

Successful Defense and Appeal Strategies—Hospitals

The Second National Medicare RAC Summit

September 15, 2009

*Ronald S. Connelly, Esq.
Powers Pyles Sutter and Verville, P.C.
Ron.Connelly@ppsv.com*

Powers Pyles Sutter & Verville, PC

- Health law firm with over 30 years experience
- Assisting clients with over 1,000 RAC appeals
- Representing hospitals nationwide with thousands of medical necessity denials
- Council to the FAIR Fund and Palomar Medical Center in federal litigation challenging RAC reopening procedures

Rules for a Successful Appeal

1. Don't Assume that the RAC Knows What It Is Doing
2. Prepare Now, Not When the RAC Comes Calling
3. Don't Miss Deadlines
4. Make Effective Use of Every Stage of Appeal
5. Write Effective Appeal Letters

Rule1:

Don't Assume that the RAC Knows What It Is Doing

- Their job is to make money by taking your money
- You know more about your patients than they do
- Just because they say they can look at a claim doesn't mean that they can
- Extrapolation can and should be challenged

Rule1:

Don't Assume that the RAC Knows What It Is Doing

You know more about your patients than they do

- Take a second look at all denied claims
- Appeal everything that is defensible
- Claims probably not reviewed by a physician
- Opportunity for your clinicians to testify at the ALJ appeal

Rule1:

Don't Assume that the RAC Knows What It Is Doing **“Good Cause” for Reopening**

- All reopenings that occur after one year following payment must be accompanied by a showing of “good cause”:
 - new and material evidence that was not known or available at the time of payment or the evidence available at the time of payment shows on its face that an error was made.
- CMS recently issued a new manual provision indicating that medical records, if not previously submitted to the reviewing entity, can be “new and material evidence” for purposes of satisfying the “good cause” standard
- This issue currently pending in federal court

Rule1:

Don't Assume that the RAC Knows What It Is Doing

Extrapolation

- RACs permitted to extrapolate
 - Will they?
- MMA Section 935 is a general prohibition on extrapolation unless
 - A. There is a sustained or high level of payment error; or
 - B. Documented educational intervention has failed to correct the payment error
 - Forbids administrative or judicial review of a determination that a provider's error rate is sustained or high (but not whether documented education has failed)
- Hire a statistical expert

Rule 2:

Prepare Now, Not When the RAC Comes Calling

- Create a RAC team
 - POC for RAC communications and central coordination of appeals
 - Medical personnel capable of evaluating the validity of denials
 - Administrative personnel for coordinating the appeals process
- Familiarize RAC team with the appeals process and applicable deadlines
- Inform the medical records department of possible incoming medical records requests (up to 200 requests every 45 days)
- Inform all other departments so that any misaddressed/misdirected communications from RAC are promptly identified and re-routed

Rule 2:

Prepare Now, Not When the RAC Comes Calling

- Institute processes for addressing RAC audits
 - Handling and submission of requested medical records
 - Tracking denials & other RAC communications
 - Drafting responses, including rebuttals and appeals
- Implement an internal audit and/or education process based on likely areas of inquiry and results of audits
- Determine whether in-house counsel can assist in appeals and, if necessary, extrapolation issues or whether outside counsel is necessary.

Rule 3:

Don't Miss Deadlines

- Initial Determination—Fiscal Intermediary (30-day timeframe for processing)
- Redetermination—Fiscal Intermediary (120 days to file request)
- Reconsideration—Qualified Independent Contractor (“QIC”) (180 days to file request)
- Administrative Law Judge (“ALJ”) Appeal (60 days to file request)
- Medicare Appeals Council (“MAC”) Appeal (60 days to file request)
- Federal District Court (60 days to file action)

Rule 4:

Make Effective Use of Every Stage of Appeal

■ Rebuttal (RAC)

- Also known as the “discussion period”
- Not required (not technically an “appeal”)
- Is it worth it?

■ Redetermination (FI/MAC)

- Keep it short

■ Reconsideration (QIC)

- Focus on the medicine
- All documentation

Rule 4:

Make Effective Use of Every Stage of Appeal

■ ALJ

- Independent judges, best chance for reversal
- Bring your physicians

■ Appeals Council

- Generally not fruitful to appeal medical necessity

■ Federal Court

- Only to make a point

Rule 5:

Write an Effective Appeal

- Explain in detail why the case was medically necessary, with citation to pages in the medical record.
- Address all reasons for denial.
- Write in plain English. Avoid abbreviations and acronyms.
- Don't forget the "Why" or the "Because."
 - Don't just recite what you did to the patient
- Make sure that the attending physician and team members extensively review the medical record, assist in the appeal, and are available for the ALJ hearing.

Conclusion

- RAC audits and appeals are scary but survivable
- Be organized both globally and for each appeal
- Know your rights