

## MDS Alert

### Compliance Trends: Beware Audits Targeting Part A Rehab RUGs

**If you get notice of a ZPIC audit, make sure to do this.**

What auditors can pack a major punch in the compliance realm? The answer is Zone Program Integrity Contractors or ZPICs, which should definitely be on your watch list.

The ZPICs "are one-stop shopping for investigations," cautions attorney **Anna Grizzle**, with Bass Berry & Sims in Nashville, Tenn. The ZPICs have the "full picture of all the Medicare claims in their assigned zone."

Beware: ZPICs are replacing the Program Safeguard Contractors nationwide. And Grizzle has been seeing an uptick in ZPIC audits. Once the ZPICs become fully operational in the various zones, she expects to see a significant increase in audit activity compared to what the PSCs have been doing in that regard. (To review what states are in the various zones, see the sidebar on page 137.)

Most recently, Grizzle heard a presentation by AdvanceMed, the ZPIC for Zone 5, about its rehab therapy audits in SNFs. The ZPIC is targeting the higherend rehab RUGs and will also focus on the lower rehab groups, she relays. Because providers are aware that the higher rehab RUGs are a target, "some instead over-use some of the lower therapy [RUG] codes," Grizzle says. "Of particular note, AdvanceMed has stepped up the number of onsite, unannounced visits to SNFs," Grizzle adds. And the ZPIC is talking to referring hospitals to find out if an SNF rehab patient "was an appropriate therapy candidate prior to transfer."

Know the ZPIC Rules and Perils

"ZPICs can shut down a provider's revenues by doing prepayment audits," Grizzle warns. She saw that happen to DME providers in Texas at the first of the year. "Even if [the DME] providers were billing honestly and had good records, they did not have any revenues until the ZPIC determined that they should be paid."

More bad news: "The flip side is that on post payment review, I have seen ZPICs audit a sample where they then use extrapolation so that a provider is looking at a huge overpayment demand," Grizzle adds. She reports seeing "even small providers hit with hundreds of thousands or even millions in overpayments. The ZPICs can start recouping unless the provider appeals or they request a repayment plan."

And while RACs can only look back three years, ZPICs can go back much further because they are looking at fraud -- "even up to 10 years," Grizzle says. If the ZPIC doesn't refer the audit findings to law enforcement, it will refer the findings to the MAC to collect the overpayment, which triggers the appeals process, Grizzle relays. "The ZPIC appeals will follow the Medicare appeals process"(see the sidebar on page 137).

Get Your Attorney in the Loop Even for Self-Audits

Don't underestimate the ZPICs, caution legal experts. "Immediately contact a healthcare lawyer familiar with these audits when you get the first letter," advises attorney **Steven Kern**, a principal with the Bridgewater, N.J. office of Kern Augustine Conroy & Schoppmann, PC.

Reasoning: "If you are the target of a ZPIC audit, it is likely that you have already gone through a complex screening process and are viewed as likely to have committed fraud," says Kern. The SNF "could be looking at substantial penalties through a False Claims Act case," adds Grizzle.

Also: "A ZPIC audit requires meeting strict deadlines for responding. And if you do not meet the deadlines, you may waive your ability to contest their findings," Kern tells Eli.

SNFs should also probably consider getting legal counsel involved when they receive an additional development request from a Program Safeguard Contractor, advises **Betsy Anderson**, VP at FR&R Healthcare Consulting in Deerfield, Ill. She notes that consultants at her firm were recently retained by one facility's legal counsel to do some chart reviews related to an ADR from a PSC. That way, the consultants' findings fell under the attorney-client privilege in case the reviews uncovered any concerns, Anderson reports.

Anderson has been seeing or hearing about a spate of ADR requests from the Program Safeguard Contractor, Trust Solutions, in Illinois, Michigan, and Indiana. "The ADRs are obviously targeting therapy utilization and medical necessity issues."

Many of the SNFs receiving the ADR requests care for a lot of short-stay patients with hip and knee replacements who are in the ultra-high and very high rehab RUG categories, Anderson relays.

Tip: Train staff to recognize the various auditors. Anderson recently received a call from an SNF provider reporting the facility had received a RAC request that was actually from a Program Safeguard Contractor.

### **Hone Your Medical Record Documentation**

That's your best defense in any audit. "Medical record documentation requirements would be the same whether you're audited by a ZPIC, RAC, MAC, etc.," Grizzle says. "You have to demonstrate that you met all the coverage requirements in providing the service, including medical necessity."

Don't miss: For an inside look at the type of therapy and nursing documentation that will pass muster with auditors, see the next MDS Alert.