).

Laury Jackson at (410) 786-9222 or [Laury.Jackson@cms.hhs.gov](mailto:Laury.Jackson@cms.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On December 21, 2000, the Congress passed the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106-554). Section 531(b) of BIPA mandated that we establish procedures that permit public consultation for coding and payment determinations for new durable medical equipment (DME) under Medicare Part B of title XVIII of the Social Security Act (the Act). The procedures and public meetings announced in this notice for new DME are in response to the mandate of section 531(b) of BIPA.

In the November 23, 2001 **Federal Register** (66 FR 58743), we published a notice providing information regarding the establishment of the public meeting process for DME. It is our intent to distribute any materials submitted to CMS to the Healthcare Common Procedure Coding System (HCPCS) workgroup members for their consideration. CMS and the HCPCS workgroup members require sufficient preparation time to review all relevant materials. Therefore, we are implementing a 10-page submission limit and firm deadlines for receipt of any presentation materials a meeting speaker wishes us to consider. For this reason, our HCPCS Public Meeting Coordinators will only accept and review presentation materials received by the deadline for each public meeting, as specified in the **DATES** section of this notice.

The public meeting process provides an opportunity for the public to become aware of coding changes under consideration, as well as an opportunity for CMS to gather public input.

##### II. Meeting Registration

###### A. Required Information for Registration

The following information must be provided when registering:

- Name.
- Company name and address.
- Direct-dial telephone and fax numbers.