

Winning Strategies in Challenging Demand Letters

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Overview

A demand letter is a tactic that makes legal claim demanding a specific action, restitution, or performance of some obligation, usually in the form of payment, for legal wrongdoing. In the health care industry, providers may be confronted with a demand letter from the government or one of their contractors regarding overpayment of claims. In a surprising number of these cases, providers fail to take proper action to address the requirements of the letter and instead may inadvertently aggravate the situation further. To avoid creating additional unnecessary problems, providers dealing with a demand letter should prepare to (a) evaluate the reliability of methods used to create the demand letter and (b) appeal a decision.

Determining the Reliability of a Demand Letter

The most common mistake providers make upon receiving a demand letter related to overpayment extrapolation is to accept the claims sample indicated in the letter as being valid and reliable. Due to an increase in cases that may warrant a demand letter, contractors and government agencies may cut corners or be less accurate in how they draw their claims sample. This could lead to inaccuracies in the claims sample included in the letter, thus decreasing the reliability of the demand.

The best way to challenge the reliability of the claims selected for the review is to first determine whether the methodology used to define the demanded amount is accurate. If this methodology is flawed in any way, the entire result is undermined and the agency's or contractor's conclusions may come into question. Exposing a flawed sample of claims may reduce the true error amount to a small fraction of the demand amount, proving the unreliability of the letter in terms of claims used and money that the provider might owe.

If the provider can determine that there were significant errors in the claims samples, then he or she should generate their own sample based on proper, unflawed methodology federal government guidelines. The most credible approach to do this is through the Department of Health and Human Services Office of Inspector General RAT STATS sampling method. Providers should engage an independent outside expert to conduct the sampling to ensure reliability and accuracy in the results. This expert should have no conflicts of interest with the provider or his or her organization, and should conduct the sampling under attorney privilege until the provider has the results of the review. Using this sampling method also challenges the demanding party, possibly encouraging them to reach a more reasonable, early settlement.

Proper Preparation for ALJ Appeals

In addition to conducting RAT STATS sampling, providers dealing with a demand letter should be prepared to defend their results before the government and in a hearing with an Administrative Law Judge (ALJ). Although in many cases it can take months to schedule a hearing and/or receive a final decision, there are some preparation strategies that can help facilitate the appeals process. Providers should properly follow the Medicare claims appeals at the ALJ level of review and take all relevant steps to expedite a hearing with the best possible outcome. They should also develop and implement creative and responsive appeals strategies to improve chances of a reasonable settlement that are not as severe as the demands of the letter.

In Review

While demand letters may seemingly have an unavoidable outcome, providers who are issued such letters can properly address the demands and prepare for impending appeals through several strategies. By evaluating the reliability of the demand letter and following preparation guidelines for a hearing, providers can mitigate the situation and possibly decrease the severity of the government's or contractor's demands, resulting in a more favorable outcome for the party receiving the letter.

About the Author

Richard P. Kusserow is currently the President and CEO of Compliance Resource Center. He served as the Inspector General of HHS for 11 years and brings decades of valuable experience from the government sector to Compliance Resource Center. Mr. Kusserow's expertise on compliance policy and regulation as well as his extensive knowledge of compliance solutions enables Compliance Resource Center to effectively help health care organizations best manage their compliance programs.

About Compliance Resource Center

Compliance Resource Center has been leading the compliance industry since 2010 with our complete suite of solutions that are geared towards improving compliance program operations. Our solutions ensure that organizations regularly meet federal and state laws and supply the necessary resources to sustain long-term compliance.