

Report on Medicare Compliance Volume 31, Number 10. March 21, 2022

Provider Frustration Mounts That OIG's Independent Medical Reviewers Are 'Shielded'

By Nina Youngstrom

When attorney Deborah Kantar Gardner represented Staten Island University Hospital in a provider compliance audit, she and clinicians from the hospital met with the HHS Office of Inspector General (OIG), but they weren't allowed to talk to the independent medical reviewers who were making decisions behind the scenes about compliance with Medicare coverage and payment requirements. A lot was at stake, because OIG had concluded the hospital was overpaid an extrapolated amount in the millions of dollars.^[1] Gardner thought the OIG's independent medical reviewers had misconstrued Medicare requirements and made other mistakes when reviewing claims submitted by the hospital and should hear why directly. It was not to be.

"There was no effort to provide any transparency," said Gardner, with Ropes & Gray LLP. "They keep their independent medical reviewers shielded." She considers it "a flaw" in the OIG audit process because discussions between the providers and the people who do the reviews could conceivably prevent some appeals. "They are the ones who are making the decisions and supposedly understand the regulations and are applying them to the facts, so they would be the ones you want to talk with."

The inability to discuss audit findings with the independent medical reviewers used by the OIG in provider compliance audits is a source of growing frustration among some providers and their attorneys. They are not convinced that information they convey during the audit process, such as additional documentation or clarifications of regulations they think have been misunderstood or misapplied, is factored into the independent medical reviewers' thinking or final audit reports. The sound and fury of their responses to OIG audit findings sometimes seem to signify nothing, some observers contend.

Providers Raise Concerns About OIG Audits

OIG says that's not the case. According to Amy J. Frontz, deputy HHS inspector general for audit services, providers and other auditees have the option to interact with the audit team as part of OIG's audit process. "OIG audit teams share our medical contractor's review determinations with the auditee. Additionally, auditees always have an opportunity to respond to the official draft report. We review these responses critically and re-engage our medical review contractor when, in our professional judgment, we require their expertise to interpret new medical information or expert opinions," Frontz said in emailed answers to RMC's questions. "When appropriate, we revise our findings and recommendations as a result of the auditee's response to our official draft report."

But the lack of direct communication with independent medical reviewers frustrates people like Andrei Costantino, vice president of integrity and compliance at Trinity Health in Michigan. "I struggle with it," he said. "Why can't we meet with the reviewers?" He thinks the process is "broken" because hospitals and other providers are unable to take a shot at showing independent medical reviewers why they may have made a mistake and should reconsider, with the goal of saving everyone time and money by avoiding appeals. "At the end of the day, we were paid appropriately based on administrative law judge reviews. That's the word on the street—just

fight it. When we get to the administrative law judge, we usually win.”

Several provider compliance audits have reinforced his frustrations, including a review of Virtua Our Lady of Lourdes Hospital in Camden, New Jersey, which was previously owned by Trinity Health.^[2] OIG audited a stratified random sample of 100 claims and found errors on 40 of them, resulting in an extrapolated overpayment of \$4,765,305 for the two-year audit period. The bulk of the overpayment stemmed from errors on inpatient rehabilitation claims, according to OIG.

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