Evaluating Audit Error Rates and Deciding What to Do Next

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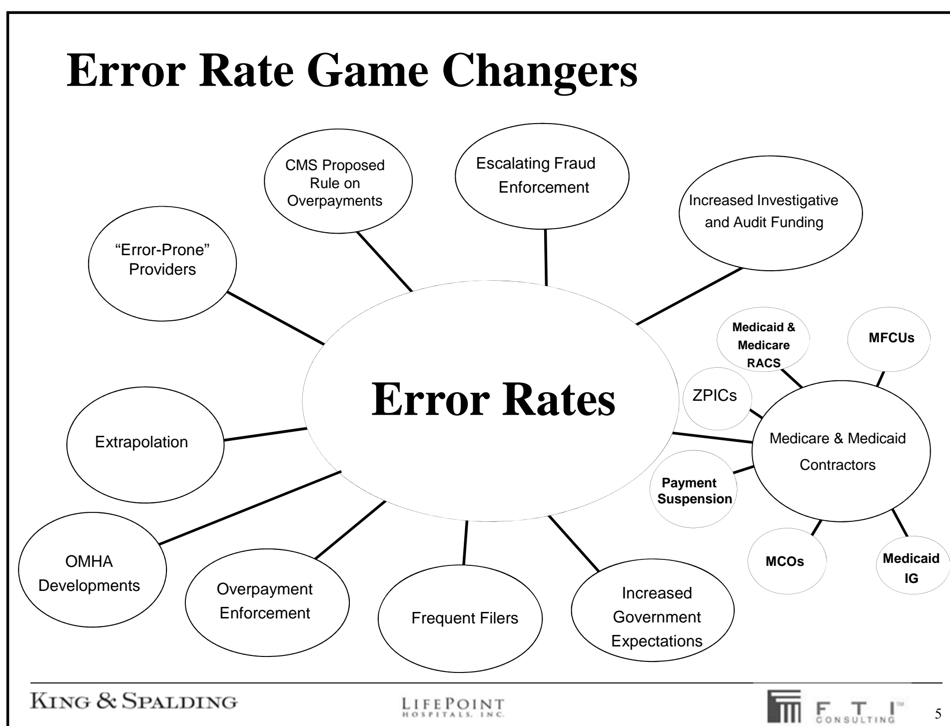
Agenda

- Enforcement / Oversight Landscape
- Audit Design & Error Rate Considerations
- What Is An Acceptable Error Rate?
- Interpreting External Error Rate Benchmarks
- Analyzing Internal Error Rates
- Additional Considerations
- Questions

Enforcement / Oversight Landscape



Healthcare Enforcement and Oversight Landscape

- Pressure from Congress to identify fraud, waste and abuse in deficit reduction efforts
- Technology and resources improving
- Continued efforts to identify "baseline" error and overpayment rates
- Ongoing enforcement activity
- **<u>All</u>** providers are at risk in the current environment

Contractors

- Federal and state governments outsourcing oversight responsibilities
- Greater number of private companies authorized to request and analyze information from provider community
- Contractors are not created equally
- Understanding different roles and authority of each contractor category will enhance providers' ability to interpret and understand the results of their work
  – *e.g.*, authority to extrapolate?

Consider One State… Georgia

Medicaid

- Thomson Reuters (Review of Provider MIC)
- Health Integrity (Audit MIC)
- Strategic Health Solutions (Education MIC)
- Medicaid Fraud Control Unit of Georgia (MFCU)
- Myers & Stauffer (Medicaid RAC)

Medicare

- Cahaba Government Benefit Administrators (A/B MAC)
- CIGNA Government Services (DME MAC)
- Palmetto GBA (Home Health and Hospice MAC)
- Connolly Consulting (A/B RAC)
- Part C RAC (TBD)
- ACLR (Part D RAC)

Potential Fraud

- AdvanceMed Corporation (ZPIC)

But Each State Is Unique

“Baseline” Error Rate Studies

- Comprehensive Error Rate Testing (“CERT”) Program -- Medicare fee-for-service
- Historical Hospital Payment Monitoring Program (“HPMP”)
- Payment Error Rate Measurement System (“PERM”) -- Medicaid
- OIG studies
  - Review of industry questionable billing practices
  - Facility-specific audits (*e.g.*, Medicare Compliance audits)

What is An Acceptable Error Rate?

Potential Consequences of High Error Rates

- Further reviews
- Corrective actions
- Overpayments/extrapolation
  - Voluntary Repayment
  - Self Disclosure
  - FCA Liability
- Stakeholder notification requirements
- Other consequences
  - Possible Payment Suspension
  - Referral to Law Enforcement
  - Increased Contractor Activity

What is An "Acceptable" Error Rate? It Depends . . .

- Type of audit
  - External or internal audit?
  - Nature and purpose of audit (CERT vs. ZPIC)
- Issues being probed
- Audit design
  - Review criteria
  - Universe
  - Sample size
  - Random (*e.g.*, CERT reviews) vs. Risk-Based Audit (*e.g.*, RAC reviews)
  - Statistically valid
  - Definition of an "error"
- Types of Errors
  - Financial vs. claim error rates
  - Net versus gross
  - Internal error rate thresholds/history
- Expectations

How Do I Compare to My Peers?

- Must understand how to interpret various government "error rate" data to determine how you "compare" to other providers
- Need to determine when your performance deviates from the norm and what sort of corrective actions and remediation steps might be necessary

Interpreting External Error Rate Benchmarks

External Audit Considerations

- Generally speaking, contractors do not publish their error rate thresholds
- However, potential consequences from contractor audits can often be gleaned from their findings:
  - References to the FCA?
  - References to extrapolation and / or statistically valid sample?
  - Findings include provider education -- could signal a potential re-audit.
  - Referral to another contractor for additional auditing?
  - Prepayment review or payment suspension?

External Audits: CERT

- Calculates Medicare fee-for-service improper payments
- The 2012 improper adjusted payment rate was **8.5%**
  - Part A Acute Inpatient Hospital Claims had an error rate of **6.8 percent**
  - Stays of one day or less had an improper payment rate of **36.1 percent**
- DMEPOS had an improper payment rate of **66.0 percent**
- E&M services had an improper payment rate of **14.0 percent**

External Audits: Medicare Program Integrity Manual

- CMS has **not** articulated an error rate threshold in the context of Medicare contractor reviews
- However, in a section of the Program Integrity Manual addressing corrective action, CMS outlines several scenarios to provide guidance regarding how MACs should respond to varying levels of errors
  - "Twenty claims from one provider are reviewed. Once claim is denied because a physician signature is lacking on the plan of care. The denial reflects ***7 percent of the dollar amount of claims reviewed***. Judicious assessment of medical review resources indicates ***no further review is necessary at this time***."
  - "Forty claims from one provider are reviewed. Twenty claims are for services determined to be not reasonable and necessary. These ***denials reflect 50 percent of the dollar amount of claims reviewed***. ***One hundred percent prepayment review is initiated*** due to the high number of claims denied and the high dollar amount denied."
  - "Forty claims from one provider are reviewed. Thirty-five claims are denied. ***These denials reflect 70 percent*** of the dollar amount of claims reviewed. ***Payment suspension is initiated*** due to the high denial percentage and the Medicare dollars at risk."

External Audits: OIG CIA

- **OIG Open Letter to Health Care Providers, Office of Inspector General, November 20, 2001:**
  - "The corporate integrity agreement billing review requirements will, in the future, require the use of a full statistically valid random sample only in instances where the initial claims review (which we will call a discovery sample) ***identifies an unacceptably high error rate."***
  - "If the net financial error rate of discovery sample is below 5% (the reportable error rate), [the] provider is not required to do any further audit work under the CIA for that year. Results are reported to OIG and identified overpayments (if any) are refunded in accordance with payor policies."
- **OIG FAQ regarding CIAs provides the following:**
  - "The purpose of conducting a Discovery Sample as part of the Claims Review is to determine the net financial error rate of the sample that is selected. ***If the net financial error rate equals or exceeds 5%, the results of the Discovery Sample are used to determine the Full Sample size.*** The Full Sample size is based on an estimate of the variability of the overpayment amount in the population from which the sample was drawn."

External Audits: Prepayment Review

- **Palmetto GBA Decision Tree:**
  - 0 - 9 percent error rate: Prepayment review is discontinued
  - 10 - 15 percent error rate: Prepayment review is discontinued, and education and a reprobe at six months is possible
  - 16 - 50 percent error rate: Continued prepayment review and a written corrective action plan from the provider is requested
  - 51 - 100 percent error rate: A written corrective action plan is requested from the provider and, after prolonged review, additional actions may include the following: (1) referral to a Zone Program Integrity Contractor (ZPIC); (2) postpayment review; (3) referral for program exclusion; and (4) payment suspension
- **National Heritage Insurance Corporation (NHIC):**
  - NHIC provides that if error rates are "high enough (above 10 percent)" then progressive corrective action will continue while provider education is being provided
  - NHIC further provides that "Targeted medical review (TMR) continues until a supplier reaches an acceptable payment error rate (usually less than 10 percent)"

External Audits: OIG Medicare Compliance Reviews

- OIG has begun to extrapolate the results of *some* Medicare compliance reviews
- This increases the ramifications of even comparatively low audit error rates
- The standard being used for when/why to extrapolate is unclear
  - Different standard for Medicare contractors versus OIG?
- Lack of clarity around appeal/repayment processes

External Audits: State Medicaid Agencies

- State Medicaid agencies may provide guidance concerning "acceptable" error rates
- **Texas, Tex. Admin. Code tit. 1, § 371.214**
  - (I) For Utilization Reviews conducted on September 1, 2008 through August 31, 2009, HHSC-OIG Utilization Review will extrapolate to the population only when the error rate exceeds 25%
  - (II) For Utilization Reviews conducted on September 1, 2009 through February 28, 2010, HHSC-OIG Utilization Review will extrapolate to the population only when the error rate exceeds 20%
  - (III) For Utilization Reviews conducted on March 1, 2010 through August 31, 2010, HHSC-OIG Utilization Review will extrapolate to the population only when the error rate exceeds 15%

2014 IPPS Final Rule: Two-Midnight Rule

- **From the Preamble – Error Rates:**
  - **"**In 2012, the CERT contractor found that Medicare Part A inpatient hospital admissions for **1-day stays or less had an improper payment rate of 36.1 percent**. The improper payment rate decreased significantly for 2-day or 3-day stays, which had improper payment rates of 13.2 percent and 13.1 percent, respectively." (FR 50943).

2014 IPPS Final Rule: Probe & Educate Reviews

- **NOT a delay in enforcement.**
- **Applies to dates of admission on or after October 1, 2013 but before September 30, 2014.**
- Medicare Administrative Contractors (MACs) will **conduct patient status reviews** using a "probe and educate" strategy
  - MACs will select a sample of 10 claims for prepayment review for most hospitals (25 claims for large hospitals).
  - Based on the results of these initial reviews, MACs will conduct educational outreach efforts and may conduct additional reviews
- *Contractors may continue other types of inpatient hospital reviews*, including coding reviews and inpatient hospital patient status reviews for dates of admission prior to October 1, 2013.

2014 IPPS Final Rule: Probe & Educate Reviews

The MACs will categorize concern levels and implement provider-specific action.

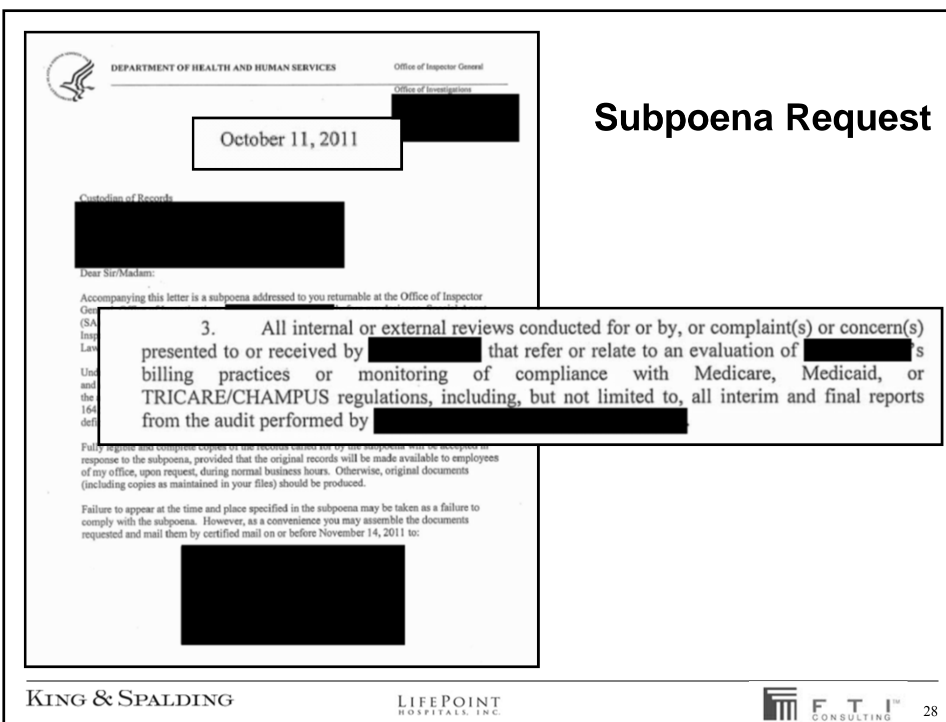
- **Minor Concern**: A provider with a low error rate and no pattern of errors, defined as 0-1 errors out of 10 claims or 0-2 errors out of 25 claims.
  - Action: MACs will educate the provider via the results letter indicating the reasons for denial of the inpatient claim.
- **Moderate-Significant Concern**: A provider with a moderate error rate, defined as 2-6 errors out of 10 claims or 3-13 errors out of 25 claims.
  - Action: MACs will offer 1:1 telephonic provider education in addition to the written review results letters. ***MACs will repeat the probe strategy***.
- **Major Concern**: A provider with a high error, defined as 7+ errors out of 10 claims or 14+ errors out of 25 claims.
  - Action: MACs will offer 1:1 telephonic provider education in addition to the written review results letters. ***MACs will repeat the probe strategy.***

- If continuing major concerns are identified, MACs will select 100 claims (for providers with 10 sampled claims) and 250 claims (for providers with 25 sampled claims) for review.

Analyzing External Error Rates – Recap

- What was the purpose of the audit?
- How was the universe (sampling frame) defined?
- How was the sample selected?
- How were errors defined?
- How was the error rate calculated?
- What sort of follow-up steps were required?

Analyzing Internal Error Rates



Subpoena Request

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Office of Investigations

October 11, 2011

Custodian of Records

[redacted]

Dear Sir/Madam:

Accompanying this letter is a subpoena addressed to you returnable at the Office of Inspector

> 3. All internal or external reviews conducted for or by, or complaint(s) or concern(s) presented to or received by [redacted] that refer or relate to an evaluation of [redacted]'s billing practices or monitoring of compliance with Medicare, Medicaid, or TRICARE/CHAMPUS regulations, including, but not limited to, all interim and final reports from the audit performed by [redacted].

response to the subpoena, provided that the original records will be made available to employees of my office, upon request, during normal business hours. Otherwise, original documents (including copies as maintained in your files) should be produced.

Failure to appear at the time and place specified in the subpoena may be taken as a failure to comply with the subpoena. However, as a convenience you may assemble the documents requested and mail them by certified mail on or before November 14, 2011 to:

[redacted]

Internal Audits

- Can control design of audit
  - Random?
  - Risk-Based?
  - Statistically valid?
  - Reviewer expertise
  - Issues reviewed
  - Standards employed
- Internal Auditing & Monitoring Policies
  - Differences between auditing and monitoring
  - Who is authorized to *initiate* audits that may generate error rates?
  - Who is notified of the audit findings and error rates?

Internal Error Rate Considerations

- Always trying to drive error rates down
- When is the Chief Legal Officer (CLO) and Chief Compliance Officer (CCO) notified of error rate results?
  - All error rates over 15%? 20%?
- How are error rates intended to be used?
- How are error rates communicated?
  - What documentation is created and how is it maintained and used?
  - Are audit findings typically issued in draft form?

Internal Error Rate Considerations

- Confirm that appropriate stakeholders are notified of "significant" error rates
  - Consider an internal policy for notifying the CLO and CCO of significant error rates
- Document the nature, purpose and design of the audit in the report (*e.g.*, best practices / company policies audited)
- Document any and all corrective action measures

Internal Error Rate Considerations

- Consider when a re-probe is needed to test corrective action
- When refunding overpayments, consider messaging of error rate (*e.g.*, are you clearly explaining the audit design?)
- Corporate culture implications
  - Internal communications
  - Whistleblower considerations

Additional Considerations

False Claims Act Litigation

- The government and qui tam relators may attempt to use **error rates as a sword**:
  - *United States ex rel. Keltner v. Lakeshore Medical Clinic, Ltd.*
    - "Relator's allegations are sufficiently detailed to survive defendant's Rule 12(b)(6) and 9(b) motions. Although she does not allege that defendant knew that specific requests for reimbursement for E/M services were false, ***she claims that defendant ignored audits disclosing a high rate of upcoding*** and ultimately eliminated audits altogether."

False Claims Act (cont'd)

- Some providers have been able to use **error rates as a shield**:
  - *United States v. Prabhu (D. Nev.)*
    - "[T]he existence of such a low alleged error rate [5.5%] disproves the contention that Defendants 'knowingly' engaged in a pattern of submitting false or fraudulent claims."

Additional Considerations

- CMS Proposed Rule on Reporting and Refunding Overpayments
- Halifax Order
- Potential managed care reporting requirements

QUESTIONS AND ANSWERS