

Anatomy of an Appeal

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Fourth Medicare RAC Summit
September 13-14, 2010

THE NEW AUDIT LANDSCAPE

- CMS contractors in the current audit landscape
 - Recovery Audit Contractors (RACs)
 - Medicare Administrative Contractors (MACs)
 - Medicaid Integrity Contractors (MICs)
 - Program Safeguard Contractors (PSCs) & Zone Program Integrity Contractors (ZPICs)
 - Quality Improvement Organizations (QIOs)

SUCCESSFUL APPEAL STRATEGIES

The Medicare Appeals Process

OVERVIEW

- *Rebuttal*
- *Discussion period*
- Redetermination
- Reconsideration
- Administrative Law Judge Hearing
- Medicare Appeals Council (MAC)
- Federal District Court

SUCCESSFUL APPEAL STRATEGIES

The Medicare Appeals Process

■ Rebuttal and Discussion Period

- Engaging in rebuttal or the discussion period (or both) **does not** extend the provider's appeal deadlines
- The rebuttal and discussion periods are avenues outside of the Medicare appeals process
 - Rebuttal and discussion period may be used to create an open dialogue with the contractor or attempt to stop the immediate recovery of an alleged overpayment.

SUCCESSFUL APPEAL STRATEGIES

The Medicare Appeals Process

Rebuttal

- Providers may file a rebuttal statement within 15 calendar days of receiving the results of a post-payment review
- The statement should address why the suspension, offset or recoupment (collectively referred to as the “recovery”) should not take effect on the date specified in the notice
 - The statement may be accompanied by other pertinent information
- The contractor must consider the statement and any accompanying evidence and, within 15 days of receiving the statement, make a determination as to whether the facts justify the recovery
 - The contractor must issue a written determination of its findings
- Consideration: Rebuttal before ALJ stage of appeal

SUCCESSFUL APPEAL STRATEGIES

The Medicare Appeals Process

Discussion Period

- Discussion period begins on:
 - The date of the demand letter for automated reviews
 - The date of the review results for complex reviews
- Discussion period ends on the date recoupment occurs
- To engage in a discussion, providers must notify the RAC in writing
- Providers can use this opportunity to:
 - Discuss and challenge the denial rationales
 - Obtain clarification on how the RAC made its determination

SUCCESSFUL APPEAL STRATEGIES

The Medicare Appeals Process

Discussion Period

- Recent experiences
 - Recent success in discussion period
 - Confusion between RAC and MAC
- Considerations
 - Available in RAC audits
 - Timing of submission – substantive work up at an early stage

SUCCESSFUL APPEAL STRATEGIES

The Medicare Appeals Process

Redetermination

- Once contractor makes an initial determination, a provider has **120 days** to file a request for redetermination
 - Request for redetermination must be filed **within 30 days** after the date of the first demand letter in order to avoid recoupment of the overpayment. Recoupment begins on the 41st day after the date of the demand letter.
- The contractor has 60 days from the date of the redetermination request to issue a decision
 - Providers may submit additional evidence after the request is submitted, and the contractor may extend the 60 day decision-making time period by 14 days for each submission.
- Consideration: Preventing the withhold
- Experience: Recent success at redetermination

SUCCESSFUL APPEAL STRATEGIES

The Medicare Appeals Process

Reconsideration

- Once the contractor issues a reconsideration decision, a provider has **180 days** to file a request for reconsideration
 - Request for reconsideration must be filed **within 60 days** after the redetermination decision in order to avoid recoupment of the overpayment. Recoupment begins on the 76th day after the redetermination decision.
- **Key Considerations:**
 - Full and early presentation of evidence requirement
 - Preventing the withhold
 - Submission of additional evidence, 14 day extension of time
 - Reviewer credentials

SUCCESSFUL APPEAL STRATEGIES

The Medicare Appeals Process

Administrative Law Judge (ALJ) Hearing

- A provider must file a request for an ALJ hearing **within 60 days** of the QIC's reconsideration decision.
- Amount in controversy requirement must be met
- ALJ hearing may be conducted in person, by video-teleconference (VTC), or by phone
- CMS will recoup the alleged overpayment during this and following stages of appeal
- Consideration: MAC reversal of favorable findings by ALJ

SUCCESSFUL APPEAL STRATEGIES

The Medicare Appeals Process

Administrative Law Judge (ALJ) Hearing

- Discovery versus requests for information
 - Discovery is only permitted when CMS or its contractors participate as a party
 - Regardless, providers can submit FOIA requests for information and request to review the audit file
- CMS or its contractors may participate in the hearing without being a party

SUCCESSFUL APPEAL STRATEGIES

The Medicare Appeals Process

Medicare Appeals Council (MAC)

- A provider dissatisfied with the ALJ decision has **60 days** to file an appeal to the Medicare Appeals Council (MAC)

Federal District Court

- A provider must submit an appeal to the federal district court within **60 days** of the date of the MAC decision
 - Amount in controversy requirements must be met

SUCCESSFUL APPEAL STRATEGIES

Arguing the Merits

- Merit-based arguments include:
 - Medical necessity of the services provided
 - Appropriateness of the codes billed
 - Frequency of services

- To effectively argue the merits of a claim:
 - Draft a position paper laying out the proper coverage criteria
 - Summarize submitted medical records and documentation
 - If relying on medical records in an ALJ hearing:
 - Organize using tabs, exhibit labels and color coding
 - Use graphs and medical summaries to assist in the presentation of evidence

- Use of past Medicare Appeals Council cases
 - http://www.hhs.gov/dab/divisions/medicareoperations/macdecisions/mac_decisions.html
 - <http://www.hhs.gov/dab/macdecision/>

SUCCESSFUL APPEAL STRATEGIES

Use of Experts

- Experts such as physicians, registered nurses, coding experts, and inpatient rehabilitation specialists may be helpful in appealing a contractor determination

- Experts can:
 - Assess strength of a case early on and help develop a strategic plan
 - Assist with the interpretation and organization of medical records
 - Provide testimony regarding appropriateness and/or necessity of services
 - Affidavit at redetermination and reconsideration levels
 - Live testimony at ALJ hearing

SUCCESSFUL APPEALS STRATEGIES

Audit Defenses

- Provider Without Fault
- Waiver of Liability
- Treating Physician's Rule
- Challenges to Statistics
- Reopening Regulations
- Regulatory & Constitutional Challenges

SUCCESSFUL APPEALS STRATEGIES

Post-Payment Audit Case Study

Example: Recent post-payment audit of an hematologist-oncologist

- **Redetermination**

- Prevent a withhold: structure of practice involved purchasing chemotherapy drugs upfront – a withhold could have put the practice out of business
- 30 day deadline to submit request for Redetermination to stop withhold
- Gather necessary documentation and submit copies
- Involvement of counsel at an early stage
- Likelihood of success?

SUCCESSFUL APPEALS STRATEGIES

Post-Payment Audit Case Study

Example: Recent post-payment audit of an hematologist-oncologist

■ Reconsideration

- File request for reconsideration within 60 days to stop withhold
- Full and early presentation of evidence requirement
- Continued to serially submit additional evidence every 14 days, QIC has discretion to extend timeframe
- Involvement of experts
 - Affidavits

SUCCESSFUL APPEALS STRATEGIES

Post-Payment Audit Case Study

Example: Recent post-payment audit of an hematologist-oncologist

- ALJ Hearing
 - Provider can no longer stop a withhold
 - Timing considerations: 90 day waiver
 - Use of experts and other witnesses
 - Provider
 - Statistician
 - Efforts to involve treating physician for a key denial

SUCCESSFUL APPEALS STRATEGIES

Other Audit Experiences

- Pre-Payment audit appeals
 - Time considerations - withhold is not an issue, but the provider may not be receiving payment
 - Consolidation of individual claims for efficiency
- Successful statistical challenge at reconsideration
- Considerations when appealing to the MAC

QUESTIONS?

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