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Lawyer: Without Post-Appeal Adjustment, TPE May Go Down Bad Path

By Nina Youngstrom

When a provider's claims for facet joint injections ran the gauntlet of Targeted Probe and Educate (TPE), 64% were denied by the Medicare administrative contractor (MAC). A high denial rate isn't uncommon for pain management procedures, which are under the microscope, attorneys say. But the provider's luck changed at the second level of appeal. After the provider called attention to entries in the documentation that supported the medical necessity of the facet joint injections, the qualified independent contractor (QIC) overturned most of the claim denials, and now 64% have been approved, a mirror image of the original findings, according to the attorney who represents the provider.

But it's too soon for the provider to celebrate, said Richelle Marting, an attorney and certified coder in Olathe, Kansas. The MAC isn't adjusting the TPE error rate to account for the overturned claim denials, leaving the provider vulnerable to prepayment review and extrapolated overpayment findings, she said. With the provider on the cusp of TPE round two, Marting notified the nurse reviewer at the MAC, WPS Medicare, every time she received a notice that a claim denial was overturned. But Marting said the nurse reviewer told her the MAC doesn't adjust the provider's error rate based on the outcome of the appeal. As far as the MAC is concerned, the error rate is 64%, Marting said.

CMS FAQ Said Otherwise

"The risk of this escalating to 100% prepayment review or extrapolated review is the risk we are trying to avoid," she explained. In the Medicare manual, the standard for extrapolation is a high or sustained error rate, but the provider has shown it met coverage criteria for the procedures it's performing. "When you're basing the standard to escalate on an incorrect error rate, that's a failure of due process," Marting said.

Also, not taking into account appeal findings flies in the face of CMS guidance, Marting said. CMS addressed this question in FAQs when TPE was introduced.^[1] The question is, "Can claims reviewed as part of the TPE process be appealed? If a claim is appealed and overturned, would this impact the provider denial rate?" and the answer is, "The appeals process is unchanged under the TPE process. If a claim denial is appealed and overturned, this would be taken into consideration in subsequent TPE rounds. ... If a provider's adjusted error rate, after appeals, indicates no need for additional review, CMS will make that recommendation, and the provider will be monitored by the MAC as they would be had they passed the TPE process and been released from review."

Providers may want to pay attention to the possibility of audits coming their way because facet joint interventions and/or other pain management procedures are (or recently have been) under the microscope of MACs, unified program integrity contractors, the HHS Office of Inspector General and the supplemental medical review contractor. CMS July 1 added facet joint interventions to the hospital outpatient prior authorization process.

"I have five big-box pain management audits going on," said attorney Jessica Gustafson, with The Health Law

Partners in Michigan. They include an audit of an injection that Medicare is considering investigational and audits of nerve blocks, injections and evaluation and management services. “The scrutiny of pain management is kind of unprecedented,” Gustafson said. MACs may refer providers to UPICs or the provider enrollment department at CMS “if they think you’re not getting your house in order.”

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