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Medicare Target, Probe and Education Audits Require Immediate and Full Attention from Providers/Suppliers

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While many Medicare providers and suppliers may not yet have experienced a Targeted Probe and Education (TPE) audit, they should be on the lookout for this newest weapon in the medical review arsenal. It is important that providers/suppliers take these reviews seriously, because failing to demonstrate compliance by the end of the review process can have significant repercussions, including revocation of Medicare billing privileges.

CMS asserted that the intent of TPE audits is to reduce provider burden and appeals by combining medical review with provider education. TPE involves up to three rounds of review conducted by a Medicare Administrative Contractor (MAC). If the provider/supplier is deemed compliant based on the results of the review, they are removed from TPE and generally are not subject to further review on the topic that was the subject of TPE review for at least one year. However, if the MAC determines noncompliance, the provider/supplier must engage in one-on-one education with the MAC and then participate in a subsequent round of review.

Chapter Three, Section 3.2.5 of the Medicare Program Integrity Manual (MPIM) outlines the requirements for the TPE process, which leaves much of the process within the discretion of the MAC conducting the review. A recent One-Time Notification Transmittal provides additional instructions to MACs on the TPE process. CMS Transmittal 2239 (January 24, 2019). Providers/suppliers are selected for TPE audit based on data analysis, with CMS instructing MACs to target providers/suppliers with high denial rates or claims activity that the contractor deems unusual in comparison to their peers. These audits are generally performed as a prepayment review of claims for a specific item or service, though relevant CMS instructions also allow for post-payment TPE audits. A TPE round typically involves review of a probe sample of between 20 and 40 claims. Providers/suppliers first receive notice that they have been targeted from their MAC, followed by Additional Development Requests (ADRs) for the specific claims included in the audit.

As the name suggests, "education" is a major focus of these reviews. CMS requires the MACs to provide education both during the claims review process and after a probe review has been completed. Intra-probe education should occur when the MAC identifies an easily curable error and requires the MAC to contact the provider/supplier to address the error. Post-probe education requires "one-on-one" sessions which can be face-to-face, telephonic or electronic visits using webinar or similar technology, during which the MAC representative explains the alleged errors and its recommendations for resolving them prior to the next round of TPE. The MAC must provide at least 45 days between the date education is conducted and the date of service of claims selected for review in the next round to allow the provider/supplier to correct identified errors.

The large amount of discretion given to the MACs in performing these audits is problematic. The MACs determine which providers/suppliers to target, whether claims meet coverage requirements, what error rate is considered compliant, and when a provider/supplier should be removed from TPE. Providers/suppliers can be subjected to future audits based solely on the MAC's determinations, before the provider/supplier has received an opportunity to challenge claim denials through an independent appeals process. In this way, misapplication of coverage requirements can lead to further review or disciplinary action based on a determination that is later

overturned. Similarly, while the educational activities are supposedly meant to assist providers/suppliers in achieving compliance, in practice they can force providers/suppliers to appear to acknowledge error findings with which they may disagree and which may ultimately be determined to be wrong.

CMS has instructed the MACs to cite Medicare regulations addressing provider/supplier enrollment when providing notice of TPE review, which allow the agency to revoke billing privileges based on a determination that "the provider or supplier has a pattern or practice of submitting claims that fail to meet Medicare requirements." 42 C.F.R. § 424.535(a)(8)(ii). This language suggests that TPE audit findings may be used as a basis for a finding of abuse of billing privileges warranting removal from participation in the Medicare program. CMS guidance also gives the MACs authority to refer providers/suppliers for potential fraud investigation based on TPE review findings. It is therefore vital that providers/suppliers submit documentation timely and build a clear record to support their claims and compliance with Medicare requirements.

Providers/suppliers should make every effort to have inappropriate determinations of noncoverage reversed as early in the appeal process as possible to avoid the negative impact associated with high denial rates, which could ultimately result in additional prepayment review, extrapolation of denial determinations and, in a worst case scenario, revocation of billing privileges.

For assistance with TPE audits or questions about the process, please contact Kathleen Salsbury or any member of the Baker Ober Health Law Team.