Zone Program Integrity Program & Recovery Audit Contractors

Advance Planning and Responsive Tools.

AHLA – Long Term Care and the Law Program
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The Decade of Recovery
ZPIC Authorization / Purpose

- Detect fraud or improper utilization.  
  42 USC 1395ddd(b)(1)
- Successor to PSCs
- “primary task … is to identify and stop potential fraud” – PIM 1.7, 4.2
- Conduct pre and post payment audits
- Extrapolate overpayments
- Refer to MACs for recovery
- Suspension Authority/OIG Referrals
ZPIC Contracts include:

- Part A: Home Health & Hospice
- Part B: DME & Supplies
- Part C: Managed care
- Part D: Medicare Prescription drugs
- A cost audit report
- Reimbursement
Your Neighborhood ZPIC
Regional Audit Contractors – RACs

- Younger Sibling to ZPIC
- Authorized at 42 USC 1395ddd(h)
- Analyze Fee for Service Payments Only
- Often Automated Review; Often Wrong
Audits Triggered By:

- Billing Patterns
- Whistleblowers / MAC Referrals
- Hospice Length of Stay
- Growth in Billings
- Continuous coding errors- OASIS Timing
- Bundling fees
- Billing for services not rendered
Be Prepared for an Audit

• Select a highly qualified compliance officer
• Identify response team
• Master the LCDs
• Implement intake, tracking & billing process
• Develop audit policies and procedures & involve clinical staff
• Internally self audit on on-going basis
• Use external auditors
Response to Audit Request

- Compile **complete** documentation
  - Even Documents Outside Audit Window
- Ensure multi-disciplinary review before submission
- Retain a copy of all documents
- Confirm Receipt of Documents by ZPICs
- Can take years to complete work
Outcomes from Audits

• Suspension of payment
• Recoupment of payment
• Refer to enforcement agencies
• Provider can be placed on 100% pre-payment and stop billing (getting off based on approval-denial %)
• Revocation of participation in Medicare program
ZPIC Audit Findings

- Reported by ZPIC in letter and data CD
- Adopted by MAC immediately into demand
- First Chance: Rebuttal Opportunity
  - Immediately to ZPIC
  - 15 days only (42 USC 1395ddd(7)(B)(iii))
  - Supply missing Documentation
  - Insist upon specifics (42 CFR 405.921; PIM 3.6.4)
First Level – Redetermination (Medicare Administrative Contractor) –
Medicare Administrative Contractor (MAC) make initial review. Must be filed within 120 days of initial determination.

Second Level – Reconsideration (Qualified Independent Contractor) –
Qualified Independent Contractor (QIC) review may be sought within 180 days of the MAC redetermination. Not many wins at this level! Must have evidence in the record by this stage. Decisions required in 60 days.

Third Level – Administrative Law Judge Hearing –
Providers entitled next to hearing before an Administrative Law Judge (ALJ). ALJ review must be sought within 60 days. Actual justice available here.

Fourth Level – Medicare Appeals Council (MAC)
A fourth level appeal request may be filed with the Departmental Appeals Board (DAB) / Medicare Appeals Council (MAC). Requests for a MAC review must be filed within 60 days of receipt of the ALJ’s decision. ZPIC and CMS will often appeal adverse ALJ decisions.
Providers that win at ALJ must remember to preserve arguments at next level.
The Appeals Council is home territory for CMS; providers lose here.

Fifth Level – U.S. District Court Review
Providers may file suit in District Court, but forget about medical necessity at this level. If going to District Court, bring a good legal argument. Judges are not medical experts.
ALJ – Justice Available Here (For Now)

- ALJ’s Are Best Chance
  - 56% Reversal Rate for Providers
  - Don’t Like ZPIC Technical Denials
  - Focus On Reasonable and Necessary, Nothing Else
  - Willing To Examine Statistical Validity

- OIG Study:
  - Providers file “too many” appeals
  - Suggests implementing fees
  - Planning to re-educate ALJs

- NOTE: FIND GREY SCALE OF JUSTICE BACKGROUND
Recoupment / Interest Issues

- Congress precludes recoupment until both redetermination and reconsideration complete (42 USC 1395ddd(f)(2)(A))
- But CMS short-circuits statutory appeal timing by requiring quick redetermination and reconsideration requests (41 days / 60 days)
- Significant time pressure on provider - TIPS
- Contrast ZPICs; allowed years to complete
- Interest accrues meanwhile at 11% (highest US government rate on the books)
Post Finding Appeal Tips

- Carefully Review Findings
  - Medical Statements buried in Claim Line Denial Docs Running Thousands of Pages
- File Separate Redetermination Requests on Each Patient Denial in the Sample
- Double Check Completeness of Documentation
  - Obtain Third Party Records (Hospitals/Treating Physicians)
- Retain Statistics Expert
- Pay Attention to Inconsistencies Findings
Hospice Medical Necessity Arguments

Clinical Judgment of Doctors Entitled to Deference

LCD Provide Objective Criteria

Partial Denials Beyond 6 Months Vulnerable

CMS Said Hospice Won’t Be Punished for LOS

Decline Not Required

Death of Patient as Evidence
Home Health Medical Appeal Notes

- OASIS system provides objective rating
- ZPICs don’t understand this rating and make arbitrary adjustments
- ZPIC focus on numbers of visits but ignore OASIS authorization coding
- ZPICs don’t understand visit payment cliffs for skilled nursing or therapy
- ZPICs fail to explain basis for denials
Legal Arguments

- Technical Denials Improper
  - US Code/PIM says denials must be on necessity
  - Courts say payment denial must be material
  - Excessive Fines Argument

- Improper Reopening
  - ZPICs limited to CMS Reopening Regs
    - 1 year ok; but ZPICs most often use 2-4 year reopening for good cause (and it often does not exist)
      - Requires new material evidence
    - 9th Circuit Says No Judicial Review
Statistical Extrapolation

- Improper Extrapolation
  - Congress said Secretary must authorize Contractor use of extrapolation; but ZPICs do this on their own

- ZPIC (Bad) Habits
  - Choose same sample size always = 30
  - Variance in overpayment size undermines reliability
  - Universe size may not always justify sampling

- Offsets
  - Hospice Cap Liability
Financial Strength Depends On:

- Leadership is the foundation of a “just culture” & meaningful corporate compliance program
- Full understanding Medicare Regulations
- Training / Auditing
- Documentation Protects You and Income
EDUCATE & DOCUMENT!!

ASSESSMENT

PLANNING

IMPLEMENTATION

EVALUATION &

EDUCATION & RESPONSE
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Simione™ Healthcare Consultants provides solutions for your core home care and hospice challenges – organizational, financial, sales & marketing, technology, and mergers & acquisitions. Over 1000 organizations use our practical insight and tools to reduce costs, mitigate risk and improve efficiencies to steward the way they conduct business.

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