

Health Law Bulletin

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Surviving a Provider Audit

Both the Medicare and Medicaid programs are devoting more resources to program integrity, which means you are more likely than ever to be audited by Medicare, Medicaid, or one of their contractors. Here are some general steps you can take to make such an audit go more smoothly for you and your staff.

Before the Audit. The most important thing you can do before the audit is make sure you keep your documentation in order. Emphasize to your staff the importance of proper documentation. Be sure you are familiar with the manuals and regulations. Consider performing a self-audit from time to time to ensure that your staff is performing proper documentation. If the manual requires certain signatures, be sure you are getting those signatures on a timely basis.

When the Auditors Arrive (or When the Audit Letter Arrives in the Mail). You will be asked to make certain records available. Medicaid auditors may scan the records onsite or they may take them back to Little Rock. If they want to take the records back, ask if they would accept copies of the records. If necessary, ask the auditors if you can take the records to a copy shop to make copies, if you don't have adequate copying facilities in your facility. If your originals go with the auditors and you don't keep a copy, you may never get your originals back.

For audit requests in the mail, try to meet the requested deadline for submitting records if it is reasonable. If it is unreasonable or impossible to produce all the records in that time, call the audit contractor and request a reasonable extension. It is a good idea to confirm this extension in via email or letter to the contractor. Again, either send them copies or make a set of copies if you send them the originals.

In either case, designate one person to deal with the auditors and their requests for records. That way, you know that all records are handled in the same manner and you won't end up with missing records.

The auditors may offer to have an entrance conference at which the auditors will typically explain the work they are going to do and the records that they will need to see. It is usually a good idea to take them up on the offer. Some issues can be dealt with early on in the entrance conference and thereby reduce the work for you and the auditors.

At some point after the audit, the auditors may offer to hold an exit conference to explain the results of their audit. Again, it is usually a good idea to take them up on this offer in order to clear up any misunderstandings that might have occurred and also to get an indication of what might be in their final report.

If the auditors are on-site, you should remember (and remind your staff) to avoid engaging in unnecessary conversations with the auditors while they are at your facility, no matter how great the temptation may be. Of course, if they have questions about what

something in your records means or what it represents, you should answer those questions succinctly and truthfully. But don't get into drawn-out conversations with the auditors, because what you say may be taken out of context and ultimately used against you in an audit report or appeal hearing. No matter how nice the auditors may seem, they are in your facility because they have reason to believe there may be a problem; they are not there to help you.

After the Audit. You should receive a letter and a written report that explains the findings from the audit. The report will identify any alleged errors or deficiencies that the auditors found. The report will also identify the amount of questioned costs identified by the auditors. This represents the dollar value of the claims for services that the auditors believe were not appropriately documented or which were incorrectly billed.

The letter will outline your reconsideration or appeal rights for any alleged overpayment identified in the audit. Do not ignore this letter and just think that the audit will go away. You should respond to the letter within the timeframe for a reconsideration request and give your explanation for what the auditors found. You may want to review the letter and report with your attorney and request his or her assistance in responding to the auditors with your request for reconsideration, and if that is unsuccessful, an appeal. (The terminology is different for Medicare, but the principle is still the same.)

In some cases, the letter may indicate that Medicaid is taking action against you as a result of the audit findings. That action may include suspending payments, suspending participation in the program, or referral to the Attorney General Medicaid Fraud Control Unit or the federal OIG. If the letter indicates that Medicaid or Medicare is taking action that is this serious, you certainly want to consult an attorney about the issue. While it may not turn out as bad as it sounds at first, you need to be sure that you protect your rights at each step of the process.

After you respond to the audit letter, you should eventually receive a response explaining that Medicare or Medicaid agrees or disagrees with your explanation. Depending on how much money is involved and how serious the finding is, you will need to decide whether to pay the money back or pursue your appeal rights, which will be described in the letter. Again, your attorney should be involved at every stage of the process.

Do not be surprised if it takes a long time to receive your audit report or to receive a reply to any letters that you send in response to the audit. We have seen cases where audits went unresolved for several years. That doesn't mean that the audit findings have gone away. It just means no action has been taken on them yet. Medicare generally sticks to a stricter timeframe for responses than Medicaid does.

The last, but perhaps most important, thing to do after an audit is to address whatever the auditors pointed out as problems. If there were documentation problems, try to find a way to address their concerns by changing your procedures or the documents you use. Increase your oversight of the billing if billing problems were identified. It is important to address the audit findings for two reasons. First, it makes it more likely that the finding won't recur if you get audited again. And second, if the audit does result in more serious action like a suspension or referral to the Attorney General or OIG, your good-faith implementation of a corrective action plan will be a good indication that any problems the auditors found were unintentional and not worthy of drastic action. Be sure to document the steps you take, including the training you provide to your staff.

Every facility is different. Every audit is different. Therefore, there is no way to tell you exactly what will happen and exactly what you should do when the auditors arrive. But you can make sure that you are following the Medicaid manual and educating your staff so that, if the auditors do arrive, there is less chance that they will find any problems with your facility.