

# Therapeutic Shoe Audits Are Back

These steps will help you win the audit.

BY PAUL KESSELMAN, DPM



The Public Health Emergency (PHE) shows no signs of coming to a close, and cases, after decreasing over the late spring and summer of 2020, are again rising. Yet in early August 2020, CMS announced that audits that had been suspended due to the PHE would restart. As you can imagine, this created quite a buzz during the late summer of 2020. “Talk Tuesday”, a web-based radio-style talk show, titled one of their recent shows “Medicare Audits are Back with a Vengeance”. This auditing vengeance is not limited to DMEPOS providers. This edition of DME for DPMS will review some SMRC audit experiences with therapeutic shoes.

In early January (2020), the dreaded letter from Noridian, requesting materials on several patients who had received A5500 (Extra depth shoes), A5514 (Custom milled inserts) and for L5000 (Custom toe filler) was delivered to my office.

Soon thereafter, news came that CMS had authorized Noridian as the Supplemental Medicare Review Contractor (SMRC) to conduct post-payment audits on those HCPCS codes

listed within the Therapeutic Shoe for Patients with Diabetes (TSPD) LCD.

The audit letter provided specific instructions on what was required from each patient’s chart. After re-

was this humbling anxiety, should my own charts fail to pass the audit. Note: a single error could be appealed or with further investigation possibly even fixed (signature logs, re-openings for coding errors, wrong

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viewing and scanning the letter, I researched each of the patient’s files (2) and exported the required materials out of my Electronic Health Records into a separate file. All documents were password protected and sent onto Noridian, but not before calling the SMRC to confirm they had received the password.

Prior to submitting responses to the SMRC, an Excel Spread sheet was created containing multiple fields corresponding to the LCD requirements. As objectively as possible, all the records were reviewed. My patients’ records seemed to be completely devoid of errors. There still

chart notes from the MD/DO etc.).

Initially, Noridian was asked to extend all the submission deadlines (this was prior to the PHE declaration). This was easily obtained, sometimes via phone, others via email or fax. Ultimately, just before the deadline for submission, the PHE was declared and all auditing ceased. While many who have been audited submitted the required materials in advance of the last deadline, a long-protracted waiting period ensued and did nothing to defer the anxiety of anticipated failure.

On November 5, Noridian re-

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sponded to my practice's audit. The thinner the envelope, the more likely you are to have passed. The thicker the envelope the more likely you are to have failed.

word in the patient's file within the EHR.

7) All the materials for the same audit should have the same password. Be sure to send the password to the SMRC via email in accordance with their instructional letter which

torney and expert will work with you to handle any adverse results. With SMRC audits, the next step is usually a D/E. Having an expert and your attorney as your compliance team on the D/E call with you will keep you objective and calm. Losing your cool and becoming argumentative are a sure-fire way of having the auditors dig in their heels more and of your losing any possibility of reducing or eliminating any post-payment repayments.

12) Should you fail your D/E, recoupment of the money from your DME MAC is possibly next. You may appeal an unfavorable audit and D/E, following the same channels as any other Medicare appeal. It is wise to ask the opinions of your attorney and expert witness in these matters. The appeals process is long and often stressful. It is rare that an unfavorable D/E and initial SMRC audit will result in extrapolation. Your attorney and expert witness can provide you with advice on whether you heed to the demand letter or appeal.

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### **Write a brief cover letter for each patient, detailing where the various required elements are within each chart.**

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The best advice to follow when faced with any audit experience is to take the following steps:

1) Scan/copy the audit materials into each patient's chart for future reference.

2) Contact your malpractice carrier. They often provide Administrative Defense Coverage (ADC). You will have to respond to the audit. However, they may assign an attorney who may initially have minimal involvement. However, in most (if not all) cases, an expert will be assigned to review your files. If an unfavorable decision is returned you may require further legal and expert witness assistance (see below). Failure to report audit requests to your ADC carrier may result in forfeiture of any assistance from your carrier should results escalate to extrapolation and/or needs for appeals.

3) Having an expert who knows the subject matter as well if not better than the auditors is a decided advantage for those being audited.

4) Be organized, polite and respectful of the auditors at every step, whether initially contacting them for a deadline extension or asking about other informational issues or during the D/E.

5) Obtain and review all required documentation for shoes/inserts prior to fitting, measuring, ordering or dispensing any products covered under the Therapeutic Shoe Policy for Beneficiaries with Diabetes.

6) Export all the required information into an encrypted password protected file in an acceptable format (usually PDF or Word). Do this for each patient and safeguard the pass-

comes with the audit and call them to confirm they received the password prior to submitting any records.

8) Write a brief cover letter for each patient, detailing where the various required elements are within each chart.

9) If something is unclear, clarify it. For example, if the MD/DO who performed the examination is different than the one who signed the Certification Statement, this could be problematic. If the examining doctor

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was unavailable to sign the Certification Statement, obtain a statement from the group practice as to why. Some acceptable reasons are: the examining doctor was out ill, on maternity/paternity leave, left the practice, etc. Be sure you thoroughly read any audit request letter to ensure you provide the requestor with all the required information.

10) Whether you are submitting paper or electronic records, do not highlight any pertinent sections of the medical records. It can interfere with the requestor's scanner.

11) Regardless of the response from the auditing entity, be sure to contact your ADC carrier, and the attorney and expert witness assigned to your file. Both the at-

13) Be sure to review every DME claim and all the LCD requirements before submitting a claim. This will avoid mix-ups on easy-to-fix errors involving HCPCS codes between the claim, chart, and written proof of delivery.

14) Not all ADC liability plans provide for both legal and expert witness at every step of the auditing process. Be sure that when you compare plans, you consider this valuable resource included with your professional liability package.

15) Remember the same formulas apply to audits regarding other DMEPOS such as night braces, custom AFOs, CAM Boots, surgical dressings. On the medical/surgical

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side, this includes routine foot care, nail avulsions, etc.

My experiences with TPE, RAC, SMRC or CERT audits have always been successful. You too can achieve

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the same level of success with correct documentation and strict adherence to the requirements of the LCD. Setting the right tone for your staff, where you do not tolerate any short cuts, and abiding by the requirements of the LCD will allow your practice to achieve 100% passing. Once you do

that, the SMRC (and often other auditing agencies) will no longer audit you for the same group of HCPCS codes for a one-year period!

Remember if you take short-cuts, not only will you likely have to pay back what you were paid, but your accounting sheet will be in the negative. The costs of acquiring the shoes, inserts, or whatever DME you ordered are no longer off-set by a revenue stream which generated you a profit.

If you fail one SMRC audit, it may be a small painful experience. Using a painful experience to avoid any future larger recoupment has enabled many DMEPOS suppliers, both small and large, to remain hugely profitable. Obtain professional assistance to develop a thorough compliance plan and be sure your staff is on board with your compliance program!

**Postscript:** As this article is being submitted, there is late-breaking news that physician extenders such as physician assistants and nurse practitioners working “incident to” an MD/DO are able to certify patients as diabetics. Rumors abound as to what this means. There are myriad questions which were posed to the DME MAC to further clarify this new addition to the policy. At the time of this article’s submission, those questions are now being researched. *PM News* will have answers to these questions as soon as they are available, and *PM News* will run those answers in their entirety at the time of this publication. **PM**

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