Hospitals See Some Success with Part B Reimbursement After Initial RAC Denial

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Since the Recovery Audit Contractor (RAC) Demonstration Program launched in 2005 and the final RAC program launched in 2008, industry leaders have been involved in the effort to obtain full Part B outpatient reimbursement for hospitals where a short-stay inpatient claim has been denied for lack of medical necessity by Medicare Contractors, such as RACs. Industry leaders, including Andrew Wachler, met with officials from the Centers of Medicare & Medicaid Services (CMS) three times since 2009 in an attempt to obtain full Part B reimbursement for hospitals. The hope for these meetings was that they would lead to a positive change to CMS' policy and directions to contractors. Although there are still some unanswered questions about hospitals' ability to obtain full Part B reimbursement where inpatient services are denied during a Medicare audit, years of hard work have led to a very important development that positively affects hospitals.

During the RAC Demonstration program, hospitals in the demonstration received denials from RACs for inpatient hospital admissions. The services were denied because the RACs alleged that the inpatient admission for the beneficiary was not medically necessary and reasonable; essentially that the services should have been provided in an outpatient setting. Although hospitals argued during the Medicare appeals process that the inpatient admission was medically necessary and reasonable, there was a collective effort to also argue that if an independent reviewer affirmed the RAC's denial of the inpatient admission, then payment should be made for the services as if provided in the outpatient setting. Hospitals achieved some success at the administrative law judge (ALJ) hearing stage of appeal, and ALJs would order payment to the hospital for full Part B reimbursement, including observation services. Despite the ALJ orders, it was difficult for hospitals to receive effectuated payment from administrative contractors. Even as CMS phased in the final RAC program, hospitals continued to face these challenges.

This past November, CMS announced a demonstration program that industry leaders hoped would be a positive step towards allowing hospitals to effectuate full Part B reimbursement. The Part A to Part B Rebilling Demonstration Program (AB Rebilling Demo) includes some changes, but the demonstration on a whole is limited and hospitals must pay a high price to participate. The AB Rebilling Demo allows participating hospitals to submit claim forms for 90% of the Part B reimbursement, not including observation, for short-stay inpatient claims denied by a RAC for medical necessity. However, the hospitals are not allowed to appeal these short-stay inpatient claims, and thus receipt of the limited Part B reimbursement is their only option.

Recently, prominent CMS officials issued a memorandum to "All Fiscal Intermediaries (FIs), Carriers, and Part A and Part B Medicare Administrative Contractors (A/B MACs)". The memorandum begins by noting the numerous ALJ decisions where the ALJ has affirmed contractors' denial rationale that inpatient services were not reasonable and medically necessary, but then stated in the ALJ order that the contractor must pay the hospital full Medicare Part B

outpatient reimbursement, including observation. In line with these ALJ orders, CMS issued mandatory instructions for claims administration contractors to follow the ALJ orders. Thus, where an ALJ orders a claims administration contractor to make payment to a hospital for Medicare Part B outpatient/observation services, the contractor must honor the order and follow CMS's instructions to effectuate the order. The instructions in the CMS memorandum provide a step-by-step process for the contractors to follow. First, the instructions require contractors to contact the provider to obtain a Part B claim within 30 calendar days of receipt of the effectuation notice from the Administrative QIC (AdQIC). The provider must then send the replacement claim to the contractor within 180 days from the date the contractor contacts the provider or else the contractor must close the case and consider effectuation completed.

The memorandum's instructions to contractors, however, are very specific in terms of the precise situation in which an ALJ's order would trigger the contractor to pay a hospital full Part B reimbursement, including observation. Unless the medical record for the inpatient hospital claim at issue includes a physician's order for observation, the only way a hospital will receive reimbursement for observation is if the ALJ's order instructs the contractor to pay observation. Specifically, the ALJ's order must clearly specify "observation level of care" for the hospital to receive payment for observation. If the ALJ includes this language in the order then line item charges for observation may be added if otherwise appropriate, as the ALJ's order substitutes an order to admit for observation that would be included in the record. A hospital with a claim that is without an order for observation in the medical record or without an ALJ's specified order for reimbursement for observation will not receive reimbursement for observation services. The very precise articulation of the language required in ALJ orders for a hospital to receive observation highlights the importance that hospitals specifically request the alternative relief from an ALJ to be full Part B reimbursement, *including observation services and all underlying care*.

The CMS memorandum is a very positive improvement in the effort to realize accurate Part B reimbursement for hospitals where a contractor has denied an inpatient short-stay claim because the admission was not medically necessary. Although the memorandum still evokes some limitations, it is, to date, the clearest indication from CMS that contractors are now required to effectuate an ALJ's order for Part B reimbursement where an inpatient claim has been denied for medical necessity. It also highlights to hospitals the crucial importance of the appeals process, especially the ALJ hearing stage. Hospitals should understand that encouraging an ALJ to order reimbursement for observation and all underlying outpatient care is a legal, not a clinical, argument. During appeals, it is essential that hospitals evoke legal arguments and authorities to persuade an ALJ to issue a precise order for Part B reimbursement, including observation services and underlying outpatient care.