Garfunkel Wild

HHS-OIG's Strategic Plan for Oversight of Managed Care for Medicare and Medicaid

How OIG's Newest Plan Impacts Providers

Debra A. Silverman, Esq.
David M. Traskey, Esq.
Alison T. Schimel, Esq.

April 17, 2024

About Garfunkel Wild

40+
YEARS

85+
LAWYERS

6
OFFICES

FULL-SERVICE, ONE FOCUS: HEALTH CARE.

OFFICES: New York (Great Neck and Albany), New Jersey, Connecticut, Washington, DC and Florida

RECOGNITION: *Chambers USA, The Best Lawyers in America©, and Super Lawyers*

Garfunkel Wild

Disclaimer

Although this presentation may provide information concerning potential legal issues, it is for educational purposes only and not a substitute for legal advice from qualified counsel. Any opinions or conclusions provided during this presentation represent the personal opinions of the presenters and should not be ascribed to Garfunkel Wild, P.C. You should not and are not authorized to rely on the content of the presentation as a source of legal advice, and this presentation does not create any attorney-client relationship between you and Garfunkel Wild, P.C. or the attorneys presenting.

Garfunkel Wild

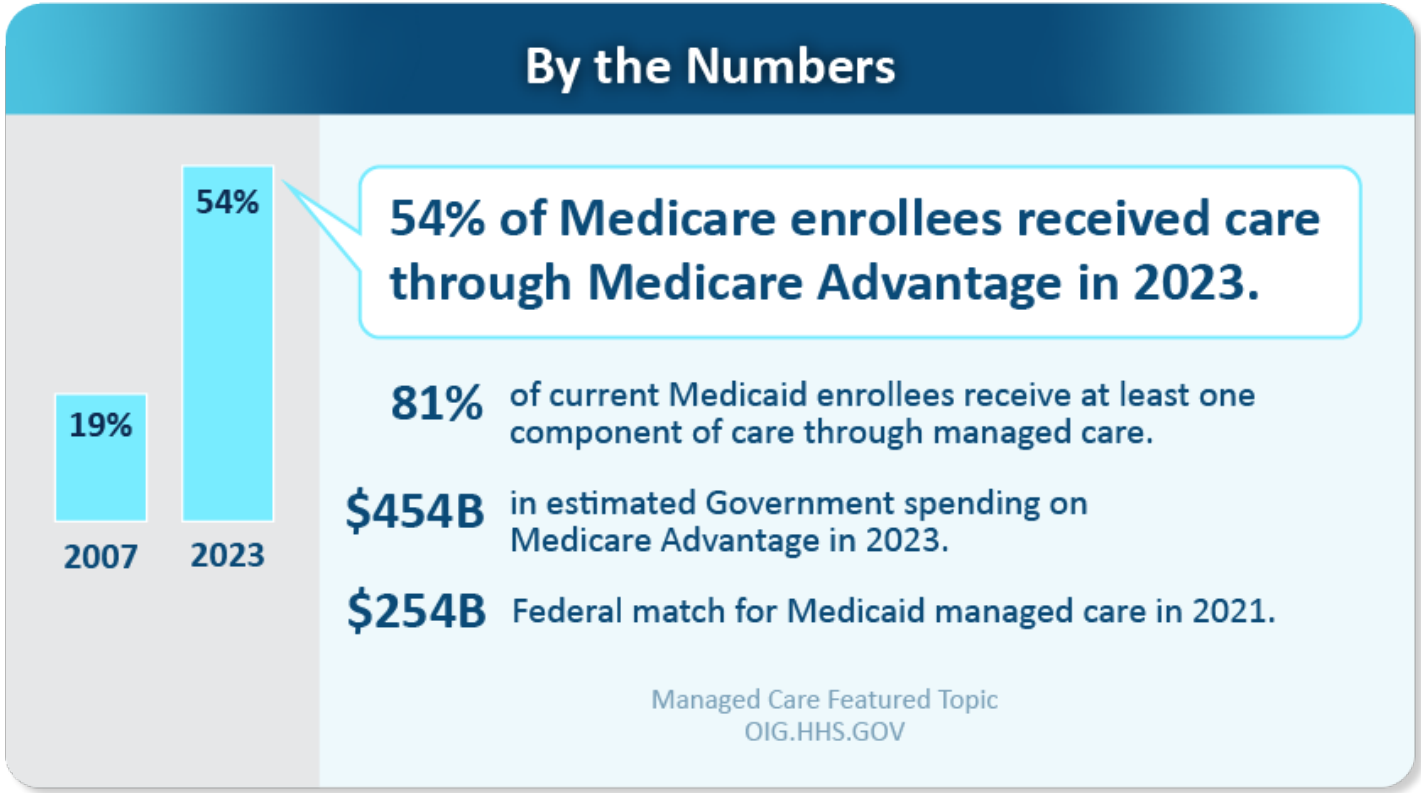
Today's Agenda

- HHS-OIG Strategic Plan Overview
- Impact on Providers
- Payments and Service Issues
  - Two-Midnight Rule
  - Risk Adjustments
  - Voluntary Self-Disclosures

Garfunkel Wild

HHS-OIG Strategic Plan Overview

The U.S. Department of Health and Human Services (HHS) Office of the Inspector General (OIG) recently designated oversight of managed care as a priority.



https://oig.hhs.gov/reports-and-publications/featured-topics/managed-care/?hero=managed-care-ft

Garfunkel Wild

HHS-OIG Strategic Plan Overview (cont.)

- The HHS-OIG Strategic Plan for Oversight of Managed Care for Medicare and Medicaid has three goals:
  - promote access to care for people enrolled in managed care;
  - provide comprehensive financial oversight; and
  - promote data accuracy and encourage data-driven decisions.
- HHS-OIG has developed a strategy to align its audits, evaluations, investigations and enforcement of managed care.

Garfunkel Wild

Impact on Providers

- While the majority of OIG's oversight will focus on managed care organizations (MCO), MCOs have already shown their intent to shift this risk down to providers.
- OIG will focus on MCO activities related to the following areas:
  - plan establishment and contracting;
  - enrollment of enrollees;
  - payments – both from CMS and States to MCOs and from MCOs to providers; and
  - services – do enrollees have sufficient access to high-quality services (network adequacy, untrustworthy providers).

Garfunkel Wild

Payments and Service Issues – Two-Midnight Rule

- Starting this year, Medicare Advantage plans have to follow the Two-Midnight Rule that already applies to traditional Medicare.
- Medicare Advantage Organizations (MAOs) must now provide coverage for inpatient admissions when:
  - the admitting physician expects the patient to require hospital care for at least two-midnights;
  - the admitting physician does not expect the care to cross two midnights but determines inpatient care is still necessary (based on complex medical factors, severity, current medical needs, and the risk of an adverse event); and
  - the inpatient admission is for a surgical procedure specified by Medicare as inpatient only.

Garfunkel Wild

Payments and Service Issues – Risk Adjustment

- The Medicare Advantage Risk Adjustment Data Validation (RADV) program is how CMS addresses improper overpayments to MAOs by confirming that any diagnoses submitted by the MAO for risk adjustment are supported in the enrollee's medical record.
- Risk adjustment discrepancies are identified when an enrollee's HCCs used for payment, which are based on MAO self-reported data, differ from the HCCs assigned based on the medical record review performed by CMS through the RADV audit process. Discrepancies are aggregated to determine the overall level of payment error.
- In February 2023, CMS issued its Final Rule codifying that RADV audits will now be extrapolated back to payment year 2018.
- As of August 2023, OIG had identified approximately $377M in potential overpayments.

Garfunkel Wild

Payments and Service Issues – Risk Adjustment (cont.)

- Since there is now greater financial risk for MAOs, MAOs are strengthening the language related to RADV audits in provider agreements to pass along the risk to providers such as:
  - Requiring providers to comply with all medical record requests relating to RADV audits in specified time frames; and
  - If the MAO determines that the provider's coding and documentation is not accurate, the MAO may:
    - institute a corrective action plan or require the provider to undergo training and education;
    - apply financial penalties to the provider; or
    - terminate provider's agreement for recurring failures.

Garfunkel Wild

Payments and Service Issues – Voluntary Disclosures

- OIG is expanding its engagement with MAOs and their special investigation units to address growing fraud under Medicare Advantage and Medicaid managed care.
- This improved collaboration will increase referrals of potential fraud to law enforcement.
- Whether or not the managed care participation agreement includes language requiring providers to voluntarily disclose identified overpayments, voluntary disclosure requirements apply equally to Medicare Fee-For-Service as well as Medicare Advantage.

Garfunkel Wild

Debra A. Silverman

Partner/Director

516-393-2225 | dsilverman@garfunkelwild.com

Debra A. Silverman is the Chair of Garfunkel Wild's Managed Care Practice Group. She represents hospital systems, teaching and community hospitals, faculty practice plans and physician group practices, with an emphasis on managed care contracting, health care delivery networks, accountable care organizations, clinical integration, physician arrangements, antitrust and regulatory matters.

Garfunkel Wild

David M. Traskey

Partner

202-844-3256 | dtraskey@garfunkelwild.com

David Traskey, co-head of the Firm's Washington, DC Office, advises individuals and entities involved in government investigations, guides clients on corporate compliance and governance matters, and litigates civil and white-collar healthcare fraud cases. Prior to joining Garfunkel Wild, David served as Senior Counsel with the United States Department of Health and Human Services (HHS), Office of Inspector General (OIG).

Garfunkel Wild

Alison T. Schimel

Associate

516-393-2506 | aschimel@garfunkelwild.com

Alison Schimel advises clients on a host of general commercial and regulatory matters. Alison's practice focuses on counseling clients with respect to managed care contracting and health care delivery models.

Garfunkel Wild

Our Offices

Garfunkel Wild

Great Neck, New York

111 Great Neck Road, Suite 600
Great Neck, NY 11021
Tel: 516.393.2200
Fax: 516.466.5964

Albany, New York

677 Broadway, 7th Floor
Albany, NY 12207
Tel: 518.242.7582
Fax: 518.242.7586

New Jersey

411 Hackensack Avenue, 10th Floor
Hackensack, NJ 07601
Tel: 201.883.1030
Fax: 201.883.1031

Connecticut

350 Bedford Street, Suite 406A
Stamford, CT 06901
Tel: 203.316.0483
Fax: 203.316.0493

Florida

401 E Las Olas Boulevard, Suite 1423
Fort Lauderdale, FL 33301
Tel: 754.228.3853
Fax: 754.228.3852

Washington, DC

1717 K Street NW, Suite 900
Washington, DC 20006
Tel: 202.780.3366
Fax: 202.780.3366

Garfunkel Wild