

SUCCESS DURING THE DISCUSSION PERIOD

By Amy K. Fehn, Esq. and Jesse Adam Markos, Esq., Wachler & Associates, P.C.

Recovery Audit Contractors (“RACs”) are required to participate in a discussion period if the provider submits a timely request. Many providers may be skeptical about the value of this discussion. They may be reluctant to spend time and resources on a process that will lead to another determination by the same RAC that issued their denial. Furthermore, because payment to RACs are made on a contingency fee basis and are based on the principal amount collected from the provider, they may assume that it is futile to engage in a process where the decision maker has a pecuniary interest in the outcome. However, experience has proven that the discussion period is an option that the provider should strongly consider. Recently, during the discussion period we were able to persuade a RAC to completely overturn an overpayment determination previously issued to our client.

The discussion period operates independent from the appeals process. It is intended to offer a provider an opportunity to submit additional information to the RAC and explain why the claim denial should be overturned or why recoupment should not occur. If persuaded, the RAC may overturn their overpayment determination.

A request to open the discussion period must be submitted to the RAC within 40 days of receipt of either the demand letter for automated reviews or the review results letter for complex reviews. One form for each claim should be submitted by facsimile on a Discussion Period Submission Form. These forms should be made available by the RAC involved in the denial.

To complete the form, the provider should include their audit number, claim number, provider number, and a copy of the audit detail. Enclosed with the form, the provider should submit additional documentation supporting payment and may include a legal brief setting forth the arguments as to why the claims should be payable.

The discussion period runs until the time for recoupment occurs. For example, if a valid request for redetermination is not received by the claims processing contractor within 30 days from the date of the demand letter, recoupment will begin and the discussion period will end on the 41st day from the demand letter date.

The discussion period offers the RAC an opportunity to revisit its payment determination. The RAC is required to assign an independent reviewer to review the additional material and provide a written response. The independent reviewer is not independent of the RAC, but is considered independent if they were not involved in the original determination.

After reviewing the additional information, the RAC may provide a written explanation supporting its overpayment determination. Alternatively, the RAC may reverse its decision altogether and find that the previous overpayment determination should be overturned.

Our client, a supplier of durable medical equipment (“DME”) received an overpayment determination letter stating that a billing pattern existed that was inconsistent with CMS

regulations. On behalf of our client, we submitted a timely request to open the discussion period with a legal brief detailing why our client was entitled to payment. In addition, to prevent recoupment, we submitted a request for redetermination with the claims processing contractor within 30 days of receipt of the demand letter.

Shortly thereafter, our client received a letter from the RAC overturning their previous overpayment determination. After reviewing the legal brief, the RAC concluded that no overpayment existed related to the claims.

Following a determination, the RAC is required to notify the claims processing contractor of its determination. The RAC's determination during the discussion period is outside of the appeals process. Therefore, the appeal will remain active until the claims processing contractor receives notice of the reversal. Once notice is received, the claims processing contractor should withdraw their overpayment request. Unfortunately, a communication delay often exists between the RAC and the claims processing contractor. As a result, providers may continue to receive correspondence from the claims processing contractor until notice is received. In some cases the provider may actually receive an unfavorable appeal decision before the claims processing contractor receives notice of the RAC's reversal!

Participating in the discussion period requires the provider to formulate their arguments and submit additional evidence at an early stage. Providers may ignore the discussion period in an effort to minimize cost and effort. However, the documentation and legal brief can also be submitted at later stages of appeal.

The success detailed above suggests that the discussion period is an option that should be explored. At a minimum, the provider will obtain information from the RAC that may prove useful both in the current appeal and to prevent future denials. Most importantly, there is always the chance that the discussion period will result in a complete withdrawal of the overpayment request.