American Orthotic &
Prosthetic Association

The Medicare DMEPOS Audit Improvement and Reform (AIR) Act

H.R. 5083 in the 113th Congress

Background

Overview of the O&P RAC Audit/Pre-payment Audit Problem

In August of 2011 the Health and Human Services Office of Inspector General released a report, which was premised on a severe misunderstanding of the prosthetic patient care delivery model, on lower limb prosthetic billing and the report indicated that there appeared to be an abundance of fraudulent billing for lower limb prostheses. CMS accepted most of the major findings of the OIG report, without correction or rebuttal, and used the allegations of fraud to create new requirements mandating that O&P providers must have expanded documentation from the referring physician; which is often lacking in detail, is not available or the physician is unwilling to provide. CMS took this stance, even though the Office of Program Integrity determined that whatever is going on with O&P care and documentation, there is generally an absence of indicators of fraud, contrary to the premise of the OIG report.

As a result of this report:

1. CMS audit contractors, who appear to operate without rules or supervision, have applied the newly announced physician documentation standards retrospectively to claims; when the provider could have no knowledge of the standard at the time services were rendered.
2. Unleashed a “gotcha” mentality and unrealistic RAC audit practices that denied Medicare claims based frequently on minor technicalities or physician documentation requirements. Claims that were valid just months before the report was released were now denied, with no evidence of fraud. The majority of these denied claims that providers have appealed have been reversed at some level of appeal, even if it takes up to two years, demonstrating there was no fraud. (The increase in the denials and appeals due to the audits for physician documentation is a large factor in the outlandish and unlawful Administrative Law Judge (ALJ) delays).
3. CMS contractors will secure substantial caches of additional physician documentation; however it is misused as rationale for detached audit personnel who have never seen

the amputee patient, generally without either credentials or experience in orthotics or prosthetics, to countermand the prescription and care orders of the physician who has the responsibility for the overall clinical care of the patient.

The Medicare DMEPOS AIR Act

The Medicare DMEPOS AIR Act (HR 5083) was introduced on July 11, 2014 by Rep. Renee Ellmers (R-NC) and will be reintroduced in the 114th Congress. The bill addresses many auditing issues facing orthotic and prosthetic professionals, in the era of rampant unrealistic “gotcha” RAC audit practices, and provides a means to create a more accurate picture of where in the Medicare Part B program fraud is taking place. The bill amends title XVIII of the Social Security Act and would:

1. Provide fair and equal weight to certain documentation created by orthotists and prosthetists. “For purposes of determining under this title the reasonableness and medical necessity of prosthetic devices and orthotics and prosthetics, documentation created by orthotists and prosthetists relating to the need for such devices, orthotics, and prosthetics shall be considered part of the medical record”. (This modest change in language would increase patient’s access to care and eliminate a large number of claims that are being denied due to lack of notes in the medical record; prior to the inception of the current CMS audit policy in August of 2011, Medicare relied on the patient evaluating notes of the orthotist and prosthetist to determine medical necessity and other aspects of the claim)

2. Require the Department of Health and Human Services to create separate categories for orthotics and prosthetics (O&P) and for durable medical equipment (DME); when compiling and publicly reporting information on appeals filed and success of appeals for providers at ALJ level. (This would provide concise data on which claims (O&P or DME) are being appealed and the success rate of those appeals).

3. Require the Center for Medicare and Medicaid Services, or any of its contractors, exclude claims for payments that have been denied and are being appealed by a provider or supplier when calculating payment error rates. (This would allow for a more accurate and fair error rate.)

Recommendation

Please urge your legislators to support the provisions of the AIR Act, both as they appear here and to support as well the Medicare O&P Improvement Act, taking a stand against the undue burden, caused by the overzealous Medicare Recovery Audit Contractor (RAC) audits, being placed on small healthcare providers and Medicare beneficiaries. Encourage them to support both of these bills when they are to recognize and restore the legitimacy of the documentation by certified or licensed professionals in the O&P profession, and separates orthotics and prosthetics from durable medical equipment for reporting appeals information and calculating error rates.

For more information contact the American Orthotic & Prosthetic

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