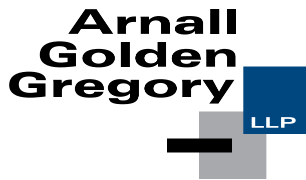

Client Alert

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RAC Update: Hospitals that Appeal Denials for Inpatient Admissions Can Be Reimbursed for Ancillary Part B Services

In the event a Recovery Audit Contractor (RAC) denies coverage for an inpatient admission, can the hospital still be paid under Medicare Part B, assuming the service was medically necessary and otherwise meets Part B requirements? Hospitals have long struggled with this issue, especially in the context of reimbursement for emergency room care and outpatient services where the patient was admitted for an in-patient stay that was later denied. Because the denials come long after the timely billing requirements have passed, hospitals have faced an "all or none" situation in those cases: either challenge the denial of the inpatient admission and prevail or receive no reimbursement whatsoever for their services. During the RAC Demonstration Project, hospitals were permitted to go back and re-bill those claims, but the Center for Medicare and Medicaid Services (CMS) has taken the position that this practice was only permitted under the special demonstration program.

In a recent decision, the Medicare Appeals Council (the Council) of the Department of Health and Human Services Departmental Appeals Board rejected CMS's position and adopted a position that has long been advocated by this firm on behalf of its hospital clients, holding that where claims billed as inpatient services under Part A are not covered, but the patient met the standards for outpatient observation, the RAC should adjust the claim for payment, offsetting any overpayment under Part A with the amount that should be allowed under Part B for outpatient observation status. See *In the Case of O'Connor Hospital*, issued February 1, 2010; please click here to view.[1]

The *O'Connor Hospital* case arose from a hospital's challenge to a denial of coverage for inpatient hospital services furnished to a Medicare beneficiary. Although Medicare initially paid the hospital for the inpatient services, the RAC reopened the claim and determined that the inpatient services provided were not reasonable and necessary and therefore not covered. The RAC concluded, however, that the beneficiary's care was reasonable for outpatient observation status. Nevertheless, the claim was fully denied since the hospital had billed for Part A inpatient care.

The provider appealed the denial of the claim to an Administrative Law Judge (ALJ), who issued a partially favorable determination. While the ALJ denied Medicare coverage for the inpatient hospitalization services, she found that

1 www.hhs.gov/dab/divisions/medicareoperations/macdecisions/o_connor_hospital.pdf

"the observation and underlying care are warranted" and should be paid. Thus, the ALJ issued the partially favorable decision.

CMS challenged the ALJ's finding, asserting that no payment should be made to the hospital for any services under observation status. CMS contended that the ALJ erred as a matter of law by ordering Medicare payment for observation services because those services are not separately billable under Part A.

In determining that the hospital was, in fact, entitled to payment for the observation care, the Council observed that the "position advanced by CMS in its memorandum [that there be no payment] is inconsistent with the guidance set forth in the CMS Manuals." Specifically, the *Medicare Benefits Policy Manual* provides that Part B payment may be made for the services rendered if "the admission was disapproved as not reasonable and necessary."[2] The Council noted that "this manual section clearly indicates that payment may be made for covered hospital services under Part B, if a Part A claim is denied for any one of several reasons." Similar provisions are set forth in the *Medicare Financial Management Manual* and the *Medicare Claims Processing Manual*.

The Council pointed out that when the RAC reopened the determination on the provider's initial claim, the RAC had the same plenary authority to process and adjust the claim as it did when that claim was first presented and paid. The RAC and reviewers at each stage of the appeals process concluded that outpatient observation status for the beneficiary was reasonable and necessary. Therefore, the hospital was entitled to reimbursement for the Part B outpatient observation services furnished to the beneficiary as an off-set against any overpayment for the inpatient services billed.

Using the Council's decision in *O'Connor Hospital*, hospitals appealing Part A denials should assert that in the event the denial is upheld, any overpayment should be offset by the costs of the necessary outpatient observation services provided. Although the Council made clear that RACs have the authority to compensate providers for those services at the time they reopen and review the determination, hospitals should consider appealing unfavorable denials to ensure that they receive at least partial payment for these services.

2 See *Medicare Benefits Policy Manual*, CMS Pub. 100-02, Ch. 6 at § 10.

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