

“Traps for the Unwary During MassHealth RAC Audits”

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Introduction

The home health community is aware that MassHealth has begun to perform Recovery Audit Contractor (“RAC”) audits of services provided by home health agencies (“HHA”). The MassHealth RAC audits are being performed by a contractor, Washington & West LLC, of Towson, Maryland. These audits proceed as follows:

1. The HHA receives a request for various records (up to 100 claims) going back a period of three years from the date a claim was filed. The HHA is required to provide the requested records within 15 days. (This compliance date can be extended upon request).
2. The MassHealth RAC auditor reviews the records to determine if the HHA complied with the requirements of the MassHealth Home Health Regulations (130 CMR 403) and All Provider Regulations (130 CMR 450). If the auditor identifies an overpayment, it will issue an initial Notice of Overpayment.
3. The HHA has 30 days to submit any additional documentation disputing the findings by the RAC audit.
4. In the event the RAC auditor disagrees with the HHA’s rebuttal, it will issue a Final Notice of Overpayment. Significantly, MassHealth will immediately begin to withhold payments up to the amount listed in the Final Notice.
5. Once a Final Notice is issued, the HHA has 30 days to file an appeal with the MassHealth Board of Hearings.

Filing an Appeal from the RAC Auditor Findings

It is critical that any appeal made by the HHA comply with the rules for claiming such an appeal: it must be timely (within calendar 30 days of the date of the Notice, not receipt), and the appeal must detail the basis for the appeal (the HHA must set out genuine and material facts for resolution and detail the basis for the dispute). An appeal will be dismissed if the HHA simply makes “general allegations or denials or general descriptions of positions or contentions.”

The regulation governing what a “Claim for an Adjudicatory Hearing” must contain is 130 CMR 450.243, and should be reviewed by an HHA in preparing the appeal. Specifically, that regulation states in relevant part that the claim “must specifically identify each issue and fact in dispute and state the provider’s position, the pertinent facts to be adduced at the hearing, and the reasons supporting that position.” The regulation further provides that the Board of Hearings will grant a hearing only if the provider demonstrates all of the following:

- (1) The claim was filed within 30 days of the Final Notice;
- (2) There is a genuine and material issue of “adjudicative fact” for resolution.
- (3) The factual issues can be resolved by available and specifically identified reliable evidence. As stated above, a hearing will not be granted on the basis of general allegations or denials or general descriptions of positions and contentions.
- (4) The provider’s allegations, if established, “would be sufficient to resolve a factual dispute in the manner urged by the provider.”
- (5) Resolution of the factual dispute in the way sought by the provider is relevant to and would support the relief sought.

The regulation concludes that “[f]ailure to comply with the conditions set forth [above] will result in dismissal of the claim.”

We point out this regulation because Verrill Dana was recently contacted by an HHA following the dismissal of an appeal for failure to comply with this rule even though the HHA had excellent grounds to contest the RAC auditor’s findings.

The following is an example of what the HHA should submit in connection with a claim for an adjudicatory hearing. In a recent audit, the RAC auditor denied twice a day skilled nursing services for medication administration, asserting that the nurse could have prepared the medications in the morning for administration by the patient’s caregiver in the evening. However, the RAC auditor failed to acknowledge that the patient lived in a group home that would not allow the caregiver to administer medications.

In another case, the RAC auditor denied home health aide services, asserting that the frequency of services “suggested” that the home health aide was used for homemaker, respite, and chore purposes, which are specifically excluded from coverage by the MassHealth home health regulations (130 CMR 403.421(C)). In this case, the HHA should submit evidence that in fact the home health aide was assisting with ADLs and IADLs, safety and supervision.

Preparing for the Payment Withhold

HHAs should be aware that within approximately 45-60 days of the issuance of the Final Notice of Overpayment by the RAC auditor, MassHealth will commence withholding payments at 100% of current amounts due the HHA. The filing of a timely appeal with the Board of Hearings will not postpone the withholding of payments. See 130 CMR 450.242. For most HHAs, this will create a severe financial hardship, if not put the agency out of business. It is recommended that following receipt of the Final Notice the HHA immediately contact the MassHealth Provider Compliance Unit in an effort to reduce the rate at which payments will be withheld. Pursuant to 130 CMR 450.249(B), the HHA can make a written submission as to why a payment withhold should not be imposed, or why the rate of withhold should be reduced. However, MassHealth takes the position that even if it allows for a payment plan based on financial hardship, the total amount of the alleged overpayment would have to be recovered within one year. If the HHA was successful in its appeal to the Board of Hearings, the withheld funds would be paid over to the HHA.

We strongly suggest that any HHA faced with a RAC audit consult with a health care attorney familiar with the MassHealth overpayment process to avoid risking being foreclosed from contesting these audits.

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