

CMS RESPONSES TO MINNESOTA'S COMMENTS
ON THE MEDICAID NCCI APD TEMPLATE

2.3.11

Minnesota's concern 1: However, the APD template and other CMS guidance indicate that a state may not deactivate edits without prior approval from CMS after March 31, 2011 for any reason. It is unclear whether or not this guidance applies to new and/or revised edits appearing in quarterly update files.

Response: The CMS will approve a State's request to deactivate edits after March 31, 2011, if the State documents through the APD process the State laws, regulations, administrative rules, and / or payment policies that conflict with those edits. This guidance applies to both new and revised edits from the quarterly updates; thus, States must make a determination on a quarterly basis and ascertain if edit files from one quarter to any following quarters contain updates that conflict with State laws, regulations, administrative rules and/or payment policies. If edits do in fact conflict with State law, etc. States are required to submit an APD Update to receive prior approval from CMS to deactivate edits after March 31, 2011. However, CMS is providing some flexibility in terms of edits that continue to conflict with State law etc. Specifically, if the edit files from quarter to quarter continue to contain certain edits that continue to conflict with State law etc. and the State has already received approval from CMS to deactivate these specific edits, CMS will not require an APD Update from the State every quarter thereafter.

Minnesota's concern 2: Part II of the APD template is clear that states that did not submit APD's prior to March 1, 2011 may need to submit an APD for the first time if a new quarterly release contains edit changes that now conflict with state law/regulation/rule/payment policy. It also clear that the quarterly updates will be complete replacement files and that an APD update is not needed to continue previously approved deactivations that continue to be in conflict with state law/regulation/rule/payment policy. However, the template is unclear regarding the process for CMS approval for deactivations for states that submitted APDs prior to March 1st when there is a conflict in a subsequent quarterly release. If states are to use the APD Update process, this should be clearly stated and a timeline for such a process should be described. Such a timeline should also account for the work a state must undertake in retrieving, evaluating, and loading the replacement files; drafting and submitting the APD update when it finds a conflict in the new files; and the time CMS has to respond to the APD Update (30 days). Given that CMS has indicated that they will post quarterly updates only 15 days prior to the commencement of the new quarter, we do not think it will be possible for states to complete these tasks before the new files become effective at the quarter's start.

Minnesota suggests that CMS outline a timeline for states to submit APD updates that are necessitated by the new and/or revised edits contained in quarterly replacement files. We also suggest that when a state has submitted a timely APD update, CMS permit flexibility in implementing quarterly replacement files until they receive an APD Update response from CMS.

Response: In cases where a State has submitted an APD request for deactivation prior to March 1, the APD will remain in effect even after April 1, assuming that the deactivated edits previously approved by CMS for deactivation continue to conflict with State law, regulation, administrative rules and/or payment policies. If the State determines that subsequent quarterly updates contain edits that conflict with State law etc. that have not been previously approved for deactivation by CMS, the State should prepare and forward an APD Update to CMS in order to receive prior approval to deactivate any additional edits. By regulation, CMS has up to 60 days to approve APDs; however, we agree with the commenter that the timeline for a State determination and submission of an APD and the receipt of approval of the APD from CMS may not be conducive to timely implementation of quarterly edit updates. Therefore, CMS has committed to responding to APD requests timely and has put together a national team to review and approve APDs. The timeline would be such that once the quarterly updates are received, the State should request, via APD Update, any deactivations once the need to do so has been identified, and CMS would then respond within 30 days. It would be reasonable for CMS to grant flexibility to meet this best case timeline.

Minnesota's concern 3: Additionally, Minnesota would like to point out that the final section of the APD template calls for States to report by February 1, 2011, certain information for the period October 1, 2010 to January 31, 2011. It is unlikely that States will be able to gather the information requested, draft this section of the APD, and have it approved internally and submitted to CMS all within one working day. We recommend that the APD template be adjusted to request the information for the time period of October 1, 2010 to January 1, 2011.

Response: Section 6507 of the Affordable Care Act and the State Medicaid Director letter of September 1, 2010 refer to CMS reporting to Congress by March 1, 2011. CMS is imposing this requirement since the States' reports to CMS must be received by February 1, 2011 in order to allow 30 days for CMS to prepare the Report to Congress and in order to ensure that State issues are represented. CMS agrees it would be reasonable for a State to report to CMS by February 1 State activities beginning with the period of implementation through January 1, 2011.