



Compliance TODAY

March 2014

A PUBLICATION OF THE HEALTH CARE COMPLIANCE ASSOCIATION

WWW.HCCA-INFO.ORG



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by Paula G. Sanders, Esq. and Laura M. Weeden, Esq.

Compliance guide to PEPPERs for skilled nursing facilities

- » PEPPER is a roadmap for assessing areas at risk of improper Medicare billing.
- » Use PEPPER to support the auditing and monitoring component of compliance.
- » Scrutinize risk areas and incorporate them into regular compliance assessments.
- » Failure to review PEPPER findings may be seen as reckless disregard.
- » SNF PEPPERs will be available electronically between May 5 and May 12, 2014.

Paula G. Sanders (psanders@postschell.com) is Principal and **Laura M. Weeden** (lweeden@postschell.com) is an Associate in the Harrisburg, PA offices of Post & Schell, PC.

Compliance officers for long-term care facilities who understand how to use their facilities' Program for Evaluating Payment Patterns Electronic Reports (PEPPERs) help position and prepare their organizations for Medicare audits targeted at potential improper billings related to therapy services. Other healthcare providers have been receiving PEPPERs for a number of years, but Medicare-certified skilled nursing facilities (SNFs) only started getting PEPPERs in late 2013. Many SNFs have not yet developed robust strategies for reviewing their PEPPERs and thus may not appreciate the value that their compliance team can bring to their PEPPER analyses. In order to help SNFs better utilize their PEPPERs, this article describes the impetus behind the development of the SNF PEPPER, explains the data contained within the PEPPER, and recommends strategies for responding to that data.

Overview of the SNF PEPPER

The Centers for Medicare & Medicaid Services (CMS) has contracted with TMF Health Quality Institute (TMF) to prepare and distribute PEPPERs for a wide range of healthcare

providers, including short-term acute care hospitals, long-term acute care hospitals, critical access hospitals, inpatient psychiatric facilities, inpatient rehabilitation facilities, hospices, and partial hospitalization programs. SNFs joined this list of providers in August 2013, with the release of the first annual SNF PEPPERs. The second annual SNF PEPPERs will be available electronically between May 5 and May 12, 2014. This is a change from 2013. The SNF PEPPER will be available electronically to the SNF's CEO, president, or administrator via a secure portal on PEPPERresources.org. Compliance officers should be on the lookout.

It is no secret that CMS, the Department of Justice (DOJ), the Office of Inspector General (OIG), Medicare Administrative Contractors (MACs), Medicare Recovery Auditors (RAs), Zone Program Integrity Contractors (ZPICs) and others have been developing sophisticated data analytics and data mining platforms to identify and prevent fraud, waste, and abuse in the federal healthcare programs. Through PEPPER, CMS is giving providers the opportunity to see some of the raw data that may populate these platforms. Providers may take



Sanders



Weeden

comfort knowing that the data in PEPPER is not publicly available, but the MACs and RAs do have access to the raw data for these metrics, as well as many others.

In the case of SNFs, the PEPPER identifies facility-specific and industry-wide data concerning several metrics related to Resource Utilization Groups (RUGs) and therapy services. SNFs should take advantage of this chance to compare their own Medicare billing data with that of their peers. The SNF PEPPER is an indispensable tool for analyzing their data in those areas the government has identified as being at high risk for improper Medicare payments.

Impetus for development of the SNF PEPPER

In order to determine the particular target areas for the PEPPER, TMF reviewed literature regarding SNF payment vulnerabilities, reviewed the SNF prospective payment system, analyzed claims data, and coordinated with CMS experts. Included in the literature review were various reports from the Government Accountability Office (GAO) and the OIG that identify SNFs as vulnerable to fraud, waste, and abuse.

One of the primary driving forces in the implementation of the PEPPER for SNFs was a 2012 report in which the OIG found that 25% of SNF claims were incorrectly billed.¹ In this report, the OIG specifically found that many of the improper claims were upcoded to ultrahigh therapy. Consequently, the findings of this report were

influential during TMF's development of the PEPPER target areas.

Based on this review and analysis, TMF identified six target areas: (1) Therapy RUGs with high Activities of Daily Living (ADLs); (2) Non-therapy RUGs with high ADLs; (3) Change of Therapy (COT) Assessment; (4) Ultrahigh Therapy RUGs; (5) Therapy RUGs; and (6) Episodes of Care Lasting 90 days or more (EOC>90 days).

Data contained in the SNF PEPPER

Each of the target areas contains data drawn from SNF billing claims submitted by the SNFs on their UB-04 claim form for the immediately preceding three fiscal years (FY 2010-2012 for the 2013 PEPPER; 2011-2013 for the 2014 PEPPER). Each target area presents the individual SNF's data as well as comparison data for all SNFs in the nation, all SNFs in the particular SNF's MAC jurisdiction, and all SNFs within the particular SNF's state MAC jurisdiction. At the writing of this article, TMF was hopeful that it would be able to change the state data to include all SNFs in the state, not just the subset of SNFs in the same MAC in the same state.

In order to provide this comparison, TMF created a percent that represents the SNF "score" for the target area. For example, for the target areas associated with therapy RUG levels, TMF created a percent in which the number of days billed at the particular RUG level is the numerator and the total number of

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days billed for all therapy RUGs is the denominator. In other words, the percent represents the percentage of therapy days billed at a particular RUG level.²

The PEPPER compares the SNF's target area percent to other SNFs in the state, MAC jurisdiction, and nation in the form of a percentile. If the SNF's percentile at the national level is above 80 or below 20, the SNF is considered an outlier. Outliers are considered to be at risk of improper payment. In other words, if the SNF is providing ultrahigh therapy RUGs at a rate greater than 80 percent of the SNFs in the nation, the SNF falls above the 80th percentile in terms of ultrahigh therapy RUGs. If the SNF provides services above the 80th percentile, CMS believes there is a risk that the services being claimed are not actually provided or they are upcoded. Likewise, if the SNF is providing services below the 20th percentile nationally, there is a potential risk that the SNF is not providing services necessary to meet the required quality of care for its residents. Because outliers are at higher risk for improper payment, those higher than the 80th percentile are highlighted in red, and outliers lower than 20th percentile are highlighted in green in the PEPPERS. It may be helpful to review electronic copies of the PEPPER instead of scanned copies, if the copies were not made in color.

When reviewing the SNF PEPPER, it is important to note that a comparison of the particular SNF's percent to those of the state, MAC, and national data is only presented in

the form of a percentile in the most recent Four Quarter Comparison of all the targets. This analysis is typically provided on the third page of the PEPPER. For example, the 2012 Four Quarter Comparison provides the SNF's percentile in comparison to other SNFs.

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On the following pages, the percentile is not a direct comparison of the particular SNF to the state, MAC, or national data. Rather, the SNF should compare its Target Area Percent to the State/MAC/National 80th percentile and State/MAC/National 20th percentile in order to identify if it is considered an outlier.

Although identification as an outlier is cause for concern, outlier status does not in and of itself mean that the SNF has improperly billed Medicare. Rather, outlier status means that

the SNF appears statistically different from other providers in the nation. This difference may be explained by myriad factors, including the SNF's referral sources, the SNF's patient characteristics, and special services provided by the SNF.

In addition to data regarding the six target areas, the SNF PEPPER also provides information to help SNFs better understand their RUGs distributions. The final pages of PEPPER are not specially intended to identify specific risk areas. The final pages of the SNF PEPPER identify the top RUGs claimed for all episodes of care by the SNF, the top RUGs claimed by the SNF for all episodes of care with 90 or more days, and comparable jurisdictional data.

Using this comparable data, SNFs can identify if there are areas where it is noticeably different from the other SNFs in its jurisdiction. Where such differences occur, the SNF should evaluate the cause for the differences to ensure that there has not been improper payment.

In any situation where an outlier is identified through PEPPER, the SNF should review and scrutinize those areas to ensure compliance with Medicare guidelines. The failure to review areas of concern identified in the PEPPER may be considered reckless disregard.

Suggested interventions for outliers

A SNF at or above the 80th percentile for Therapy or Non-therapy RUGs with high ADLs is potentially at risk of having over-coded residents' ADL status. SNFs who score at this level should determine if the amount of assistance with ADLs as reported on the Minimum Data Set (MDS) is supported and consistent with documentation in the medical record. Conversely, a SNF that scores at or below the 20th percentile is at risk of under-coding ADL status. The same intervention is recommended in this case, namely, that the SNF should determine if the amount of assistance with ADLs as reported on the MDS is supported and consistent with documentation in the medical records.³

A SNF at or above the 80th percentile nationally for COT assessments may be at risk for having problems delivering services as anticipated. TMF recommends examining the factors that lead to the need for the COT assessment, such as care planning or scheduling of therapy. Although there is no specific risk identified for SNFs that score at or below the 20th percentile, compliance officers should bear in mind the warning that SNFs that are using the COT assessment infrequently or not at all may be targeted by MACs or RAs for review to establish whether therapy assessments are being completed as required.

A SNF at or above the 80th percentile nationally for Ultrahigh Therapy RUGs or Therapy RUGs is potentially at risk for improper billing for therapy services. Any such SNF is well-advised to determine if the therapy provided was reasonable, medically necessary, and that the amount of therapy reported on MDS is supported by documentation in the medical record.

A SNF at or above the 80th percentile for Episodes of Care greater than 90 days is at risk for having provided services beyond the point that they were necessary. At a minimum, an affected SNF should determine if continued care was appropriate and required a skilled level of care. The SNF should also consider reviewing the appropriateness of plans of care and discharge plans.

In general, any SNF concerned that it is at risk for improper payments as reflected in its PEPPER should conduct a review of its medical records to ensure that services provided are appropriate and medically necessary and that the documentation in the medical record supports the level of care and services. Best practices also include conducting regular meetings prior to billing to verify that all aspects of care, documentation, and billing meet all Medicare regulations. These meetings, often referred to as "triple checks," frequently include the director of nursing, the MDS coordinator, the therapy director, and the business office manager, or whoever is responsible for submitting claims to Medicare. Compliance officers should consider implementing a system to ensure that these meetings occur.

Strategies for responding to the PEPPER

Compliance officers can help their organizations create an action plan for evaluating the PEPPER to identify risk areas and for developing and implementing a review of those risk areas. First and foremost, ensure that appropriate team members have received the 2013 and 2014 PEPPERS.⁴ The PEPPER team should include the

director of nursing, administrator, MDS coordinator, billing administrator, quality assessment officer, compliance officer, compliance committee, and CEO. SNFs should also ensure that the medical director reviews the PEPPER and understands the data contained therein.

If the PEPPER shows problematic areas, compliance officers should help implement a short-term audit to further evaluate compliance with Medicare requirements for the specific area. Depending on the type of issues involved, healthcare counsel may be engaged to ensure the results are protected under attorney-client privilege.

Incorporate the risk areas into the facility's compliance program, Quality Assessment and Performance Improvement program (QAPI) and Continuous Quality Improvement program (CQI) to ensure continuous oversight. Even if the PEPPER does not flag specific risk areas, as a matter of best practice, a SNF should consider incorporating all six of the identified target areas into its compliance program, QAPI, and

CQI. SNFs should also implement or adjust their Medicare triple check processes to ensure that the target areas are particularly scrutinized.

Conclusion

The PEPPER is a roadmap from the government for assessing a SNF's risk areas and for gaining insight into government audit targets. Consequently, ignoring the PEPPER would be like ignoring the other team's playbook during a championship game. As a result, SNFs should ensure that they and their staff are familiar with the information contained in the PEPPER and are ready and equipped to utilize the information to improve the SNFs' compliance with Medicare billing requirements. ©

1. Office of Inspector General, Dept. of Health and Human Services: Inappropriate Payments to Skilled Nursing Facilities Cost Medicare More Than a Billion Dollars in 2009 (2012). Available at <http://1.usa.gov/1kzyDIN>
2. TMF Health Quality Institute: *PEPPER Skilled Nursing Facility Program for Evaluating Payment Patterns Electronic Report: User's Guide, First Edition*, pp 6-7. Available at <http://bit.ly/MgpCWM>
3. Id. at pp 8-9.
4. Missing PEPPERS can be obtained by contacting TMF at 1-512-485-2201 or by using the Help/Contact Us section at www.pepperresources.org

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