

## **PHARMACY PROVIDERS – WHAT TO DO IN A MEDICAID AUDIT**

The Office of the Medicaid Inspector General (OMIG) is currently auditing numerous pharmacies is seeking recovery of hundreds of thousands of dollars. This overview provides you with a summary of the Medicaid audit process and information on related issues.

### **I. The Audit Process**

The regulations governing OMIG activity are set forth in 18 NYCRR Parts 515 (unacceptable practices), 516 (penalties), 517 (audits) and 519 (the hearing process). These regulations are extremely complex and can create pitfalls if not followed properly.

The Medicaid Audit Process involves the following components:

- A provider receives notice, usually by mail, of the intent to audit.
- The audit generally commences within 60 days of the notice (letter). Audits range from 100 to 200 claims and cover a period of two to six years.
- An exit conference is scheduled, where the audit team outlines the nature and extent of the audit. Generally, records are requested for 200 services billed to the Medicaid program. Claims can be reviewed as far back in time as six (6) years.
- The Office of the Medicaid Inspector General (OMIG) or a contractor hired by the OMIG then conducts the audit at the provider's site, which can involve review or scanning of documentation.
- Once the audit is complete, the auditors provide the opportunity for a closing or exit conference. A written Exit Conference Summary is provided. This document outlines the OMIG's detailed findings, the amount of repayment that will be sought and provides the pharmacy's first opportunity at providing additional information to OMIG. We note that this process has been the subject of revisions in more recent audits, as discussed below.
- Additional information provided in response to an Exit Conference Summary is considered when the OMIG prepares its Draft Audit Report. The Draft Audit Report is similar to the Exit Conference Summary, except that it takes into account the additional information provided and provides the pharmacy thirty (30) days to respond to the Report with any and all information or legal arguments the pharmacy wants to raise.
- After the pharmacy's submission of its Draft Audit Report response, the OMIG considers the response and issues its Final Audit Report. Upon receipt of the Final Audit Report, a pharmacy has twenty (20) days to arrange for payment or face a partial withholding of its Medicaid payments due and has sixty (60) days to decide whether to request a hearing.

## **II. Issues Regarding Pharmacy Audits**

### **A. Entrance Conferences**

Questions that an OMIG Auditor may ask at a typical pharmacy entrance conference may include the following:

- What are the duties of a pharmacist?
- What are the roles of technicians and interns?
- What is the process for intake?
- What is the process for dispensing?
- What is the process when an individual comes to the pharmacy and has no refills?
- Is there a form that is completed when a physician is contacted?
- What is the phone order process?
- What is the process for electronic orders?
- Does the pharmacy provide deliveries?
- Does the pharmacy support a methadone maintenance program?
- Does the pharmacy make the retail drug price list available upon request?

### **B. Exit Conference**

OMIG has advised that new pharmacy audit protocols will include the presentation of a “binder” at the newly created pre-exit conference, which will include sample by sample findings, with specific information as to why an item was disallowed. The draft audit report will be released as quickly as possible after the exit conference. If no documentation is produced at the exit conference by the provider, the draft report will be mailed the next day. OMIG has advised that the new protocols were forthcoming but that it would take several months to get them all in place. However, in recent audits OMIG has offered a pre-exit conference in addition to the formal exit conference.

### **C. Typical Findings**

The OMIG has a multitude of standard findings for pharmacy audits. These include:

- Missing fiscal order
- Missing follow-up hard copy
- Missing prescription
- Fax backs
- Beyond 180 days for last fill
- Non-controlled prescription filled beyond 60 days
- Controlled prescription filled beyond 30 days
- Missing supervising physician for physician assistant
- Not all of the required information

- Signature missing
- Stamped name or imprinted name missing
- Refilled without prescriber's authorization
- Incorrectly billed for services included in nursing home rate
- Brand name dispensed without certification – DAW
- Billed in excess of prescribed quantity
- Billed different strength than ordered
- Missing delivery documentation
- Ordering prescriber conflicts with claim prescriber
- Unlicensed or excluded provider ordered
- No automatic refills

#### **D. Other issues**

The adjudication file is an important document that contains valuable information regarding each provider claim in the audit universe. It should be requested as a matter of course in the audit process. In cases where the OMIG is seeking to extrapolate, the provider should also request and ensure that it has received all necessary documentation (including a certification of the extrapolation by the OMIG's expert) which will be used to support the OMIG's extrapolation.

### **III. Recent Decisions Affecting the Audit Process for Pharmacies**

#### Saratoga Pharmacy Decision:

-This decision raised issues as to what new documentary evidence could be submitted after issuance of a final report for consideration by the OMIG. It is important to make all arguments to audit findings and submit as much documentation as possible at the earliest stage in the audit process but no later than in response to the draft audit report.

-The decision also raised issues as to what type of collateral evidence should be accepted by the OMIG to refute an audit finding possibly limiting such evidence to contemporaneous records (i.e. doctor's records for a patient to support a prescription order where the prescription cannot be located by the pharmacy).

#### Brighton Beach Pharmacy Administrative Decision:

-The ALJ concluded that unless a regulation mandated that all of the information on a prescription be entered only by the prescribing practitioner, the pharmacist could add information to a prescription. In this particular case, the date had been added to prescriptions by the pharmacist via a computer generated label.

#### **IV. Corporate Compliance, Self Disclosure, Voided Claims**

OMIG is very interested in a provider's corporate compliance program and is willing to sit with a provider's compliance officer. OMIG reviews its data for providers that void a substantial number of claims, what claims are being voided and continuously looks for patterns of voids. According to the OMIG, a voided claim would not be included in the audit universe.

Upon self-disclosure, OMIG will usually only seek restitution and will likely agree to take back money over a period of time. OMIG has advised that "it prefers self-disclosure" and that it is the mark of a working compliance plan. New OMIG regulations requiring a compliance plan for all Medicaid providers who bill over \$500,000 annually and certain categories of provider regardless of billings are expected to become final in 2009.

#### **V. Conclusion**

If you are audited and believe you need counsel, engage counsel as early as possible in the audit process.

Gather as much documentation as possible to refute claims. Do not fabricate or intentionally destroy records or obstruct the audit. Electronic records accurately reproduced in a hard copy format are acceptable.

Raise all objections and provide documentation to refute audit findings as early in the audit process as possible. You must raise objections to findings in the draft audit report (and respond in writing within 35 days from the date of the draft audit report) to preserve your right to challenge the findings.

Consider developing an effective compliance plan, if you do not have one in place.

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