Understanding Self-Disclosure
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Agenda

• Regulatory Guidance
• Error Rates
• Defining the Issue
• The Process
• Using RatStat
• Reporting
Objective

• Understand the differences between a self-disclosure and a repayment using statistical extrapolation.

• Differentiate the steps involved in both a repayment and a self-disclosure
Medicare Guidance

• "Overpayments" are Medicare funds a physician or beneficiary has received in excess of amounts due and payable under the Medicare statute and regulations. Once a determination of overpayment has been made, the amount so determined is a debt owed to the United States Government. 1975
Regulatory Authority

- Office of Inspector General established in 1978
- OIG - September, 2001: "Building a Partnership for Effective Compliance": The Third Government-Industry Roundtable
- OIG - November 2001: "Open Letter to Health Care Providers”. Reduces the obligation on providers settling health care fraud matters by entering into Certification of Compliance Agreements (CCAs), rather than more extensive CIAs.
Regulatory Guidance


• February 2004: CMS Financial Management Reporting Manual “Unsolicited Voluntary Refunds” Instructions to Carriers and FI, coordination with OIG.

• March 2004: CMS Program Integrity Manual, Chapter 3, Verifying Potential Error & Taking Corrective Actions, Revamp of old carriers manual
Regulatory Guidance

• April, 2006: OIG "Open Letter to Health Care Providers“ SDP may result in less burdensome compliance agreement with OIG;

• April, 2008: OIG "Open Letter to Health Care Providers" Generally no compliance agreement will be required if providers fully cooperate during SDP process

• March, 2009: OIG/CMS - SDP not appropriate for Stark and anti-kickback
Regulatory Guidance

- March 2010: Section 6402(d) of the Affordable Care Act
  - Requires Medicare providers and suppliers, Medicare Advantage organizations, prescription drug plan sponsors, and Medicaid Advantage Organizations to report and return overpayments.
  - Requires cooperation with OIG and DOJ
  - Electronic Submission of Disclosure
  - 60 day reporting obligation
Regulatory Guidance

• February 2012: CMS proposes 10 year look back. Outlines “Self-Reported Overpayment Refund Process”

• April 2013: OIG overhauls and updates SDP.
  – Redefined process
  – Outlines 11 required elements
  – Specifies sample sizes
  – Requires CMS verification
  – Penalties for lack of cooperation in providing additional information.
Some examples of overpayments are:
- Payment based on a charge that exceeds the reasonable charge.
- Duplicate processing of charges/claims.
- Payment to a physician on a nonassigned claim or to a beneficiary on an assigned claim. (Payment made to wrong payee.)
- Payment for noncovered items and services, including medically unnecessary services.
- Incorrect application of the deductible or coinsurance.
- Payment for items or services rendered during a period of nonentitlement.
- Primary payment for items or services for which another entity is the primary payer.
- Payment for items or services rendered after the beneficiary’s date of death.
Potential Overpayment Issues

• CMS emphasized in the proposed rule that providers cannot avoid their repayment responsibility and must engage in “self-audits, compliance checks, and additional research.”

• The following might necessitate inquiry into a potential overpayment situation:
  – Incorrect CPT codes
  – Insufficient documentation
  – RAC letter/inquiry
  – Lack of medical necessity
  – Increase in Medicare revenue, and/or
  – Complaints related to billing/claims made to provider hotline or raised via other means.
Overpayments

- CMS’s Proposed Rule adopts the statutory definition of the term “overpayment” as “any funds that a person receives or retains under title XVIII or XIX of the Act to which the person, after applicable reconciliation, is not entitled under such title.”
BASICS
Item of Interest

• Reasonable inquiry of the issue to determine if overpayment occurred.
  – What steps are required?
    • CMS
    • OIG

• Sampling unit = item of interest
  – Modifier 25
Assumptions

• There was some sort of pre-audit work that indicated an error.
• Translate the “error” into dollars.
• Most compliance audits calculate an absolute error rate.
  – Absolute means the number of claims or services that were reviewed that are wrong
    • E.g. Coding audit that reviews 10 records and finds 3 over-coded and 2 under-code resulting in a 50% error rate. Not equivalent to a financial error.

• CMS & OIG calculate a financial error rate based on payments
Two Approaches

**CMS – Overpayment**

- Geared toward contractors, PSC, RAC, ZPIC
- Use of statistical sampling
- Data analysis
- Statistical sampling or overpayment estimation
  - PhD Statistician or equivalent
- No minimal sample size “sample size sufficient to obtain adequate precision
- “Decision Rules” used to determine an overpayment occurred.
- Personnel qualifications
- Error rate
- Extrapolation

**OIG – Self Disclosure**

- Geared toward providers
- Use of statistical sampling
- Recommend use of RatStat
  - No requirements re: statistician
- Suggests probe/discovery sample of 50 records
- 11 Elements required as part of submission
  - “Statement of the federal criminal, civil or administrative laws that were violated by disclosed conduct”
- Personnel qualifications
- Error rates
- Estimation Methodology (Extrapolation)
1. Common Requirements

• Define the:
  – universe - everyone in the world
  – Population – a subset of the universe.

• Examples:
  – Payers
    • All payers = universe
    • Government payers = population
  – E&Ms
    • All E&Ms = universe
    • E&Ms with modifier 25
2. Common Requirements

• Sources of data
  – All data that was used:
    • Payment data (must be payment; not charge data)
      – Services
        » Paid on the basis of CPT/HCPCS code
      – Claims
        » PPS paid claims; DRG,
        » APCs
    • Schedules
    • Documents relied upon (Decision Rules)
3. Common Requirements

- Personnel Qualifications
  - Who conducted the review and what are their credentials?
    - Statisticians
    - Auditors
    - Coders
    - Consultants
    - Physicians
4. Common Requirements

• Sample Frame. The totality of the units (items of interest) from which the sample will be drawn.
  – Modifier 25.
    • All E&M with modifier 25?
    • All providers?
5. Common Requirements

• Characteristics Measured.
  – Explanation of how each item of interest partially or fully meets the criterion for inclusion in the characteristics measured.

  • Criteria: Modifier 25 – injections and an E&M service
    – What code codes should be included?
      » New patient
      » Established patient
    – What do the decision rules say about separate payment of E&M and injection administration?
5. Common Requirements

• Sample Size
• Source of Random Numbers
• Method of selecting sampling units
• Sample design
• Missing sample items
Sampling Methodology

- Sampling Methodology - determining the right approach.
  - How are the services paid?
  - How big is the error?
  - How big is the population?
  - How bad is the problem?
  - Is there an alternative to looking at the issue? E.g. electronic analysis.

- Statistical
  - Variable
  - Attribute

- Non-statistical
Statistical Sampling

- Statistical Sampling should be used when any of the following apply:
  - Cost-benefit analyses support the additional costs and time required;
  - Sample errors must be extrapolated;
  - Requires an opinion;
  - Sampling error must be quantified and/or
  - Computer based sampling would be simpler to apply.
Non-statistical Sampling

• Cost effective and can achieve same goal;
• A well designed, well-controlled system;
• A system that is so weak;
• The audit objectives can be fully met by non-statistical sampling; The population has no variability;
• Examples of deficiencies are needed to support a contention or belief; and/or
• Clues are needed as to whether to proceed with a statistical sample
Sample Size

• Discovery sample size
  – OIG
    • Self Disclosure protocol Minimum of 50 items
    • RatStat 30 items
    • CMS no set sample size
  – Random selection

• Sample
  – Use computer based statistical program
  – Defines sample size
  – Generates random numbers from within a defined population

• Results dictate next steps
Using RatStats

Department of Health and Human Services
Office of Inspector General
Office of Audit Services

RAT-STATS 2007
Version 2
Results

- Did it result in an over payment?
  - Yes
  - No

- Depends
  - OIG in most recent SDP says no netting
  - CMS calculates the error rate by netting the over and under.
6. Common Requirements

• When is an error an error?
  – In the 2001 Round table discussion, the OIG indicated that “If the financial error rate as determined by the “SVRS” (Statistically Valid Random Sample) is below 5 percent, no additional work is required and the provider would repay on the identified overpayments in the SVRS.”
  – If >5% the error rate would be extrapolated to the universe.
7. Extrapolation

• Variable appraisal
  – Uses the frequency of the error observed in the sample and applies it to the “population”
  – It’s the number of claims, not the dollar value of the population.
  – Requires an excel “input” file in older xls format. Sample data entry file for presentation.xls
  – Using RatStats
7. Reporting requirements

- Procedures for reporting overpayments. 
  [C:\Users\gedford\Documents\Presentation\Novitas Return of Funds.pdf](C:\Users\gedford\Documents\Presentation\Novitas Return of Funds.pdf)

- Corrective actions.
  - Education
  - Process changes
References/Resources

• Updated OIG’s Provider Self Disclosure Protocol
• Program Integrity Manual CMS Publication 100-08, Chapter 3, Verifying Errors and Taking Corrective Actions
• Program Integrity Manual CMS Publication 100-08, Chapter 8, Administrative Actions and Statistical Sampling for Overpayment Estimates
• Novitas Solutions Website:  http://www.novitas-solutions.com
• Novitas Solutions Website: Additional Part B Appeals FAQs (Overpayment)
• CMS Program Memorandum, Intermediaries/Carriers 2000, PM Rev. AB-00-72 Medical Review Progressive Corrective Action (PCA)-ACTION
• Medlearn Matters Number: MM3274 Unsolicited/Voluntary Refunds
• OIG Publication of OIG’s Self Disclosure Protocol, October 30, 1998
• OIG Open Letter to Health Care Providers April 24, 2006
• OIG Open Letter to Health Care Providers April 15, 2008
• Program Memorandum Carriers, transmittal B-03-022, March 21, 2003 Use of Statistical Sampling for Overpayment Estimation when Performing Administrative Review of Part B Claims
• Affordable Care Act §6409
• Medicare Internet Only Financial Management Manual Pub. 100-04, Chapter 5, §410 Unsolicited Voluntary Refunds