



Garfunkel Wild

Navigating Payer Audits

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Introduction

Prior to Being Audited . . .

- Develop a system to ensure notifications are not missed **and** sent to the right people
 - Identify which personnel need to be (a) aware of, and (b) involved in, the audit process.
 - Define roles and responsibilities.
 - Personnel should be instructed not to turn over any records without prior approval by the appropriate supervisor.
- **TIP:** Don't leave it to others (e.g., “my billing company handles that”)

Assess the Audit

- Upon receipt of an audit request, immediately assess:
- Who is conducting it?
 - Government (which agency)?
 - Commercial payer?
 - Third-party contractor?
- What issues does the audit appear to cover?
- What time frame does the audit cover?
- Will auditors be on-site?
- Will there be an entrance conference/interviews?
- What are your deadlines?

Assess the Audit

- Know what the specific limits are (if any) for a particular audit:
 - Records request limits. . . how far back may the auditors seek records;
 - Deadlines. . . are there deadlines for submitting records.
 - Statutes of limitations
 - Contractual requirements
- Know what the appeal process is.

Review the Request

- Is the requestor authorized to request the information?
 - By statute/regulation?
 - By contract?
 - HIPAA concerns?
- Any doubt – DO NOT PROVIDE REQUESTED INFORMATION BUT **DO** RESPOND

Review the Request

- What is the time period?
 - Potential issues:
 - Statute of limitations in government audits
 - Managed care regulations
 - State law may govern
 - Contractual time periods

Components of the Legal Medical Record

- All records must be legible and complete including but not limited to:
 - Informed Consents
 - Pre-surgical assessment/H&P
 - Operative Note
 - Post-Procedures Note(s)
 - Nursing Record
 - Orders
 - Medication Reconciliation
 - Laboratory/Pathology Report
 - Anesthesia Report
 - Discharge Summary

Do Not Touch The Records

- No “additions”
- No “deletions”
- No “modifications”
- No changes
- No “new” records



DON'T TRY TO "FIX" ANYTHING!

Submit the Records

- Response must be accurate and complete.
- Protected Health Information (PHI) – send securely/ HIPAA compliant.
- Cover letter.
- Send securely.
- Proof of production.
- Keep a full copy set of what was produced.
 - (separate from the original record).

Spot Issues

- Proactive vs wait and see (various considerations)
- Review the records requested for issues.
 - Get out in front by identifying concerns/potential problems.
- Identify if there are additional records that need to be produced to support payment. (e.g., to show):
 - Medical necessity of the service;
 - Images (x-ray, ultrasound, etc.);
 - Test results (labs);
 - Prescriptions;
 - Reports.
- NB: the evaluation can begin before records are produced

Common ASC Issues

1. Incomplete op reports
2. Co-surgeon vs. Assistant surgeon
3. Unbundling
4. Diagnosis does not support procedure
5. Lack of documentation / missing records
6. No consents / ABNs

WHAT IF...

- Records are poorly documented?
- Service billed was not separately payable from primary procedure?
- Claims were upcoded?
- New problematic issues are identified?



Now What?

- DO NOT put your head in the sand.
- Be realistic . . . and get the right help (counsel, auditors, statisticians).
- Benefits to being proactive
 - Early defense preparation
 - Stop the bleeding
 - Avoid pre-pay review or shorten its duration
 - Negotiating leverage (we fixed it before you found it)
 - Entering a self-disclosure protocol where applicable
 - Evidence of effective compliance program

The Audit Results

- And then, one day . . .
 - Demand letter
- When is it dated?
- What date did you receive it?
- How did you receive it?
- Do you have appeal rights –
 - By law?
 - By contract?

The Response

- Formulate a response.
 - Do not delay. . .Deal with it immediately!
 - Do you need counsel/experts in coding, statistics?
 - Defend and correct (if you have not already done so).

The Response

- General Guidelines
 - Don't assume the audit findings are correct.
 - Do file appeals when appropriate.
- Varying Strategies
 - Often depends on who is auditing (government vs commercial payer), the amount of money at issue, allegations of fraud, and quality of your defense
 - Litigate or negotiate?
 - Are you in-network or OON?
 - Engaging legal counsel for the plan (should you and when)

Resolution

- Capitulation
- Settlement
- Compliance agreements
- Hearings/litigation

Steps You Can Take To Prevent Negative Outcomes

- Stay informed of Medicare/Medicaid/private payer regulations/policies;
- Perform regular documentation reviews;
- Perform regular billing reviews;
- Ensure staff are adequately trained;
- Know what the hot audit issues are;
- Institute an effective Compliance Program;
- Understand and abide by payer guidelines.



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Thank you

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Debra A. Silverman is the Chair of Garfunkel Wild's Managed Care Practice Group. She represents hospital systems, teaching and community hospitals, faculty practice plans and physician group practices, with an emphasis on managed care contracting, health care delivery networks, accountable care organizations, clinical integration, physician arrangements, antitrust and regulatory matters.

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Robert Del Giorno is the Chair of Garfunkel Wild's Investigations, Audits and Regulatory Compliance Practice Group. Robert's practice includes representation of skilled nursing facilities, laboratories, physicians and other health care industry-related clients (both for profit and not-for-profit) in the area of health care compliance, with a specific focus on fraud and abuse laws. He has particular expertise assisting clients with internal investigations and frequently defends clients in both civil and criminal investigations conducted by federal and state agencies. Robert has defended local New York hospitals and individual providers in complex, multi-million dollar Federal and New York State False Claims Act cases and has handled a wide variety of other high-profile matters. Robert also represents clients in the health care and early intervention industries with regard to audits conducted by government agencies.

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Simon has extensive experience in business and healthcare administrative operations. His areas of expertise include revenue cycle integrity, documentation and coding, medical auditing, billing processes, payer policies, workflow development, and compliance. Additionally, he works closely with clients on business advisory services of all sizes including hospitals, ACSs, and physicians in areas of revenue cycle, coding and billing, and regulatory compliance. He provides in-depth analysis, and assists providers with understanding best practices and how to identify opportunities while mitigating the risk of improper payments.

Simon holds a Bachelor of Business Administration in Finance. He is also credentialed as a Certified Professional Coder (CPC) and a Certified Professional Medical Auditor (CPMA) through the American Academy of Professional Coders and a Certified Revenue Cycle Executive (CRCE) through the American Association of Healthcare Administrative Management.

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