

Inside the Mind of an Auditor—Part 1

This series is based on an actual case.

BY PAUL KESSELMAN, DPM

The next two installments of this column will delve into a real case, involving a dedicated and busy podiatric physician who faced a potential recoupment exceeding \$500K. To protect the identity of the podiatrist, no identifying information about this individual will be provided. Additionally, some creative license may also be taken to further protect the individual's identity.

Imagine an innocent enough appearing envelope received from your Medicare carrier. Upon reading the letter, to your shock, it appears that you are facing a post-payment audit on 100 charts for procedures podiatrists routinely perform every day. Codes pertaining to routine foot care are specifically noted. The letter provides you with a short window for response, and appears very threatening with a warning that further recoupment beyond these one hundred charts is possible. Such a letter began a more than five-year odyssey for one podiatrist and a saga of events which, if handled properly, could have easily been averted. What this doctor endured may serve as very valuable lessons for all healthcare providers.

Receiving a letter like this can certainly be emotionally upsetting. It is very important, however, to stay focused and immediately contact the carrier providing your practice with Administrative Defense Coverage (ADC). Most likely this is available through your professional liability carrier. The ADC carrier will request

you send them copies of this initial correspondence and facilitate a file opening and an assignment to an attorney who will file an initial response to the auditing entity.

This routine initial response from your attorney will advise the carrier that you have legal represen-

unusually high error rate, the MAC extrapolated similarly coded claims for these same services going back many years. This resulted in the MAC requesting an extrapolated recoupment exceeding \$400K. With interest, and penalties for not paying in one lump sum, the podiatrist

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tation and request more time to respond. This initial request from legal counsel provides you with additional time to gather the required records without undue disruption to your practice and personal life. Furthermore, it will allow your legal team essential time needed to assess the seriousness of the penalties, if any, you may face.

Due to a series of misunderstandings, timely submission of the required information by the podiatrist was not provided to the ADC carrier. The carrier, as was their right, refused to provide coverage to their policyholder, leaving the podiatrist without legal counsel to deal with the MAC. The lesson learned here is to provide timely notification to the ADC carrier without any delay upon receipt of an audit notification.

Eventually, the podiatrist did hire an attorney for representation with the MAC. Despite legal representation, the MAC auditor concluded there was a 100% error rate on the claims reviewed. Due to this

faced an approximately \$600K recoupment for a period of approximately five years.

After failing appeals at the “Re-determination” and “Reconsideration” levels, all the while allowing interest to accrue, an ALJ appeal was filed. This appeal would have an excess of a five-year waiting period. To avoid further penalties, monthly payments of more than \$10K/month was finally negotiated with CMS. Consider what you may have to do to meet such repayment demands until that settlement was satisfied. Liquidating savings and retirement accounts, obtaining personal loans, selling fixed assets such as stocks, bonds, and property, along with their tax consequences are all conceivable. Let's not forget all the legal fees to this point and those final expenses associated with the last appeal(s). Last, but not least, the emotional toll this took on the doctor is just indescribable.

Prior to the ALJ hearing the doc-

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tor hired and paid for two expert witnesses to perform an extensive review of the charts and billing records. The experts also reviewed all pertinent CMS documents and all of the previous CMS contractor's analysis from lower-level appeals.

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The MAC auditors who provided the CMS statistician with their findings appeared to have little to no podiatric coding expertise. A review of the CMS documents revealed that the statistical analysis had been performed by a PhD in mathematics, who also had no clinical expertise. Lastly, the mathematical formulas were daunting except for someone with a PhD in statistical analysis.

The expert witnesses spent countless hours span-

ning two calendar years reviewing the files from CMS, the complete medical and billing records of the one hundred patients audited, not simply those records initially provided to the MAC. There was a myriad of meetings with the attorneys and the defendant podiatric physician. Given the potential recoupment, even prior to extrapolation, this type of in-depth analysis should have occurred years before when the case was initially with the MAC.

After an exhaustive review, it became readily apparent that there were egregious errors committed by the MAC auditors and continued failures committed by those auditors during two previous appeals. The experts concluded that the CMS statistical analysis was flawed. There were also some minor errors committed by the defendant doctor, but those were minor and inconsequential. In total these errors included:

1) The documented diagnosis narrative in the chart notes failed to exactly correspond to the diagnosis code

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on the claim form. However, the narrative findings did support the LCD requirements;

2) The qualifications for at risk or routine foot care were not always entered on the exact date of service subject to the audit. However, the podiatrist referenced previous dates of services where those findings were very well documented; and

3) Some chart entries were missing but this was clearly for an extremely minor and insignificant number of charts. Their loss could easily be accounted for due to the doctors treating these patients at the group home.

Now that the claims and charts were reviewed, it was time to wait for the ALJ hearings to be scheduled. The defendant doctor and expert witnesses were prepared and ready to go. The attorney had their legal arguments ready. By March 2020, all parties were set to go. **PM**



Dr. Kesselman is in private practice in NY. He is certified by the ABPS and is a founder of the Academy of Physicians in Wound Healing. He is also a member of the Medicare Provider Communications Advisory Committee for several Regional DME MACs (DMERCs). He is a noted expert on durable medical equipment (DME) for the podiatric profession, and an expert panelist for Codingline.com. He is a medical advisor and consultant to many medical manufacturers.