

When the Auditors Come Knockin'

A Legal Update and Compliance Game Plan

October 7, 2014

AHHC Leadership Conference
Wrightsville Beach, North Carolina

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Auditors are everywhere (and come with lots of acronyms). This presentation addresses the following audit types:

Office of Inspector General (“OIG”)

- OIG is the primary watchdog agency for federal healthcare programs (including Medicare and Medicaid).
- OIG’s annual work plan sets the tone for its work and the work of federal and state enforcement and regulatory agencies.

Health Information Portability and Accountability Act (“HIPAA”)

- The Office of Civil Rights is beginning to conduct HIPAA compliance audits.
- Penalties have recently increased.

False Claims Act (“FCA”) Investigations

- FCA is becoming go-to tool for combating fraud in federal healthcare programs.
- Changes have strengthened whistleblower rewards, allowing up to 30% of recovery.
- Failure to repay overpayment within 60 days of identification can lead to FCA investigations.
- FCA cases include treble damages and a per-claim penalty of up to \$11,000.

Criminal Investigations

- North Carolina Attorney General's Medicaid Investigations Unit ("MIU") and U.S. Attorney's Offices prosecute criminal fraud and have made healthcare-related fraud a major priority.
- Convictions frequently lead to multi-year prison sentences and millions of dollars in fines and restitution.

Medicaid Program Integrity ("PI")

- DMA PI continues to conduct postpayment reviews aimed at identifying "overpayments."
- DMA focuses on compliance with clinical coverage policies as basis for recovery.
- Use of extrapolation has decreased but still remains a tool.
- In 2015, DMA will be issuing an RFP for an omnibus Program Integrity contract.

Medicaid Recovery Audit Contractors ("RACs")

- Medicaid RACs work on behalf of the state Medicaid programs to audit Medicaid providers to recoup overpayments.
- RACs have been paid on a contingency-fee basis and frequently use extrapolation.
- North Carolina has contracts with two Medicaid RACs: Public Consulting Group and HMS.

Medicaid prepayment review

- Any provider can be subject to having its claims suspended and being required to submit documentation for review and

Top Ten Tips for Surviving Any Audit

1. Have a plan ahead of time.
2. Know which entity is auditing you and what services and payment source is being audited.
3. Know what the auditors want, and make sure you get them what they want.
4. Appoint a single staff member that is responsible for sending in documentation to audit contractors or responding to on-site audits.
5. If you do not understand what documentation the auditor is asking for, get clarification.
6. Document each interaction.
7. Be aware of deadlines.
8. Make a copy of everything you send to the auditor.
9. Involve legal counsel early in the process.
10. Conduct internal reviews and self-audits.

approval before payment.

- Chapter 108C does not give provider appeal rights.
- Prepayment review can have major impact on cash flow.
- North Carolina reviews are currently being conducted by Carolinas Center for Medical Excellence (“CCME”).

Medicaid Integrity Contractors (“MICs”)

- Medicaid audits conducted by CMS and its contractors.
- MICs were established to identify and decrease overpayments.
- MICs are divided into audit, review, and education.
- Review MICs mine the data to identify aberrant billing practices; audit MICs conduct postpayment reviews; education MICs teach providers about program integrity issues.
- CMS may cancel or postpone MIC audits to avoid duplication.
- Health Integrity is the Audit MIC for North Carolina.

Payment Error Rate Measurement (“PERM”)

- PERM is a federal Medicaid Program implemented by CMS.
- PERM measures the accuracy of Medicaid payments to the State.
- Providers are often contacted by a PERM contractor asking for documentation to support billing of one or more claims.
- PERM audits will begin reviewing eligibility in FY 2017.
- PERM review contractor is A+ Government Solutions, LLC.

Medicare Administrative Contractors (“MACs”)

- MACs are primarily charged with administering Medicare payments.
- MACs also use data from other contractors to target improper payment and vulnerabilities.
- With this data, MACs also conduct audits of Medicare providers .
- MACs conduct prepayment and postpayment review.
- Notification of MAC audit is typically through an Additional Documentation Request (“ADR”).

Medicare Recovery Audit Contractors (“RACs”)

- Medicare RACs detect and correct past improper payments so that CMS can implement actions that will prevent future improper payments.
- They are limited to a 3-year look back period.
- Medicare RACs are not paid on a contingency-fee basis.
- Medicare RACs have the authority to use extrapolation.
- Notification of RAC audit is through an ADR.

Medicare Zone Program Integrity Contractors (“ZPICs”)

- ZPICs are charged with auditing Medicare Parts A, B, C, and D, including Home Health, DME, and Hospice.
- ZPICs audits are typically based upon complaint or data analysis.
- ZPICs can and often do use extrapolation.
- ZPICs also conduct Medicare v. Medicaid data matching audits.
- ZPICs are organized into seven zones nationwide.
- North Carolina is located in Zone 5. The Zone 5 ZPIC is currently NCI AdvanceMed.

Immigrations and Customs Enforcement (“ICE”)

- ICE conducts investigations to ensure employees are authorized to work in the United States, and the employer has complied with verification requirements.
- Compliance investigations can be triggered by complaints or on ICE’s initiative.
- Penalties can include substantial fines for paperwork violations and criminal sanctions for intentional misconduct.

Fair Labor Standards Act (“FLSA”)

- U.S. Department of Labor Wage and Hour audits conduct investigations to determine compliance with FLSA.
- Auditors may review up to three years of business records and question employees.
- Violations can include failure to pay minimum wage or overtime.
- Penalties can include fines of up to \$10,000 and imprisonment of up to six years.

North Carolina Wage and Hour Act

- N.C. Department of Labor Wage & Hour Bureau conducts investigations to ensure compliance with Act.
- Compliance investigations can be triggered by complaints.
- Enforcement priorities include minimum wage, youth employment, accrued time off, and overtime pay.

