October 19, 2012

Marilyn B. Tavenner  
Acting Administrator  
Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building, Room 445-G  
200 Independence Avenue, SW  
Washington, DC 20201

RE: RAC Audits of E/M Codes

Dear Acting Administrator Tavenner:

The undersigned organizations as representatives of cognitive specialists are writing to share our concerns about the expansion of the Recovery Audit Contractor (RAC) program to include audits of evaluation and management (E/M) codes in physician offices. Cognitive specialists are physicians with additional training in a specific field of medicine who primarily provide E/M services to individuals with complex medical conditions that require a level of expertise the referring physician is not trained to diagnose or qualified to treat. Frequently, cognitive specialists are able to prevent patients from having costly procedures by identifying and treating patients early.

We are very concerned that the Centers for Medicare & Medicaid Services (CMS) recently approved Connolly, Inc., the RAC for Region C, to conduct complex medical reviews of select E/M codes, including CPT® code 99215. We strongly oppose the expansion of RAC reviews to include E/M codes and request that CMS rescind its approval of these audits.

While we understand that Medicare improper payment review entities (i.e., comprehensive error rate testing program) that perform statistical processing of claims data have illustrated that there are excessive utilizers of CPT code 99215, we do not believe that E/M services are appropriate for RAC review due to the variability and subjective nature of E/M coding. Physicians who provide E/M services apply complex decision-making based on many clinical approaches including, but not limited to, research and review of patient medical history, analyses regarding appropriate medication, discussion of home situation, prescription distribution plan and preventive care planning. Due to the complexity of this type of care, it does not easily lend itself to medical review. In addition, each E/M visit is different based on the specific needs of the patient. Assignment of E/M service levels is based on seven components:

- history
- examination
- medical decision making
- counseling
- coordination of care
- the nature of the presenting problem
- time

It is also difficult to definitively determine what qualifies as a level of service because of the subjective nature of E/M coding. For example, despite detailed Medicare guidelines that specify the documentation required for each level of E/M service, knowledgeable individuals often reach different conclusions regarding the E/M level of service justified by the documentation. These published studies also suggest that under certain circumstances, experienced reviewers may disagree for about 50 percent of the cases on the most appropriate code to describe a particular service.

Furthermore, in 2007 CMS acknowledged that there are differences of opinion in determining how documentation aligns with the E/M level of service billed in other review programs. The discussion of the “incorrect coding” errors in the November 2007 “Improper Fee-for-Service Payments Report” states:

A common error involved is overcoding or undercoding E/M codes by one level on a scale of five code levels. Published studies suggest that under certain circumstances, experienced reviewers may disagree on the most appropriate code to describe a particular service. This may explain some of the incorrect coding errors in this report. CMS is investigating procedures to minimize the occurrence of this type of error in the future.

We understand that CMS approved RAC extrapolation of their findings based on a sample of CPT code 99215 claims. Billing for E/M services is dependent on many factors and varies based on the patient. The use of the extrapolation method in an audit for comparison of visits among different patients has a high outcome probability of error and should not be used. Applying the results of a review of one patient to make assumptions about an examination of another patient is not appropriate. Therefore, we strongly urge CMS to rescind its approval of RAC extrapolation of CPT code 99215 determinations.

Moreover, these RAC audits of E/M codes will certainly add inappropriate burden on already financially strained providers because these audits target the population of providers that can least afford the time it takes to appeal the audit or to hire someone who can appeal on their behalf. Indeed, the providers most affected are those Congress deemed in need of extra support, resulting in cost shifting initiatives from expensive procedures to caring for patients through direct cognitive interaction. Cognitive specialty physicians tend to receive referrals from primary care physicians because of the greater complexity of patients’ disorders, thereby leading to a greater use of higher level codes.

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Finally, there may be an accuracy issue within the RAC program. In the CMS Medicare Fee-for-Service Recovery Audit Program Appeals Update- June 2012, it was noted that of the 4.9 percent of Part B overpayment determinations that were appealed 70 percent were overturned. We would also like to point out that many RAC audit denials are for services provided more than 12 months ago and often carriers do not allow resubmission of old claims. Therefore, the provider would be denied any payment in cases where a one or two level downcode would have been appropriate, which is unfair to this population of physicians who are already financially strained.

For the aforementioned reasons, we strongly oppose RAC review of E/M codes, including CPT code 99215, and strongly urge CMS to rescind its approval of these audits. We also urge CMS to reject any other pending RAC requests to audit E/M codes. Thank you for your attention to this matter. Should you have questions about our comments or require further information, please contact Daneen Grooms, Manager of Regulatory Affairs at the American Academy of Neurology at dgrooms@aan.com or (202) 525-2018.

Sincerely,

American Academy of Neurology
American Association of Clinical Endocrinologists
American College of Rheumatology
Coalition of State Rheumatology Organizations
Infectious Diseases Society of America
North American Neuro-Ophthalmology Society
The Endocrine Society