Current Law: Physician Audit & Appeals Process

**CMS Recovery Audit Contractor (RAC)**
- RAC Notifies Physician of Alleged Overpayment Audit
- RACs are Not Required by Law to Provide Certain Information Before and After Audits
- RACs May Use Extrapolation in Certain Circumstances to Identify Overpayments & Physician Cannot Appeal Use of Extrapolation
- RACs Not Required to Provide Notice before Conducting Audit on an Overutilized Code
- RAC Can Review Claims Up to 4 Years Old under Law

**Non-Specialist/ Subspecialist May Review Medical Necessity Audit**

**Physicians**
- Physician Disputes Audit Finding on Day 1-30 → Value of Disputed Audit Finding Protected

**Physician Appeals Disputed Claim “Redetermination”**

**CMS 1st Level Appeal**
- Medicare Administrative Contractor (MAC) Reviews
- MAC Must Act on Appeal Within 60 Days
- MAC Rarely Meets Deadline

**Physician Appeals Disputed Claim “Reconsideration”**

**CMS 2nd Level Appeal**
- Qualified Independent Contractor (QIC) Reviews
- QIC Must Act on Appeal within 60 Days
- QIC Rarely Meets Deadline
- QIC Statutorily Permitted to Clawback Physician Payment at this Level (*Legal Team to Confirm*)

**Physician Appeals Disputed Claim**

**HHS 3rd Level Appeal**
- Administrative Law Judge (ALJ) Reviews
- ALJ Must Act on Appeal in 90 days
- The ALJ Currently Takes 547 Days to Process Appeal

**Physician WINS Appeal:**
- Physician Collects Value of Disputed Claim with Interest (if Claim Repaid)
- Physician Cannot Collect Legal Fee
- Physicians Not Reimbursed by RAC for Document Production Costs

**RAC LOSES Appeal:**
- RAC Returns Contingency Fee to CMS
- RAC Faces no Additional Penalty Under Law
- RAC Faces no Liability for Physician's Legal Fee
- RAC not Required to Reimburse Physician for Production Costs
Physicians

- Physician Disputes Audit Finding on Day 1 → Value of Disputed Audit Finding Protected
- Physician Disputes Audit Finding on Day 31 → Value of Audit Finding Not Protected. CMS Cannot “Clawback” Physician’s New Claims unless Physician Loses at the ALJ Level

Physician Appeals Disputed Claim “Redetermination”

CMS 1st Level Appeal

- Medicare Administrative Contractor (MAC) Reviews
- MAC Must Act on Appeal Within 60 Days
- MAC Rarely Meets Deadline

Physician Appeals Disputed Claim “Reconsideration”

CMS 2nd Level Appeal

- Qualified Independent Contractor (QIC) Reviews
- QIC Must Act on Appeal within 60 Days
- QIC Rarely Meets Deadline
- QIC Statutorily Permitted to Clawback Physician Payment at this Level (Legal Team to Confirm)

Physician Appeals Disputed Claim

HHS 3rd Level Appeal

- Administrative Law Judge (ALJ) Reviews
- ALJ Must Act on Appeal in 90 days
- The ALJ Currently Takes 547 Days to Process Appeal

Physician WINS Claim Appeal:

- Physician Collects Value of Disputed Claim with Interest (if Claim Repaid)
- Physician Collects Legal Fees for RAC Error that is Equal to or More than Double Final Overpayment Determination
- Physician Reimbursed by RACs for Document Production Costs

RAC LOSES Claim Appeal:

- RAC Returns Contingency Fee to CMS
- RAC Liable for Physician's Legal Fee for Errors that is Equal to or More than Double Final Overpayment Determination
- RAC may be Subject to Administrative Penalty
- RAC must Reimburse Physician for Document Production Costs

* Yellow font = changes made by the Fair Medical Audits Act (H.R. 2568)
Physicians
- Day 1-30 – Physician Disputes Claim → Value of Claim Protected
- Physician Disputes Audit Finding on Day 31-120 → Value of Audit Finding Not Protected
- CMS Cannot “Clawback” Physician’s New Claims unless Physician Loses at the ALJ Level
- Non-Specialist/ Subspecialist May Review Medical Necessity Audit

Physician Appeals Disputed Claim
“Redetermination”

CMS 1st Level Appeal
- Medicare Administrative Contractor (MAC) Reviews
- MAC Must Act on Appeal Within 60 Days
- MAC Rarely Meets Deadline

Physician Appeals Disputed Claim
“Reconsideration”

CMS 2nd Level Appeal
- Qualified Independent Contractor (QIC) Reviews
- QIC Must Act on Appeal within 60 Days
- QIC Rarely Meets Deadline
- QIC Statutorily Permitted to Clawback Physician Payment at this Level (Legal Team to Confirm)

Physician Appeals Disputed Claim

HHS 3rd Level Appeal
- Administrative Law Judge (ALJ) Reviews
- ALJ Must Act on Appeal in 90 days
- The ALJ Currently Takes 547 Days to Process Appeal

Physician LOSES Claim Appeal:
- Physician Repays Value of Disputed Claim after ALJ Decision
- Physician Reimbursed by RACs for Document Production Costs
- Physician can Appeal to the Medicare Appeals Council

RAC WINS Claim Appeal:
- RAC Receives Contingency Fee from CMS Based on Disputed Claim Amount
- RAC is Required to Reimburse Physician for Document Production Costs

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