The Question Is Not If Your Company Will Be Audited But When: Be Proactive Instead of Reactive

Denise M. Leard, Esq.
Brown & Fortunato
Current Audit Climate
Current Status

- Audits are back with volumes increasing from all audit contractors.
- Most contractors seem to be staying away from pandemic related claims so seeing increased volume on things like surgical dressings, urologicals, ostomy, hospital beds, manual wheelchairs, etc.
- Many suppliers are seeing multiple audits occurring at the same time from different entities.
DME MAC – Targeted Probe and Educate (“TPE”)

- On August 12, 2021, CMS announced the restart of the TPE program:
  - TPE started fresh, so suppliers that were in a TPE before may not get one right away and vice versa.
  - Providers previously referred to CMS after failing round 3 and were in a round 4 have been picked up right away again.
  - The 10-claim review that was being done prior to initiating a TPE has reconvened.

- For the 19 Counties Affected by Hurricane Ian TPE audits have temporarily been suspended and closed.
Current TPE Audits

<table>
<thead>
<tr>
<th>Product Category/HCPCS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ankle-Foot/Knee-Ankle-Foot Orthosis (L1902,L1906,L1971,L4361,L4396,L4397)</td>
</tr>
<tr>
<td>Enteral (B4035)</td>
</tr>
<tr>
<td>Glucose Monitors (A4253)</td>
</tr>
<tr>
<td>Immunosuppressive Drugs (J7503,J7507,J7518,J7520,J7527)</td>
</tr>
<tr>
<td>Knee Orthosis (L1832,L1833,L1844,L1851,L1852,L2397)</td>
</tr>
<tr>
<td>Manual Wheelchairs (K0000-K0009)</td>
</tr>
<tr>
<td>Spinal Orthoses (L0450-L0651)</td>
</tr>
<tr>
<td>Therapeutic Shoes (A5500,A5512,A5513)</td>
</tr>
</tbody>
</table>
Supplemental Medical Review Contractor

- Conducts nationwide medical reviews, as directed by CMS
- Reviews are assigned through CMS and focus on analysis of national claims data issues identified by:
  - CMS internal data analysis
  - Comprehensive Error Rate Testing (CERT) program
- Three types of SMRC Reviews
  - Provider Compliance Group
  - Program Integrity Group
  - Healthcare Fraud Prevention Partnership
SMRC Audit Process

- SMRC reviews claims on a post payment basis
- Affected providers receive an additional documentation request (”ADR”) letter
- Providers have 45 days to respond but can request extensions
- Supplier will receive Review Results Letters with detailed findings
  - Agree: Refund upon receipt of overpayment demand
  - Disagree:
    - Request a re-review - opportunity to submit additional documentation for review
    - Appeal upon receipt of overpayment demand
SMRC

- A small number of very large SMRC audits involving thousands of claims also occurred during PHE
- Three types of SMRC Reviews
  - Provider Compliance Group
  - Program Integrity Group
  - Healthcare Fraud Prevention Partnership
- PCG audit volumes are on the rise
<table>
<thead>
<tr>
<th>Project Details</th>
<th>Dates for Review</th>
<th>Date Added</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ostomy Supplies</td>
<td>1/1/2019 – 12/3/2019</td>
<td>12/10/2021</td>
</tr>
<tr>
<td>Surgical Dressings</td>
<td>1/1/2019 – 12/31/2019</td>
<td>11/23/2021</td>
</tr>
</tbody>
</table>
Recovery Audit Contractor ("RAC")

- Performant Recovery – National HH&H and DMEPOS Recovery Audit Contractor (RAC) Region 5
- Goal: To recoup overpayments and pay underpayments
- As required by Section 1893(h) of the Act, RACs are paid on a contingency fee basis
  - The amount of the contingency fee is a percentage of the improper payment recovered from, or reimbursed to, providers.
  - The contingency fees range from 14.0 - 17.5 percent. The RAC must return the contingency fee if an improper payment determination is overturned at any level of appeal.
Recovery Audit Contractor ("RAC")

- Performant Recovery – National HH&H and DMEPOS Recovery Audit Contractor (RAC) Region 5
- Goal: To recoup overpayments and pay underpayments
- As required by Section 1893(h) of the Act, RACs are paid on a contingency fee basis
  - The amount of the contingency fee is a percentage of the improper payment recovered from, or reimbursed to, providers.
  - The contingency fees range from 14.0 - 17.5 percent. The RAC must return the contingency fee if an improper payment determination is overturned at any level of appeal.
RAC Audit Process

- The RAC reviews claims on a post payment basis
- Audit issues must be approved by CMS
- Two types of reviews:
  - Automated (no medical record needed)
  - Complex (medical record required)
- Providers have 45 days to respond, but can request extensions
### RAC - Complex

<table>
<thead>
<tr>
<th>DMEPOS Under Complex Reviews</th>
<th>Date Posted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enteral Nutrition Therapy</td>
<td>12/6/2021</td>
</tr>
<tr>
<td>Parenteral Nutrition Therapy</td>
<td>12/6/2021</td>
</tr>
<tr>
<td>Immunosuppressive Drugs</td>
<td>12/1/2020</td>
</tr>
<tr>
<td>Continuous Glucose Monitor</td>
<td>9/8/2020</td>
</tr>
<tr>
<td>Hospital Beds</td>
<td>3/1/2020</td>
</tr>
<tr>
<td>Manual Wheelchairs</td>
<td>3/1/2020</td>
</tr>
<tr>
<td>Surgical Dressings</td>
<td>1/1/2020</td>
</tr>
</tbody>
</table>
# RAC - Automated

<table>
<thead>
<tr>
<th>DMEPOS Under Automated Reviews</th>
<th>Date Posted</th>
</tr>
</thead>
<tbody>
<tr>
<td>CGM Supplies</td>
<td>9/8/2020</td>
</tr>
<tr>
<td>Cervical Orthoses</td>
<td>1/1/2020</td>
</tr>
<tr>
<td>Ankle-Foot Orthoses and Knee-Ankle-Foot Orthoses</td>
<td>10/1/2019</td>
</tr>
<tr>
<td>Upper Limb Orthoses</td>
<td>5/17/2019</td>
</tr>
<tr>
<td>Knee Orthoses</td>
<td>5/1/2019</td>
</tr>
<tr>
<td>Spinal Orthosis (TLSO/LSO)</td>
<td>1/1/2019</td>
</tr>
</tbody>
</table>
Uniform Program Integrity Contractors (“UPICs”)

- Perform program integrity functions
- Primary goal is to investigate suspected fraud, waste, and abuse
- UPICs may, as appropriate:
  - Conduct interviews with beneficiaries, complainants, or providers
  - Conduct an onsite visit
  - Identify the need for a prepayment or auto-denial edit, payment suspension, revocations, post pay overpayment determination
  - Refer cases to law enforcement to consider civil or criminal prosecution
- Share information (leads, vulnerabilities, concepts, approaches) with other UPICs
- Are often very aggressive although CMS oversight has increased in recent years.
UPIC Audit Response Strategy

- UPICs should be treated very differently and carefully
- Requests from UPIC should be escalated to upper management/compliance officer immediately
- Review request and respond with required documentation to support services were provided and medically necessary
- Conduct a risk assessment to determine potential financial risk so you can prepare, if necessary
- Prepare “cover letter” that summarizes the medical record and pertinent policy requirements when necessary
- Consider engaging counsel and/or audit experts
OIG Audit – Hospice claims

- OIG Report, “Medicare Improperly Paid Suppliers an Estimated $117 Million Over 4 Years for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Provided to Hospice Beneficiaries”
- Audited two samples of claims (with/without GW modifier) – 200 claims total
- OIG found 121/200 claims were improperly paid
  - Suppliers were unaware that they had provided items to hospice patients
  - System edits were not effective or did not exist
  - Suppliers inappropriately used the GW modifier
- Expect audit activity of hospice claims to increase
**OIG Audit – PMD Repairs**

- “Medicare Improperly Paid DME Suppliers an Estimated $8 Million of the $40 Million Paid for PMD Repairs”

- 100 sampled beneficiaries, 922 PMD repairs: 637 complied, 261 did not
  - Documentation did not support the charges for repairs, labor time was not documented, or charges were not reasonable and necessary
  - $41,137 in improper Medicare payments and $10,494 in associated beneficiary coinsurance payments.

- OIG also questioned charges for 183 repairs associated with 19 sampled beneficiaries citing documentation and services not being medically necessary.
  - $20,692 in questionable Medicare payments and $5,278 in associated beneficiary coinsurance payments.
OIG Audits

- Another PAP audit is currently underway
- Likely a follow up to the 2018 report that identified $631.3 million in overpayments after auditing just 100 claims
  - Resulted in significant issues for suppliers throughout the US
  - Led to 6-year lookback audit
- This time, OIG has indicated that they are only reviewing to determine that a valid sleep study occurred.
## OIG Work Plan

<table>
<thead>
<tr>
<th>Project Description</th>
<th>Date Posted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicare Payments for Intermittent Urinary Catheters</td>
<td>July 2022</td>
</tr>
<tr>
<td>Medicare Payments outside of the hospice benefit (revised)</td>
<td>February 2022</td>
</tr>
<tr>
<td>Prevention of fraud, waste and abuse related to orthotic braces (revised)</td>
<td>January 2021</td>
</tr>
<tr>
<td>Review of Medicare Payments for Power Mobility Device Repairs (partial)</td>
<td>October 2019</td>
</tr>
<tr>
<td>Supplier Compliance with Medicare Requirements for Replacement of Positive Airway Pressure Device Supplies</td>
<td>October 2019</td>
</tr>
<tr>
<td>Medicare Payments of PAP Devices for OSA Without Conducting a Prior Sleep Study</td>
<td>August 2019</td>
</tr>
</tbody>
</table>
General Audit Response Strategies

- Prepare intake staff for incoming ADR requests and establish response process: Non-response adds to error rate
- Review ADR request and corresponding coverage policies to ensure documentation meets criteria
- Consider drafting a “cover letter” that summarizes the records and pertinent policy requirements when the opportunity allows
- If documentation is lacking and an addendum would be sufficient, work to obtain this for submission during the appeals process
  - Addendums are sometimes accepted upon appeal, but not during audit
- Request extensions when needed – only on post-payment reviews
Audit Response Strategies

- Review audit results and utilize discussion periods if possible
  - Allows providers to provide additional information to support the original payment of a claim
  - 30 days to submit request

- Review records for valid signatures and obtain attestations where applicable
Proactive Audit Strategies

- A provider without a compliance program is considered negligent and uncovered compliance issues could result in more severe penalties for providers without a compliance program.

- Most important elements:
  - Education and Training
  - Internal Auditing
  - Risk Analysis
  - Policies and Procedures

- Have staff regularly review audit contractor websites.
Audits – Looking Ahead

- FY 2022 Budget calls for significant budget increase for CMS Program Integrity Activities – $65.8 million increase
- Administrative Law Judge backlog is clearing
- Audit volumes will likely continue to increase as PHE winds down
- CMS will likely develop an audit plan for DME MACs and other contractors to audit CR modifier claims
  - Entities using CR modifiers on large volumes of claims will likely be targeted
- Industry stakeholders are still calling for transparency in CMS audit plans and clarity on unresolved issues
- There is a potential for a significant uptick in RAC audit volume after Q2 2022
Audits – Looking Ahead

- FY 2022 Budget called for significant budget increase for CMS Program Integrity Activities – $65.8 million increase
- TPE started fresh, so providers that were in a TPE before may not get one right away and vice versa.
- Providers previously referred to CMS after failing round 3 and were in a round 4 have been picked up right away again.
Audits – Looking Ahead

- Audit volumes will likely continue to increase as PHE winds down
- Industry stakeholders are still calling for transparency in CMS audit plans and clarity on unresolved issues
- There is a potential for a significant uptick in RAC audit volume after Q2 2022
Questions?
Thank you

Denise M. Leard, Esq.
dleard@bf-law.com | 806-345-6318