

Preparing for Medicare's hired guns

What you need to know about Recovery Audit Contractors and the review process

By Jennifer Kirschenbaum, Esq., and Rachel Weinrib, Esq.

If you haven't heard, Medicare is utilizing third parties, otherwise known as Recovery Audit Contractors (RACs), to identify services provided by doctors who do not meet the many documentation requirements now required by Medicare for reimbursement.

For example: There have been patient's visits denied based on lack of qualitative measures of patient improvement in plans of care or failure to identify a medical reason for a visit, both convictions leading to a determination of failure to provide medical necessity for care.

Conveniently, RACs are reimbursed a percentage of the reimbursement recouped from the services they identify as unsubstantiated for Medicare reimbursement, and therefore, determinations of unsubstantiated care are rampant.

By all accounts, the RAC review process is not a fair process. Given a big enough haystack, you are bound to find some needles. Records are requested and thereafter, dissected and recalibrated in ways that rattle the best of documenters.

Of late, the results presented by clients indicate the RACs are looking to establish that the majority of chiropractic medically necessary visits submitted for reimbursement are in fact maintenance visits and therefore not reimbursable by Medicare.

You may be thinking that if you are not the target of this type of audit as of yet, there is still time to take "preventative measures." While this is true, the RAC is authorized to look back at your records for three years.

Any intentional alterations to medical records after the fact may be construed as fraudulent behavior. Keep in mind that this reference is not meant to stop you from amending a record appropriately, which would include adding a new entry signed and dated contemporaneously in an old visit.

What to do if you are contacted

If you are targeted by Medicare do not panic. There are a number of defenses available to substantiate documentation practices.

For example: As the treating chiropractor, you are in the best position to diagnose and treat the patient, which warrants a certain amount of deference from the get-go that is typically not acknowledged in an initial RAC review.

Be advised that the Medicare system has in place a number of appeals processes, which it is highly recommended you avail yourself of. Generally, more favorable determinations have been levied during the appeals process than as a result of an initial review.

Do not go through this process alone. Experienced healthcare counsel should be retained at the start of the audit process to ensure your rights are protected and potential damages are mitigated.

Typically, malpractice carriers cover the cost of legal defense work in RAC audits and you would not incur additional expenses.

While the audit process may seem daunting, keep in perspective what the process is about. Every claim you send to Medicare is a bill to the federal government that every taxpayer, yourself included, is responsible for. There aren't any expectations of going to a store and not being able to inspect what is being purchased.

It's not unfathomable to understand Medicare's perspective with the RAC audits — Medicare wants to know that the services for its beneficiaries it is paying for are quality goods.

However, Medicare has apparently adopted the mantra, "The customer is always right," and no longer wants to pay for its goods.

Bottom line: If no one calls security and the store detectors are turned off, Medicare is walking away with an arm load of goodies, which is why if you are audited, it's important to question any negative results and stand up for your right to be reimbursed for medically necessary services rendered.

This may be easy to forget in the midst of an audit, but you, as the treating chiropractor, are the only person in charge of care, and you are entitled to reimbursement for all appropriately rendered and substantiated care.

Jennifer Kirschenbaum and Rachel Weinrib are members of Kirschenbaum & Kirschenbaum's healthcare audit defense practice. Kirschenbaum serves as general healthcare counsel to the New York Chiropractic Council. They can be contacted at jennifer@kirschenbaumesq.com,