How to respond to a Medicare audit: 17 tips from a lawyer

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Although you may speak of a "routine" Medicare audit, there is really no such creature. This is like saying you have a "routine IRS audit." The fact is that there is some item you have claimed as a Medicare provider or the amount of claims Medicare has paid in a certain category that has caused you or your practice to be audited.

Having too many claims for level five CPT codes might, for example, cause you to be audited. Having multiple claims submitted for the same date of service, may cause you to be audited. Submitting claims for CPT codes outside of your medical speciality area, might cause you to be audited. Having the dollar amount of claims greater than the average for a similar health practitioner in the same geographic area of the country, may cause you to get audited. Having a greater number of claims submitted than the average for a similar health practitioner in the same geographic area of the country, may cause you to get audited. Filing claims for services that are on the Office of Inspector General's (OIG) annual work list may cause you to be audited.

"Routine" audits, those that do not involve some suspicion of false billings or fraudulent activities, should, nevertheless, be treated extremely seriously and the physician, group or health provider being audited should give the matter personal attention.

However, if the audit letter or audit notice is from a Zone Program Integrity Contractor (ZPIC), the matter is very serious and should not be treated as a routine audit. If the "audit" comes in the form of a subpoena, then it is extremely serious. If any FBI agent or OIG special agent is involved in it, then it is extremely serious. In any of these three cases, an experienced health attorney should be retained immediately.

Even on a "routine" audit, given the possible consequences, we recommend you immediately retain the services of an experienced health attorney to guide you through the audit process, to communicate with the auditors, and to be prepared if it is necessary to challenge the audit findings.

These are some of the actions we recommend you take and which we take in representing a physician or other health provider in responding to a Medicare audit.

1. All correspondence from Medicare, or the Medicare contractor, should be taken seriously. Avoid the temptation to consider the request from Medicare, or the Medicare contractor, just another medical records request. Avoid the temptation to delegate this as a routine matter to an administrative employee.
2. Read the audit letter carefully and provide all the information requested in the letter. In addition to medical records, auditors often ask for invoices and purchase orders for the drugs and medical supplies dispensed to patients for which Medicare reimbursed you.
3. Include a copy of the complete record and not just those from the dates of service requested in the audit letter. Include any diagnostic tests and other documents from the chart that support the services provided. Many practices document the medications and immunizations given to the patient in a separate part of the chart and not in the progress notes; all documents, the complete record, should be provided to the auditor. Remember that even other physicians records obtained as history, including reports, consultations and records from other physicians or hospitals, should also be included. Consent forms, medical history questionnaires, histories, physicals, other physicians' orders, all may be a crucial part of the record and should be included. If hospital or nursing home discharge orders or other orders referred the patient to you, obtain these to provide to the auditors.
4. Make sure all the medical records are legible and legibly copied. If the record is not legible, have the illegible record transcribed and include the transcription along with the hand-written or illegible records. Make sure than any such transcriptions are clearly marked as a transcription with the current date it is actually transcribed. Label it accurately. Do not allow any room for there to be any confusion that the newly transcribed part was part of the original record.
5. If your practice involves taking or interpreting x-rays or other diagnostic studies, include these studies. They are part of the patient's record. If the x-rays are digital, they can be submitted on a compact disc (CD).
6. Never alter the medical records after a notice of an audit. However, if there are consults, orders, test reports, prescriptions, etc., that have not been filed into the chart, yet, have these filed into it, as you normally would, so that the record is complete. Altering a medical record can be the basis for a fraud claim including criminal penalties.
7. Make sure each page of the record is copied correctly and completely. If the copy of the record has missing information because it was cut off, the original needs to be recopied to ensure it includes all the information. Don't submit copies that have edges cut off, have bottom margins cut off, are copied slanted on the page, or for which the reverse side is not copied. Reduce the copied image to 96% if necessary to prevent edges and margins from being cut off.
8. Make color copies of medical records when the original record includes different colored ink of significance. Colors other than blue and black rarely copy well and may be illegible on standard photocopiers.
9. Include a brief summary of the care provided to the patient with each record. The summary is not a substitute for the medical records, but will assist an auditor that may not be experienced in a particular specialty or practice area. Make sure that any such summaries are clearly marked as summaries with the current date they are actually prepared. Label it accurately. Do not allow any room for there to be any confusion that this new portion was part of the original record.
10. Include an explanatory note and any supporting medical literature, clinical practice guidelines, local coverage determinations (LCDs), medical/dental journal articles, or other documents to support any unusual procedures or billings, or to explain missing record entries. See item 9 immediately above.
11. When receiving a notice of a Medicare audit, time is of the essence. Be sure to calendar the date that the records need to be in to the auditor and have the records there by that date. Note: the due date is not the last date on which you can mail the records but rather is the date that the records must be at the auditor's office.
12. Any telephone communication with the auditor should be followed up with a letter confirming the telephone conference.
13. Send all communications to the auditor by certified mail (or express mail), return receipt requested so you have proof of delivery.
14. Properly label each copy of each medical record you provide and page number everything you provide the auditors, by hand, if necessary. Medical record copies often get shuffled or portions lost or damaged during copying, storage, scanning or transmission.
15. Keep complete, legible copies of all correspondence and every document you provide. When we provide records to a Medicare auditor, we make a complete copy for the auditor, for the client, for us (legal counsel) and two for your future expert witnesses (to challenge any audit results) to use.
16. Consult an experienced health law attorney early in the audit process to assist in preparing the response.
17. The above check list is by no means comprehensive. Nor do we mean to suggest that you should respond on your own. The above is illustrative of the many actions that should be taken to help protect your interests when you are subjected to a Medicare audit.

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