Are ADR Request Limits Fair to Small Businesses?

Do the Rules CMS Uses to Establish Maximum Number of Audits for O&P Facilities Create a Level Playing Field?

Audits by CMS Contractors targeting Lower Limb Prosthetics have been unfair, excessive, anathema in terms of adverse effects on patient care, and via its lawsuit, its many legislative efforts, challenges to hasten access to ALJs, testimony before the Small Business Administration and other steps, the primary message of AOPA's advocacy has been to argue to restrain CMS to reduce or eliminate all of these unjustified audits that are not at all about any fraud. But what about CMS' selection criteria for who gets audited—are they fair and balanced? The simple answer is that they are not. AOPA agrees that due process requires that the procedures by which laws are applied must be evenhanded. RAC audits have been devastating in their impact on both the O&P profession and the patients that we serve, and AOPA is committed to support any step which reduces the number of RAC audits and their adverse impact. CMS and its contractors owe providers a level playing field and fairness in their audit activity.

Facts About the Rules CMS Has Adopted

CMS applied a rule stated in an April 4, 2013 ADR update on the CMS website which provides that for O&P they are entitled to initiate up to 10 new Additional Data Requests (ADRS/audits) every 45 days as to each company Tax ID number. Every O&P provider will have at least one tax ID number--that is the norm for most small businesses. Larger companies (Hanger and others) do not have a separate tax ID number for each facility they operate, and in fact, a large company could have only one or two TAX ID numbers even for a large operation. A straight mathematical analysis reveals that so long as CMS follows this rule, **a local facility of a larger company that has a small number of tax ID numbers will be much less likely to have the same number of audits as its nearby competitor which has a single tax ID number for one or two patient care facilities.** Here is an example:

If one company, for example, had 200 facilities nationwide and operates with 3 tax ID numbers, and another facility in Timbuktu operates one facility with one Tax ID number:

The 200-facility company: In a 45 day period, CMS contractors could initiate a maximum of 30 ADRs on this larger company's operations, with the odds being that any single facility will have 30/200 chance of being audited in that 45 day period.

Timbuktu facility: In a 45 day period, CMS contractors could initiate a maximum of 10 ADRs on Timbuktu operations, with the odds being that any single facility will have 10 chances of being audited in that 45 day period.

So, the odds that the Timbuktu facility is audited will be 66 times more likely to have an audit. This formula is at minimum a strong component of the disparity so a smaller facility

is more likely to be audited than its neighboring facility owned by a larger company (that operates with a small number of tax ID numbers). So, what about changing the rule? AOPA has stated that it would very likely support a petition filed by any O&P facility who would have the legal 'standing' to raise the issue to CMS urging a change to this rule. Why hasn't AOPA filed such a petition? Twofold: (1) AOPA's central message to CMS and Congress has been—reduce or eliminate the audits across the board for everyone—and CMS/Congress might be confused or find it contradictory if AOPA also led a charge saying—*you should audit these folks more and these other folks less*. AND (2) Be careful what you ask for—if the current rule is changed we run a significant risk that any resulting new methodology CMS generates is worse, not better FOR EVERYONE! For example, if CMS reverted to the audit selection rules that apply to DME, eliminated the special flat number of 10 maximum of O&P stated in paragraph 4 of the April 2013 memo, the sole limitation on the number of new audits would be **"(L)imits will be set at 10% of all claims submitted for the previous full calendar year, divided into eight periods (45 days). Although the Recovery Auditors may go more than 45 days between record requests, in no case shall they make requests more frequently than every 45 days."**

Confused? AOPA has published information on the CMS selection criteria for who gets audited and how often on 6 different occasions previously. Read CMS' current policy on selection criteria and limits on audits for O&P facilities here.

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