Best Practices for Conducting a Compliance Audit

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AGENDA

- Defining the project scope
- Staffing
- Standards for Review
- Defining an Error
- Reporting of Audit Results
- Sampling
- Handling the Unexpected
- Overview of Internal and External Audits
- Privilege Concerns
- FERA and PPACA Implications for Overpayments

Defining the Project Scope

- Consider the reason for the review:
  - Routine
  - Complaint follow up
  - Suspected or identified error

- Identify the issues, departments and/or locations to be reviewed

- Identify the type of review, examples include:
  - Process review
  - Data analysis
  - Claims review

Defining the Project Scope - Continued

- If the audit includes a review of claims:
  - Determine whether this is to be a prospective or retrospective review
  - Identify the sampling unit (claims, line items, date of service, patient, etc.)
  - Define the time period
  - Define the sampling approach – judgment, probe, larger statistical sample

- Timing – Providers should consider the without fault provision which can be found in the Medicare Financial Management Manual Publication 100-06, Chapter 3, Section 70

Staffing

- Routine auditing is typically handled by internal staff with training and expertise in the area to be reviewed.

- Consultants are often utilized to supplement the internal team as subject matter experts.

- Consultants are regularly used to assist in special audits or investigations.

Staffing - Continued

- Advantages of using internal staff can include:
  - Cost
  - Organization and system knowledge
  - Organizational trust

- Disadvantages of using internal staff can include:
  - Lack of employee openness during interviews due to fears of confidentiality and retaliation
  - Perceived doubts about the objectivity of the results and findings

- It is always helpful to have an internal IT person as part of the team whenever possible.

Standards for Review

- Define the standards to be used. Often these standards will be conflicting or may include requirements that go beyond legal requirements. Examples of standards often cited include:
  - Federal and State laws
  - Payor manuals
  - Conditions of participation and coverage
  - Local and national payment policies
  - Payor correspondence
  - Industry guidance

Standards for Review - Continued

- The standards used will be determined by the nature of the project and should be given careful consideration.

- It is advisable to perform some portion of the project utilizing the identified standards, review the results and then re-evaluate the applicability of the standards before completing the project.

Defining an Error

- The definition of an error and how errors will be counted is critical to meeting project expectations. Common questions include:
  - What is considered an error, only overpayments or is every record deficiency counted ?
  - Are errors counted on a claim, charge line or encounter basis? In other words, can a claim have more than one error?

Defining an Error - Continued

- Determine how you will handle common situations including:
  - What to do if a record cannot be produced (Payors typically count a missing record as an error in claims sampling);
  - What to do if an after the fact attestation could be used to satisfy the requirement;
  - How long the audit team should wait for responses to information requests before proceeding with or without the responses.

Defining an Error– Continued

- Define a targeted or acceptable error rate, examples include:
  - 5% error rate based on lines, claims etc.
  - 5% overpayments
  - 5% net overpayments

- Note that generally CIA's define an acceptable error rate as net overpayments of less than 5%. If net overpayments are less than 5% of total payments (as defined), an expanded review is generally not required.

Reporting of Audit Results

- Generally it is beneficial to present audit findings verbally prior to issuing a written report:
  - Resolve factual disputes
  - Obtain additional information or substitute information that may satisfy identified requirements

- The draft and/or final report should follow promptly thereafter.

- Providers have an obligation to report and repay *identified* overpayments within 60 days.

Sampling

- Sampling is employed when it is cost prohibitive to look at all of the items in a population. There is two types of sampling, judgment and statistical.

- Judgment sampling:
  - Non-statistical form of sampling;
  - Based on judgment;
  - Cannot be extrapolated to a larger population since it is not based on random sampling.

- Statistical sampling usually consists of a probe sample and, if necessary, a larger sample with a targeted confidence and precision.

Sampling - Continued

- Probe samples
  - Commonly used to determine whether an error exists within a population;
  - Commonly used as part of an ongoing auditing and monitoring program;
  - Used to gain information helpful in setting the parameters of an expanded sample (if necessary).
    - Expected error rates
    - Relationship between the sample unit and error
  - Generally consist of 30, 40 or 50 sample items
  - Probe sampling can assist in making assumptions about the population.

Sampling - Continued

- Larger samples (if required):
  - Are designed to achieve a targeted confidence and precision (example 90% confidence +- 10%, 15% or 25% margin or error)
  - Sample sizes are based on assumptions concerning the expected error rate and the relationship between the sampling unit and error.
  - If underlying assumptions are incorrect, the sample size may be incorrect and the targeted precision (margin or error) may not be achieved.

Sampling - Continued

- CMS requires that the sampling methodology be reviewed by a statistician or someone with equivalent experience.

- Sample Frame (population) is the listing of all possible sampling units. The sample frame must include the item to be sampled (claim, patient, date of service, etc.) and the time periods.

- In choosing the time period to sample from keep in mind changes in fee schedules between years as well as other changes that may impact the population over time.

Sampling - Continued

- Confidence and precision:
  - Terms used to describe how reliable the sample results are intended to be;
  - Confidence refers to how confident the auditor is that the results are representative of the population;
  - Precision (margin of error) is the range of values that the results may fall within if all of the items were reviewed;
  - The results are stated as a range of values with a point estimate representing the midpoint of the range.

Sampling - Continued

- Confidence and precision:
  - CMS requires not less than a 90% confidence interval
  - OIG recommends a precision of no greater than +-25%
  - CMS generally requires that overpayments be calculated at the lower bound of a one sided confidence interval.

Sampling - Continued

- Stratified and cluster sampling:
  - Populations comprised of similar items (homogeneous) require fewer sample items than populations with dissimilar items (heterogeneous).
  - It is more efficient to sample from homogeneous groups (smaller sample sizes)
  - Stratification is a process of dividing a population into homogeneous groups of items for sampling efficiency.
  - The main objective is reduce the sample size and margin or error.

Sampling - Continued

- Stratified and cluster sampling (cont.):
  - Cluster sampling involves drawing a random sample of clusters. As an example, instead of sampling individual claims it may be more efficient to sample all paid claims within a day. In this situation claims are clustered into days and days are the sampling unit.
- Sampling myth – Sample size is determined by the size of the population.

Sampling - Continued

- Sampling results:
  - Before the sample results are finalized and extrapolated to the population (frame) it is critical that each item scored as an error be reviewed to confirm that:
    - No other documents exist that would change the findings.
    - The standards used to evaluate the sample items are appropriate for the purpose of the project.

Sampling - Continued

- Calculating overpayments or underpayments:
  - In most situations, the lower bound of a one-sided 90 percent confidence interval will be used to calculate overpayments.
  - Contactors can request the point estimate in situations where a high level of precision (low margin of error) has been achieved.

Sampling - Continued

- Calculating overpayments or underpayments (cont.):
  - In a simple random sample the total overpayment may be estimated by calculating the mean net overpayment or underpayment and then multiplying that result by the number of items in the population (frame). This is the point estimate or mid-point.
  - In a stratified sample, a calculation is made for each stratum and the stratum specific calculations are added together to produce an overall point estimate.

Handling the Unexpected

- Identify the course of action to be taken if there is an unexpected (and unpleasant) discovery during the course of the review:
  - Define the event (example: suspected fraud or systemic error)
  - Identify a contact person to consult with for such discoveries (typically legal counsel)
  - Identify a course of action (example: stop all work in that area and consult with legal counsel)
  - Create a separate and distinct project for such events.

References

Sampling References

- Medicare Program Integrity Manual, Chapter 3 - Verifying potential Errors and Taking Corrective Actions
- Office of Inspector General Self Disclosure Protocol, Federal Register/ Vol. 63, No. 210/ Friday October 30, 1998, (V) (C) (3).

Privilege Concerns

Attorney-Client Privilege:

(1) Attorney-client relationship

(2) Attorney acting in capacity as attorney

(3) Communication made in confidence between the attorney and client

(4) For the purpose of securing legal advice

Privilege Concerns

Work Product Doctrine:

(1) documents and tangible things

(2) prepared in anticipation of litigation

(3) by or for a party's attorney are protected against discovery unless the party seeking disclosure can demonstrate:

(a) substantial need and

(b) that it would experience undue hardship without discovery.

Privilege Concerns

Privilege Complexities:

- Compliance Officer/Attorney may be acting in a business capacity, not as an attorney
- Crime/Fraud Exception--What if the audit leads to criminal prosecution or FCA suit?
- Underlying facts not protected--How are interview memos treated? (Opinion/Fact Work Product distinction)

Privilege Concerns

Privilege Complexities Continued:

- Disclosure to Government--Potential Waiver.
- Revised Federal Rule of Civil Procedure governing Expert Disclosures.

FERA and PPACA Implications for Overpayments

False Claims Act Changes:

- The FCA, 31 U.S.C. §§3729, et seq., is the government's primary civil enforcement vehicle.

- Congress greatly strengthened the FCA in 2009 with the passage of the Fraud Enforcement and Recovery Act ("FERA"), which established liability for improper retention of overpayments.

- PPACA further strengthens the FCA.

FERA and PPACA Implications for Overpayments

Overpayments:

- Before the passage of FERA in 2009, a "false claim, record, or statement" was required to violate the FCA. Now, "knowing" and "improper" concealment or avoidance of an obligation is sufficient.
- Under FERA, if one knowingly and improperly retains an overpayment from the Government, there is potential liability.
- "Improperly" is not defined
- Timing for return of overpayments was unclear

FERA and PPACA Implications for Overpayments

FCA Liability Triggered:

– PPACA provides:
  - "Any overpayment retained by a person after the deadline for reporting and returning the overpayment . . . is an obligation [that triggers FCA liability]"

– This section does not add a new liability provision to the FCA but stipulates the procedural steps and time period to report and return an identified overpayment in order to avoid potential FCA liability.

FERA and PPACA Implications for Overpayments

60-Days to Report and Return Overpayments:

– PPACA provides a 60-day deadline for **reporting and returning** overpayments.

– The deadline is the later of:

- (A) the date which is 60 days after the date on which the overpayment was identified;
  or
- (B) the date any corresponding cost report is due, if applicable.

FERA and PPACA Implications for Overpayments

Key Interpretive Issues-- "Reconciliation Process"

- The Committee Report accompanying FERA notes that the overpayment provision is not intended to capture interim retention of an overpayment permitted by a reconciliation process so long as it is not the product of any willful act to increase payments to which the entity is not entitled.
- PPACA § 6402 defines an "overpayment" as "any funds that a person receives or retains . . . to which the person, *after applicable reconciliation,* is not entitled. . . ." (italics added).

FERA and PPACA Implications for Overpayments

When is an overpayment “identified”?

- Once there is notice of a potential issue?
- During the course of an audit when a statistically significant error rate occurs?
- At conclusion of audit?
- After completion of final report?

Jim Sheehan Presentation to HCCA/AHLA Fraud & Abuse Conference, September 10, 2010:

> “’*identified’ for an organization means that the fact of an overpayment, not the amount of the overpayment has been identified. (e.g., patient was dead at time service was allegedly rendered, APG claim includes service not rendered, charge master had code crosswalk error)*”

Questions?

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