



Billing Audit Deeper Dive: Legal Perspective

A Close Encounter of the Audit Kind...
Will You Be Ready?

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Practice Protectors | Forward Lookers | Solution Partners

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Technical Assistance

- Technical Assistance Telephone Number
 - **732-362-5724**
- Question Submission for Q&A Session
 - Type your question into the Questions Box on the control panel on your screen

Please jot down this information



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Presenters



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Guillermo J. Beades, Esq., is a Senior Counsel practicing in Frier Levitt's Healthcare Litigation Department. Guillermo represents healthcare professionals in a broad range of administrative, civil and criminal healthcare matters. Guillermo has extensive litigation experience before state licensing authorities and Medical Boards (e.g., NJ BME, OPMC), federal healthcare agencies (e.g., OIG, CMS, DEA) and state healthcare agencies (e.g., NJ Medicaid Fraud Division, NY OMIG). Guillermo has represented practices and healthcare professionals in matters concerning credentialing and denial of privileges, administrative discipline, Medicare audits, post-payment demands and pre-payment audits. Guillermo also represents healthcare professionals in criminal and civil white collar defense matters, including matters alleging Medicare / Medicaid Fraud and violations of the Anti-Kickback Statute, False Claims Act, Codey Law and Stark. Guillermo has been selected to the New Jersey Super Lawyers Rising Stars list in 2015 - 2017.

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SENIOR CLAIMS COUNSEL AND CORPORATE BOARD SECRETARY, CONVENTUS

Lindsey Gelormini is Senior Claims Counsel and the Corporate Board Secretary at Conventus Inter-Insurance Exchange. Lindsey manages medical professional liability claims in addition to regulatory, administrative, and licensing matters. Lindsey has experience with matters brought before state licensing authorities (New Jersey Board of Medical Examiners [NJBME] and Office of Professional Medical Conduct [OPMC]), as well as Medicare audits, post-payment demands and pre-payment audits. Lindsey obtained her B.A. from Loyola University and her J.D. from University of Massachusetts.



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What You Will Learn

- How to tell the difference between a routine and risk adjusted audits
- Common focus areas and coding pitfalls
- What to do if you are audited
- Legal implications for you and the practice
- Best practices to avoid audits and keep you in business



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Audits: Overview

- Risk Adjustment Audit Ramp Up
 - Significant increase in past 18 months
 - ▶ Medicare/Medicaid
 - ▶ Commercial Payer
- Audits
 - Risks predisposition to more audits!
 - Targets weaknesses in documentation and coding
 - Should not be confused with routine document requests
- The Conventus Experience



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Audits: Impact to Practices

- Audit Types
 - Post-Payment
 - ▶ Precursors to recoupment of monies paid over time
 - ▶ Can lead to extrapolations
 - Pre-Payment
 - ▶ Targets a practice ongoing coding and documentation errors
 - ▶ Requires claim to be submitted prior to payments
- Threatens cashflow
 - Reimbursements
 - Loans
 - Bankruptcy

Audit Letters: What to Look For

- Risk Adjustment Audit or HEDIS Audit?
 - “Outlier”
 - “Billing Aberrancy”
 - Look Back
 - ▶ Number of charts
 - ▶ Previous years
 - ▶ Up to 5 years!

Common Pitfalls: EHR

- Electronic Health Record (EHR) issues
 - Multiple dates of service look the same
 - Pre-populated notes and medication lists
 - ▶ i.e. cloning, cut and paste
 - Failure to use “free form” fields
 - “Cluttered” notes
 - Suggested coding
 - Using the “wrong” EHR



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Common Pitfalls: Coding

- Misunderstanding of E/M visit requirements
 - e.g., time vs. elements
- Documentation to support use of codes
 - Examples: 99214, 99215
- Misunderstanding of Modifier usage
 - 25
 - 59
 - X



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Common Pitfalls: Coding (cont'd)

- Billing Under Same NPI number for non-credentialed providers
- Failure to use a Certified Professional Coder within your specialty
- Failure to perform internal self-audits
 - Frequency
 - How to Do/Tools from Novitas Evaluation & Management Center

- ▶ Interactive E/M and Specialty Score Sheets

https://www.novitas-solutions.com/webcenter/portal/MedicareJL/pagebyid?contentId=00027621&_afriLoop=2670286472902283#%40%40%3F_afriLoop%3D2670286472902283%26centerWidth%3D100%2525%26contentId%3D00027621%26leftWidth%3D0%2525%26rightWidth%3D0%2525%26showFooter%3Dfalse%26showHeader%3Dfalse%26_adf.ctrl-state%3D7xm4u5wdp_169



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Common Pitfalls: Ignoring Provider Agreements & Regulations

- Non-Credentialed Providers
- Modifier 25
- Consultations
- Allergy Testing



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Common Pitfalls: Administrative Responsibilities

- In-house versus outsourced billing
 - Provider remains responsible for coding accuracy
 - Check you billing contracts
- Review every record before it is sent
 - Trends
 - Coding
 - Diagnoses
 - Signatures
 - Medical decision making
 - ▶ i.e. documentation supports code
 - Review of medical record requests prior to sending to payer
 - ▶ e.g., 3rd party handles requests



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Common Pitfalls

- Proceeding without contacting your Medical Professional Liability (MPL) carrier
 - Assistance of Counsel
- Carte Blanche access to medical records/EHR
- On-site “reviews” turning into interrogations
- On-site copying of incomplete records
- Incomplete production of records



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Audit Process: General

- Notice
 - Practice receives a letter requesting records re: post-payment or pre-payment audit
- Investigators can appear without notification
 - i.e. whistleblower, complainant, etc.

**Contact your MPL Carrier immediately
for assistance**



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The Conventus Process

- Evaluation of record request
- If not “routine”
 - Vetted legal counsel may be engaged
 - Vetted coding expert may be engaged by counsel to preserve attorney-client privilege



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Audit Letters: Who, What, Why and How

- Examine **who** sent the letter
 - Medicaid Fraud Division (MFD), Medicare Fraud Control Unit (MFCU)
- Focus on **what** is being requested
 - Specific code, procedure, etc.
- Determine **why** it was sent
 - Outlier, code at issue, etc.
- **How** many records and years are being requested
 - 10, 50, 150, etc.

Audit Letters: Key Language

- “Risk adjustment review”
- “Alternative or additional diagnoses”
- “Outlier”
- “Validate your practice's appropriate use of _____”
- “Billing aberrancies” / “Inappropriate Billing of CPT _____”
- “Upcoding”
- “Your claim has been forwarded to the Medicaid Fraud Division / Office of Insurance Fraud Prosecutor”

Audit: Most Common Focus

- High reimbursement E&M codes
 - Level 4 (99214)
 - Level 5 (99215)
- Commonly misused Modifiers
 - 25 & 59
- High reimbursement procedures
- Consultations
- Outlier compared to “colleagues”
- Experimental procedures

Audit Process: Dos

Contact your MPL Carrier!

- Review records prior to release to payer
- Only comply with release of documentation requested
- Look for trends in codes and diagnoses
- Cooperate with an audit demand
- Limit the staff involvement with investigators

Audit Process: Don'ts

- Give statements to investigators without conferring with counsel
- Intentionally withhold documents or attempt to frustrate the payor
- Alter amend or change records in response to the audit
- Leave investigators with full access to EHR
- Retain coding experts without counsel



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Audits: Negotiation Process

- Counsel may be able to:
 - Reduce the overpayment demand
 - Obtain a payment plan
 - Obtain a discounted settlement for a lump-sum payment
- State agency access to tax returns
- Corrective Action Plans
- **Compliance Plan and Program!**
- Staff education



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Audits: Providers FAQs

- Why did they pay this code for years if it was not reimbursable?
- Why is it my fault when my EHR/billing company told me to bill this way?
- But my notes are lengthy/detailed, what else do they want?
- Everyone else is doing it this way! Why are they coming after me?
- Why didn't they say anything before since I've done it this way for years?



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Audits: Legal Implications

- False Claims Act
- Anti-kickback / Stark / Codey law violations
- Criminal litigation and MFD/MFCU Referrals
- Loss of billing privileges
- Most lead to reporting to the NPDB/National Practitioner Data Bank



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Final Thoughts

- Maintain consistent billing protocols and documentation
- Be detailed oriented to mitigate financial, legal and administrative repercussions
- Avoid the common pitfalls of EHR
- Institute a compliance program and plan
- **Don't go it alone!**
- **Contact your MPL Carrier ASAP!**



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Conventus Practice Resources

For Conventus Members Only:

- **24/7 Practice Advice Hotline**
 - **Contact the hotline if you receive an Audit Request**
- **Strategic Partnerships**
 - Fraud & Program Integrity Services, HIPAA, OSHA, Security Risk Analysis, CME for MOC, & more!
- **Consulting Services**
 - Practice Transformation and Quality Improvement Consultation
 - Patient and Staff Engagement Services
 - ▶ CARE Program
 - Practice Success Consultation
- **Practice Management Resources**
 - For Everyday Issues



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