



December 5, 2011

Ms. Karen Jackson, Director
Medicare Contractor Management Group
Centers for Medicare & Medicaid Services
Mail Stop C5-05-12
7500 Security Blvd
Baltimore, MD 21244-1850

Dear Ms. Jackson,

The California Medical Association (CMA) is writing to you regarding the multitude of medical review audits currently being conducted by Palmetto GBA in California. California physicians are distressed about the volume of requests for medical records and the threatening tone of the audit letters.

Medicare law specifically requires that, to the extent possible, the Secretary of Health and Human Services (Secretary) delegate to carriers a number of administrative responsibilities, including undertaking audits of the records of provider services as may be necessary to assure that proper payments are made. (42 U.S.C. §1395u(a)(1)(A)(C); 42 U.S.C. §1395u(b)(3).) Accordingly, Palmetto GBA has conducted numerous audits since their administrative functions for California began in 2008. Past audits, however burdensome to the recipients of the requested medical records, have not generally overwhelmed a large number of physicians at any given time. The recent so-called "special study" audit, however, has created great consternation for California physicians.

Palmetto introduced the special study because its Comprehensive Error Rate Testing (CERT) result demonstrated that its error rate in California of approximately 20% is among the highest in the country. Palmetto has mailed letters to over 11,000 physicians notifying them that they will be requesting a limited number of medical records for various ranges of codes. Some physicians have received two or more letters (i.e., one for office E&M, one for hospital E&M, and one for interpretation of diagnostic tests). Physician practices with multiple physicians are receiving large numbers of these letters and medical record documentation requests. One physician practice has 37 claims pending review of medical records from the probe of CPT 99214. This same practice now has 54 requests for documentation for four physicians, with one physician receiving 23 requests for four different studies. This volume of requests creates an enormous administrative burden on the office staff, particularly because often staff must travel to the hospital to obtain hospital records.

Even though Palmetto is referring to this initiative as a study, it is not a study but an audit. If it were a true study, Palmetto would be collecting the medical records to figure out how it can improve its performance and educate physicians on what Palmetto expects in terms of coding and proper documentation. Instead, Palmetto is collecting medical records, not paying physicians for the claims associated with the medical records, and threatening physicians with further action. Palmetto recently indicated that it expects to have over 55,000 medical records to review. CMS policy allows contractors up to 60 days to review records, which is 60 days that physicians are not paid on these claims. For the practices receiving multiple requests, this has a significant financial impact in these already difficult economic times. This coupled with the expense of converting to HIPAA 5010 transactions and Electronic Health Records, which has drained the reserves of many physicians' offices, and the uncertainty of physician reimbursement levels for 2012, is leaving many physicians wondering whether they will be able to keep their doors open.

To make matters worse, physicians are not receiving clear and consistent direction as to what is expected of them regarding coding and documentation. CMA, for instance, has long supported the elimination of two different sets of Medicare Evaluation and Management Guidelines for coding services and establishing level of care, since the outcome as a result of any review of medical records is still very subjective and may not provide fair treatment of physicians and their patients for the services rendered. Such unfairness is demonstrated by one example received by CMA of the review of one medical record by three different individuals, with three different decisions on the appropriate code. This is not an uncommon complaint. Decisions regarding appropriateness of care and of CPT code selection should be made by appropriately trained and experienced physicians who are fair and objective.

Adding further angst to physicians, the language in the various audit letters is unnecessarily threatening, particularly in light of the subjective nature of the appropriate coding interpretations. The threat of overpayment extrapolations, suspension of payments, and up to 100% of claims being subjected to pre-payment review is resulting in physicians reconsidering whether they want to continue to participate in the Medicare program. We understand that the implementing instructions CMS provides in their manuals for verifying potential errors and taking corrective actions may be driving Palmetto's audits. Nonetheless, CMA asks that CMS review and instruct Palmetto to modify the language in these letters to better reflect a willingness to help educate physicians and their staff rather than fostering the perceived impression that physicians are committing fraud.

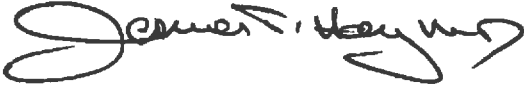
Adding to the burden of the Palmetto audits, CMS recently announced a new audit, the pre-payment demonstration project by the Recovery Audit Contractors, which will be implemented in California in 2012. Although the details have not yet been released, this is a pre-payment audit that will again create cash flow issues for physicians.

Accordingly, CMA requests that CMS demand that Palmetto reduce the size of the special study and allow Palmetto to cease mailing any further requests for records. Palmetto should be able to

utilize the records already received to improve the educational materials physician practices rely on to better understand what CMS considers appropriate documentation for the service provided.

Please do not hesitate to call us to further discuss these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "James Hay", written in a cursive style.

Dr. James Hay
President
California Medical Association

cc: Marilyn Tavenner, Administrator, Centers for Medicare & Medicaid Services
Arthur Lurvey, MD, Medical Director – CA, Palmetto GBA
Mike Barlow, Vice President, Jurisdiction 1 A/B MAC Operations, Palmetto GBA
Dustin Corcoran, CEO, California Medical Association