U.S. RAILROAD RETIREMENT BOARD

OFFICE OF INSPECTOR GENERAL

This report summary presents the abbreviated results of the subject audit. The full report includes information protected from disclosure and has been designated for limited distribution pursuant to 5 U. S. C. § 552.

Railroad Medicare Controls Over Evaluation and Management Services Were Not Fully Adequate

Report No. 19-10

August 5, 2019

OFFICE OF INSPECTOR GENERAL
U.S. RAILROAD RETIREMENT BOARD
Railroad Medicare Controls Over Evaluation and Management Services Were Not Fully Adequate

What We Found

Our audit determined that the Railroad Retirement Board's (RRB) Specialty Medicare Administrative Contractor, Palmetto Government Benefit Administrators, LLC (Palmetto) controls were not fully adequate to detect and prevent the payment of improper Evaluation and Management (E/M) services and to ensure that the services were in accordance with Medicare's coverage and medical necessity requirements. E/M services represent different types of physician patient encounters, such as office visits or hospital visits. Within each type of encounter, there are different levels of care. Medicare only allows payment where the E/M service is medically necessary. Palmetto's medical review coverage of E/M services was minimal and only represented approximately one percent of E/M services. We estimate that recoverable E/M improper payments range from $0.9 million to $3.5 million for E/M services identified during our audit. Palmetto's controls were considered ineffective and improper payments were identified for 50 percent of the high risk E/M tests performed. Palmetto's control accuracy rate for all E/M tests performed was 62 percent.

What We Recommend

To address the identified weaknesses and reduce improper payments, we made 34 recommendations. RRB management did not concur with 32 and stated it is not responsible for the Railroad Medicare program; only reviews Palmetto's contract performance; and believes the E/M improper payments can only be recovered under special limited circumstances. [Refer to pages 2-5] While benefits received under Railroad Medicare are solely for retired railroad workers, the quality of healthcare, monthly premium cost, and customer service are not distinct from traditional Medicare. If RRB management denies ownership of its Railroad Medicare program responsibilities and does not accept responsibility for minimizing improper payments, there is no practical reason for its existence. Because our findings addressed Palmetto's Statement of Work (SOW) functional requirements under the RRB's contract authority, we continue to see the need for these corrective actions.

What We Did

Our audit objective was to determine if adequate controls are in place to detect and prevent payments, for high risk E/M services that are not in accordance with Medicare's coverage and medical necessity requirements.

Our data analysis and testing primarily focused on high risk E/M services identified based on the likelihood, impact, and materiality of improper payments.

In order to complete this work, we reviewed Centers for Medicare and Medicaid Services laws and regulations, conducted interviews with appropriate officials, assessed E/M risk scenarios, utilized data analytics to quantify and test E/M claims, provided Palmetto with examples of E/M services observed, validated the critical findings, estimated the total improper payments made to E/M providers, and briefed RRB and Palmetto officials.

The scope of the audit was Railroad Medicare E/M services, paid by Palmetto for dates of service between January 1, 2013 and December 31, 2016. Palmetto paid and approved approximately $1 billion for 14.9 million E/M services.

Summary of Management's Comments and Our Response

From its responses, RRB management has not reacted proactively to observed Railroad Medicare improper payments or the need for additional E/M claim edits/audits proposed by Palmetto. Although examples of the underlying findings had been provided to and validated by Palmetto during our audit, RRB management did not concur with the majority of our recommendations. Palmetto had agreed that edits/audits were not in place and could be implemented to minimize potential improper payments.

In its responses, RRB management provided new information that had not been made available to us during the audit. For instance, the Office of Programs' indication that the Centers for Medicare & Medicaid Services (CMS) is solely responsible for ensuring that Palmetto is processing E/M claims based on medical necessity and that Palmetto is not responsible for recoupment of improper payments where Corrective Coding Initiative (CCI) edits were not in place or where the timeframe implies that a Medicare Administrative Contractor (MAC) may avoid recoupment was not brought to our attention at either of the two exit briefings we held with RRB management.

In its response to our draft report, the Office of Programs stated:

> *The Centers for Medicare & Medicaid Services (CMS) is responsible for the Medicare program as a whole. Section 1842(g) of the Social Security Act provides the RRB with the authority to contract with a carrier to perform Medicare Part B functions. According to the Memorandum of Understanding between the Department of Health and Human Services, [CMS], and the Railroad Retirement Board, (MOU 13-61)[.]*
>
> *Our job is to make sure that the SMAC [Specialty Medicare Administrative Contractor] is carrying out their responsibilities as required by CMS guidance.*
>
> *Many of the OIG audit recommendations would require the Office of Programs to perform functions that fall under the jurisdiction of CMS, which provides detailed and specific guidance to Medicare contractors, including Palmetto and in accordance with the Social Security Act and MOU 13-61.*

The Office of Programs also stated that its Quality Assurance Surveillance Plan (QASP) addresses a subset of performance standards. However, the QASPs provided during the audit did not address the E/M service findings discussed in our report. We did not recommend or expect that RRB would perform any functions under the jurisdiction of CMS. However, when RRB becomes aware of Medicare program findings and control deficiencies, their SOW establishes a responsibility to oversee and work with Palmetto and CMS to resolve the known issues and prevent further improper payments.

The Office of Programs also referred to MOU 13-61 which states that:

> *The RRB and CMS shall work in partnership and cooperate with each other throughout the duration of the RRB SMAC contract. While the RRB will assess SMAC performance, CMS provides overall program guidance. The CMS also is responsible for many of the Information Technology (IT) systems, databases, and processing environments, as*

> *well as change requests and performance standards necessary for the successful execution of Medicare contracts ….*

Our audit methodology and recommendations are consistent with the direction of MOU 13-61. However, the Office of Programs response did not discuss the following portions of MOU 13-61:

The RRB shall:

- …Maintain effective communications with the SMAC…;
- …Collaborate and work with CMS on all reporting, auditing, and security requirements of the SMAC…;
- …Coordinate and, if practicable, participate in evaluations and performance reviews with CMS in areas of common interest, such as internal controls, indirect cost rates, or other CMS required activities…; and
- …Within the general scope of the SMAC contract, provide technical direction to the SMAC based in part upon the technical direction provide by CMS to the A/B MACs….

As discussed above, the RRB's Railroad Medicare program and administrative responsibilities, for addressing our recommendations and ensuring the necessary corrective actions by Palmetto and CMS, are clearly defined. For example, while it is not RRB's direct responsibility to implement an E/M service edit/audit, RRB should ensure that Palmetto and CMS implement the necessary edit/audit where improper payments would otherwise result.

Palmetto's SOW functional requirements under the RRB's contract authority include medical review, benefit integrity, improper payment reduction, and post payment recovery. Responsibility for minimizing Railroad Medicare improper payments is also an RRB compliance requirement under Improper Payments Elimination and Recovery Act as reported under the Comprehensive Error Rate Testing program. Improper payments most frequently occur because edits were not in place or because the edits were not effective and therefore require post payment recoupment efforts. In contrast, effectively designed edits prevent improper payments and such legitimate payments would not require post payment recoupment.

As stated in the RRB's SOW with Palmetto:

> *The Contractor shall perform all Medicare Administrative Contractor (MAC) Part B functions on behalf of Railroad Retirement Board (RRB) Medicare beneficiaries as specified in this SOW and outlined in both the Internet Only Manuals (IOMs…) and Paper-Based Manuals. For purposes of this contract, when differences or conflicts occur, this SOW shall take precedence over the IOMs unless otherwise specified….*
>
> *…By statute, the RRB has separate authority to contract for the handling of physician and other Part B claims through a carrier that services railroad retirement annuitants only, as stated in the Social Security Act Section 1842(g).*
>
> *An agreement between the RRB and SSA, dated May 11, 1966, delegated responsibility and authorized reimbursement to the RRB for enrolling retired and non-retired employees, their spouses, and disabled children for Supplemental Medical Insurance benefits; collecting cash premiums for those benefits; contracting with a*

> *carrier to process Supplemental Medical Insurance claims; advising beneficiaries on Supplemental Medical Insurance benefits; and recovering Hospital and supplemental insurance overpayments.*
>
> *The Contractor shall provide initial editing of electronically submitted transactions to ensure the completeness and correctness of transactions entering the system….*
>
> *The Contractor is responsible for deterring and detecting fraud and abuse….*
>
> *Under this contract, the Contractor will perform numerous functions to support health care services for RRB Medicare beneficiaries nationwide, which include performing claims-related activities and establishing relationships with providers of health care professional services. The Contractor will perform the requirements of this contract in accordance with applicable laws, regulations, Medicare manuals, and CMS requirements to ensure the financial integrity of the Medicare program….*
>
> *The mission of the RRB is to ensure health care security for its beneficiaries….*
>
> *The Railroad Retirement Board shall take such action as may be necessary to assure that payments made for services by the (Specialty MAC Contractor formerly carrier or) intermediaries it selects will conform as closely as possible to the payment made for comparable services in the same locality by (the Jurisdictional MAC formerly) [Fiscal Intermediary] acting for CMS.*

It is clear from the SOW that Palmetto's performance is under the direction of RRB while CMS only provides guidance. The SOW also takes precedence over CMS guidance and RRB's Contracting Officer and Contracting Officer's Representative are responsible for enforcing the SOW requirements.

RRB management's response and its reliance on CMS for Medicare oversight is inconsistent with the SOW requirements and RRB's administrative responsibilities. By delegating select oversight and administrative responsibilities to CMS, RRB cannot effectively ensure that Palmetto is carrying out their Medicare program responsibilities.

In its response to our draft report, the Office of Programs stated:

> *Programs non-concurs. The SMAC has not yet received the data file to confirm alleged improper payments. Once the data file is received from the IG and alleged improper payments are validated, the SMAC will take appropriate action. The audit period was from 2013 to 2016. As CMS implements new CCI [Corrective Coding Initiative] edits, MACs are not required to recoup improper payments for claims that processed prior to implementation of new CCI edits. Note: CFR 405.980(b)(2) – Timeframe and requirements for reopening initial determinations and redeterminations initiated by a contractor. A contractor may reopen an initial determination on its own motion--within four years from the date of the initial determination for good cause as defined in 405.986.*

We also disagree with RRB management's determination that MACs are not required to recoup improper payments for claims that processed prior to implementation of new CCI edits and this determination is not supported by the quoted regulation. If Palmetto adheres to this interpretation, Railroad Medicare improper payments paid prior to implementation of the CCI edit or paid because no CCI edit exists will never be recouped.

Improper payments commonly occur where edits/audits were not in place, therefore requiring post payment recovery efforts. Whereas, recovery efforts are not typically required if the edits/audits are effectively designed to prevent the improper payments.

RRB management's response also omits the full applicable text of CFR 405.980(b) which states:

> *(b)Time frames and requirements for reopening initial determinations and redeterminations initiated by a contractor. A contractor may reopen an initial determination or redetermination on its own motion -*
>
> *(1) Within 1 year from the date of the initial determination or redetermination for any reason.*
>
> *(2) Within 4 years from the date of the initial determination or redetermination for good cause as defined in § 405.986.*
>
> *(3) At any time if there exists reliable evidence as defined in § 405.902 that the initial determination was procured by fraud or similar fault as defined in § 405.902.*
>
> *(4) At any time if the initial determination is unfavorable, in whole or in part, to the party thereto, but only for the purpose of correcting a clerical error on which that determination was based.*
>
> *(5) At any time to effectuate a decision issued under the coverage appeals process.*

CFR 405.986 also states:

> *Similar fault means to obtain, retain, convert, seek, or receive Medicare funds to which a person knows or should reasonably be expected to know that he or she or another for whose benefit Medicare funds are obtained, retained, converted, sought, or received is not legally entitled. This includes, but is not limited to, a failure to demonstrate that he or she filed a proper claim as defined in part 411 of this chapter.*

CFR 405.986 also states:

> *Establishing good cause. Good cause may be established when -*
>
> *(1) There is new and material evidence that -*
>
> *(i) Was not available or known at the time of the determination or decision; and*
>
> *(ii) May result in a different conclusion; or*
>
> *(2) The evidence that was considered in making the determination or decision clearly shows on its face that an obvious error was made at the time of the determination or decision…*

Therefore, Palmetto may reopen an initial determination or redetermination based on good cause when there is new and material evidence or if there was an error on the face of the evidence used to make the initial determination for the applicable portions of 2015 and 2016, and at any time for the audit period if the initial determination was procured by fraud or similar fault which Palmetto has not yet determined. Recoupment can be made regardless of the presence of CCI edits as CFR 405.980(b) does not specify any such limitations.