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## MEDICARE RECOVERY AUDITORS LOOKING AT SNF PSYCHIATRIC CONDITIONS

Paula G. Sanders, Esquire

The Government Accountability Office (GAO) recently released a study that showed that Medicare recovery auditors (RAs) conduct five times as many audits as all other Medicare auditors combined. In addition to Medicare RA reviews or therapy services, skilled nursing facilities (SNFs) are facing increased scrutiny for the provision of care to residents who have a psychiatric diagnosis or who transferred from a psychiatric hospital or unit. Performant Recovery, the Medicare recovery auditor for Medicare Region A identifies Issue Number A00602012, "SNF Psychiatric Conditions," as a current issue under review. *See Issues Under Review*, PERFORMANT RECOVERY, https : / / www.dcsrac.com/issuesunderreview.aspx.

What does this mean for Directors of Nursing? It means your facility is likely to be contacted by a Medicare RA, and you should be prepared. This article will provide recommendations for preparing for a RA audit in relation to SNF Psychiatric Conditions.

***Identify Your Medicare RA***

First and foremost, you should ensure that you and your staff know the identity of your Medicare RA. In Medicare Region A, which encompasses Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont, the Medicare RA is Performant Recovery. Their provider portal contains helpful information, including a sample copy of their envelope. *See,* https://www.dcsrac.com/PROVIDERPORTAL.aspx. Because time periods for responding to requests from the Medicare RA are so critical, you should train staff about your internal procedures for handling and responding to correspondence received from the RA. Many facilities have already created RA Response Teams. If you have not done so yet, it is not too late.

***Determine the Target and Be Prepared***

Even before a request has been received, you should determine what the RA is targeting. Every issue under review by a Medicare RA must be pre-approved by the Centers for Medicare and Medicaid Services (CMS). Each Medicare RA posts all issues under review on their web site.

***Practice Tip: Periodically review the RA issue list to see if you might be impacted by one of the issues.***

If you receive an Additional Documentation request (ADR) from the Medicare RA, you need to determine what it is that is being requested and why you are getting the ADR. Again, looking at the posted RA issue list may be helpful. This upfront analysis can be used to assist in your internal review of the medical records before you submit them to the RA. It may also be of assistance in crafting an effective cover letter to accompany the medical records that have been requested. In our experience, an effective cover letter helps set the stage for arguing the defense of the case.

ADRs for "SNF Psychiatric Conditions" are classified as complex reviews. They stem from the RA's proprietary data mining techniques which are used for claim selection. Once the claims are identified, and the records requested and received from a facility, the RA will review your medical documentation to determine if clinical coverage and technical requirements have been met.

Claims may be selected for review if a resident transferred to your SNF from a psychiatric hospital or a psychiatric unit or if the resident's principal diagnosis is psychiatric, not medical. Often times facilities are not as attentive as they should be when recording primary and secondary diagnoses. According to the Medicare Benefit Policy Manual, (Manual) Chapter 8, Section 20.1, "the applicable hospital condition need not have been the principal diagnosis that actually precipitated the beneficiary's admission to the hospital, but could be any one of the conditions present during the qualifying hospital stay." Accordingly, you should make sure that all applicable diagnosis codes are identified. If you receive an ADR for this issue, you should consider including all diagnoses in the cover letter, as well as highlighting them in the medical record.

The Manual goes on to caution that a patient with *only* a psychiatric condition who is transferred from a psychiatric hospital to a participating SNF is likely to receive only noncovered care. It is extremely important to identify all of the services that the patient received as well as all co-morbidities.

Indeed, Section 30.2.3.2 of the Manual provides as follows:

> Skilled observation and assessment may also be required for patients whose primary condition and needs are psychiatric in nature or for patients who, in addition to their physical problems, have a secondary psychiatric diagnosis. These patients may exhibit acute psychological symptoms such as depression, anxiety or agitation, which require skilled observation and assessment such as observing for indications of suicidal or hostile behavior. However, these conditions often require considerably more specialized, sophisticated nursing techniques and physician attention than is available in most participating SNFs. (SNFs that are primarily engaged in treating psychiatric disorders are precluded by law from participating in Medicare.) *Therefore, these cases must be carefully documented.*

Emphasis added.

Performant Recovery's ADR letter references as well a local coverage article for National Government Services Inc. ("NGS"). NGS is not the Medicare Administrative Contractor ("MAC") for Pennsylvania and thus, its position is not binding. The relevant provision of the NGS

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3. What are the people, situations, spaces, and so on that trigger emotional responses in you?
4. What are the triggers and how can you learn to recognize them?
5. Do you have an appropriate response for each trigger?
6. What extraordinary challenges do you face?

Take time for yourself and experiment with different coping strategies. Expressing your feelings in a productive way can be the difference between forming lasting relationships and destroying them; emotions are contagious. This kind of reflection will improve your self-awareness and as a result you'll become a more effective leader.

***To contact Dr. Potetz:***

***Dr. Karla Kay Potetz & Associates***
***Cleveland, Ohio - 216-221-8993***
***kpotetz@aol.com / www.DRKKP.com***

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article discussing their medical policy for SNF services for psychiatric patients follows.

> The care provided during a covered SNF stay must be associated with the condition for which the beneficiary was admitted to the hospital or for a condition that arose during the qualifying stay, or for a condition which arose while in the SNF. In the case of beneficiaries admitted to SNF care from a psychiatric hospital or psychiatric unit within a general hospital, associated SNF care would need to be related to comorbid medical conditions that require skilled nursing and therapy services. In these cases the beneficiary must require skilled nursing and/or therapy services on a daily basis and the SNF must additionally provide the psychiatric services by appropriately qualified personnel and follow acceptable psychiatric practice in the establishment and delivery of the treatment plan. It is expected that SNF placement for psychiatric patients would rarely be reasonable and necessary. (See CMS Publication 100-02, Medicare Benefit Policy Manual, Chapter 8, Sections 20.1 and 30.2.3.2.) An example would be upon transfer from an acute inpatient psychiatric service for a patient whose psychiatric condition has resolved but the medical co-morbidity requires continuous skilled care.

Understanding the RA's position should help you to prepare your response and gather the appropriate records.

***Respond to the ADR***

Once you receive an ADR, you should identify the appropriate records and ensure that you are complying fully with the request's requirements. As you can infer from the above, before you submit medical records, you should make sure that you have identified:

- Transferring facility;
- Primary and all secondary diagnosis;
- Services provided to treat the nonpsychiatric conditions; and
- Coding on the MDS that addresses psychiatric condition.

Instead of sending a simple cover letter, consider writing a cover letter that paints a picture of the resident and explains why and how the care that you gave was reasonable and medically necessary. You may want to attempt to answer within the cover letter any questions that are posed by the RA or implied by the RA's requests. For example, you may want to address whether or not you were providing any sort of psychiatric or psychological services or in depth social services related to any symptoms such as depression, anxiety or agitation.

We recommend that you number or Bates-stamp every page of every document that you send to the Medicare RA, and that you keep a copy of everything you send. The RA has detailed submission instructions that must be followed.

Once your response to the ADR has been submitted, monitor your mail, as well as your Remittance Advices, for any indication of how the review is proceeding. If the RA determines that your claim was improper, you will need to consider your next steps, which may include an analysis of your appeal rights.

***Conclusion***

Medicare RA requests can be daunting and exhausting. Advance preparation and thorough understanding of the issues before you respond to an ADR may help you position your facility for a favorable or defensible outcome.

[1]*This article does not offer specific legal advice, nor does it create an attorney-client relationship. You should not reach any legal conclusions based on the information contained in this article without first seeking the advice of counsel.*

[2]Ms. Sanders is a Principal and Chair of the national health law practice of Post & Schell, P.C. She may be reached at psanders@postschell.com and 717-612-6027. She wishes to acknowledge the assistance of Laura Weeden in preparing this article.

[3]The Medicare recovery audit contractors were formerly known as RACs and are now called RAs.

*Please see page 29 for more important information from Paula Sanders.*

***Florence Nightingale:***

***I think one's feelings waste themselves in words; they ought all to be distilled into actions which bring results.***

## RECENT DEVELOPMENTS OFFER TIPS FOR REDUCING RISKS OF HIPAA VIOLATIONS AND MEDICAID REPAYMENTS[1]

Paula G. Sanders, Esquire[2]

1. Enforcement Actions -- Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule: A company was recently fined $1.2 million by the US Office for Civil Rights (OCR) because they returned a leased copier without first removing the electronic personal health information (ePHI) that was stored on the copier's hard drive. Another provider was fined $1.5 million by OCR because they lost a laptop that was not encrypted.

***PRACTICE TIP: The HIPAA Final Omnibus Rule goes into effect on September 23, 2013, exposing both covered entities as well as their business associates, to increased fines and penalties for HIPAA breaches and other violations. If you have not already done a risk assessment and reviewed your business associate contracts for potential exposures, you should do so as soon as possible.***

2. Medicaid Recoupment – In August 2013, the Commonwealth Court issued two Opinions upholding the right of the Department of Public Welfare, Bureau of Program Integrity (BPI) to recoup Medicaid payments from providers who have inadequate documentation to support claims for services. In one case, the Court affirmed recoupment from a hospice provider who had a signed and dated physician certification of terminal illness where the date was illegible. The Court held, "that substantial compliance with Medical Assistance regulations is not sufficient, but, rather "[s]trict compliance with the regulations pertaining to submission of claims is required where disbursement of public funds is at issue . . . . Men must turn square corners when they deal with the Government." Grane Hospice Care, Inc., v. Dep't of Public Welfare, No. 1354 C.D. 2012 (Pa. Commw. Ct. July 25, 2013), at 7 (emphasis added).

Similarly, on August 5, 2013, the Commonwealth Court affirmed BPI's retrospective denial of reimbursement to an inpatient psychiatric facility for care provided to a minor who was admitted for suicidal and homicidal concerns. In Foundations of Behavioral Health v. Dep't of Public Welfare, No. 1112 C.D. 2012 (Pa. Commw. Ct. Aug. 5, 2013), the Court found that although the patient's medical record contained references to particular actions of the patient and the conditions from which he was suffering and risk assessments on certain dates, there was no description in the record of the actual treatment that was provided and why that treatment was medically necessary. The Court reached this conclusion even though the medical record contained extensive multi-disciplinary notes, including treatment plan updates, primary therapist progress notes, interdisciplinary team progress notes, psychiatric daily and weekend progress notes, mental health technician progress notes and group therapy progress notes. The Court nonetheless found the records to be insufficient to support the medical necessity of the treatment. "[T]the treatment plan updates and progress notes 'simply document what [S.D] was doing and saying,' rather than the actual treatment Foundations was providing to S.D. and why that treatment was medically necessary." Id. at 12-13.

***PRACTICE TIP: Medical records must be legible. Share this information with your staff so that they understand the ramifications, including potential recoupment, of sloppy handwriting. Additionally, medical records must be descriptive of the services provided and why they are medically necessary. The medical record should paint a picture of the care provided to your residents to support the services billed. Expect Medicare and Medicaid auditors to assess your documentation for compliance with all applicable regulations.***

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