

Responses to Comments Received
Federal Register Notice
CMS-10343/OMB#: 0938-NEW

CMS received one comment letter directed to a September 10, 2010 notice (75 FR 55330) regarding CMS-10343. The comments within that letter were outside the scope of CMS-10343, addressing instead CMS-179 “Transmittal and Notice of Approval of State Plan Material and Medicaid State Plan- Base plan, Attachments and Supplemental Pages and Supporting Regulations in 42 CFR 430.10-430.20 and 440.167.” CMS-179 has been used by States to notify CMS of changes to their State plans. However, the CMS-179 is currently being utilized by States to attest that they will establish Medicaid RAC programs that are compliant with the recently enacted Affordable Care Act. The commenter was the National Community Pharmacists Association (NCPA).

Comments on Supporting Statement for the State Plan Amendment Pre-print Form CMS-10343/OMB#: 0938-NEW

NCPA asserted that the State Plan Preprint contains a provision whereby States have the option to “make payments to the [Medicaid] RAC(s) on a contingent basis for collecting overpayments.” While NCPA stated that they understood that this provision is statutorily mandated, NCPA contended that paying auditors on a contingency fee basis encourages auditors to be unreasonably aggressive and develop a “bounty-hunter” mentality. According to the NCPA, the contingency fee arrangement creates a financial incentive for RACs to identify as many overpayments, technical and otherwise, as possible, while placing less emphasis on underpayments.

CMS Response

NCPA’s comment requests changes to a widely used form based on concerns of inappropriate vendor behavior. The CMS-179 document is a collection instrument used by CMS to gain information from States. By submitting a preprint to CMS, States are merely attesting that their RAC programs are compliant with Section 6411 of the Affordable Care Act, which requires States and territories to establish RAC programs by December 31, 2010. Because the NCPA’s concerns regarded recommended safeguards against potential inappropriate conduct on the part of some RACs, the comments are out of scope regarding the propriety of the published collection instrument. Therefore, no change will be made to the preprint document.