

MEDICAL REVIEW – SNF Medicare Audits on the Rise

Ohio Health Care Association
Fall Conference

September 19, 2012

Carol Rolf
Aric D. Martin



Rolf | Healthcare Counsel
ROLF • GOFFMAN • MARTIN • LANG Co., LPA





The Long-Term Care Law Firm

Rolf is the law firm of long-term care providers, and of the Ohio Health Care Association (OHCA). Our focused practice is dedicated to partnering with our clients to assist them with strategizing for the future, and in responding to all of their current needs. Over the years we have established ourselves as true advocates of not only our clients, but of the LTC profession as well. We serve as legal counsel to OHCA, and to providers across the Midwest in a wide range of matters, including, but not limited to:

- | | |
|---|--|
| Strategic planning | providers & suppliers |
| Buying, selling & leasing beds and facilities | Employment counsel & defense |
| Licensure & Certification | Labor negotiation |
| Survey & Enforcement | Development of operational policies & procedures |
| Certificate of need | Risk management |
| Corporate formation & restructuring | Corporate compliance |
| Mergers & acquisitions | Medical claim defense |
| Real estate issues | General civil litigation |
| Tax exemption | Staff training |
| Contracting with ancillary | Collections & accounts receivable |

A Long-Term Commitment to Long-Term Care SM



Carol Rolf



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- Senior Partner
- 30+ years experience
- Top 100 Ohio Attorney
- *Best Lawyers in America*
- Ohio Superlawyer

Carol Rolf is the Senior Partner of the law firm of Rolf Goffman Martin Lang Co., LPA.

The firm has an extensive health care practice, representing long-term care providers, hospitals, physicians, pharmacies and numerous other providers across Ohio and in other states.

Ms. Rolf has been selected multiple times as one of the Top 100 attorneys in the State of Ohio by Super Lawyers, as well as being named one of the best health care attorneys and as one of the Top 50 female attorneys in Ohio every year since 2004. She was selected for the cover of Ohio Super Lawyers magazine in 2011. She has been selected as one of the best health lawyers in the country by “The Best Lawyers in America” (each year since 1995). She has also been selected as a Top Rated Lawyer in Health Law by The American Lawyer, Corporate Counsel, and The National Law Journal.

Ms. Rolf is a nationally recognized speaker, and has been a presenter and author of materials and seminars at hundreds of engagements over the years.

Ms. Rolf is a former member of Leading Age’s Board of Directors on the core group of its Legal Committee, and also serves on the Legal Committee of the American Health Care Association. She is a member of the Facility Standards Committee, Payment for Services Committee and Developmental Disabilities Committee of the Ohio Health Care Association. Ms. Rolf has taught the legal portion of the Core of Knowledge at the Ohio State University’s Fisher School of Business – the course necessary for licensure as a nursing facility administrator in Ohio – for over 20 years.

Ms. Rolf has served as Special Counsel to the Attorney General of Ohio (appointed in 1992 and served through 1997). She has also served on numerous governmental and association task forces and boards, including: the Ohio Department of Health Certification and Licensure Task Force; the Medicaid Long-Term Care Reimbursement Study Committee; the Ohio State Board of Examiners of Nursing Home Administrators; the Advisory Committee for the Ohio MR/DD Victims of Crime Task Force. Carol is a former member of the Board of Trustees for the United Church Homes, and currently serves on the Board of Trustees of the Boys and Girls Clubs of Cleveland.

She is admitted to practice in any state court in Ohio, the U.S. District Court for the Northern District of Ohio, and the U.S. Sixth Circuit Court of Appeals. Carol is a member of the Cleveland and Ohio State Bar Associations, as well as the Ohio Women’s Bar Association, the American Health Lawyers

Association.

Aric D. Martin



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- Managing Partner
- 17+ years experience
- Ohio Superlawyer

Aric Martin is the Managing Partner of the law firm of Rolf Goffman Martin Lang Co., LPA.

The firm has an extensive health care practice, which represents long-term care providers, hospitals, physicians, pharmacies and numerous other providers in many states.

Mr. Martin has been selected as one of Ohio's best health care attorneys by his peers in the "Super Lawyers" publication since 2005. He has also been included in Marquis *Who's Who in American Law* and named as one of the nations Top Attorneys by The Legal News.

Mr. Martin is a nationally recognized speaker and author on topics related to health care. He co-produced the video "A Time of Transition: Moving Your Loved One Into a Nursing Home", which is currently marketed by AHCA and OHCA. He is a co-author of the "The HIPAA Security Rule: A Long Term Care Manual", "The HIPAA Privacy Rule: A Nursing Facility Manual", "The HIPAA Privacy Rule: An Assisted Living Manual", and "The HIPAA Privacy Rule: An ICF/MR Manual", which are all marketed by the American Health Care Association. He is also a co-author of "The Nursing Home Risk Management Checklist" and "The Survey Book for Nursing Facilities", which are marketed by the Ohio Health Care Association.

Mr. Martin has taught the legal portion of the Core of Knowledge at the Ohio State University's Fisher School of Business – the course necessary for licensure as a nursing facility administrator in Ohio for 15 years. He is the Associate Legal Counsel for the Ohio Assisted Living Association. He recently served on the Health Policy Institute of Ohio's Legal Workgroup for the Health Information Security and Privacy Collaboration.

He received his Juris Doctorate from the Ohio State University College of Law, where he was an editor and published author on the Law Review. He earned a Bachelor of Arts in Economics from Miami University. He also studied law at St. Anne's College in Oxford, England, and international economics at the John E. Dolibois European Center in Luxembourg.

Mr. Martin is admitted to practice in any state court in Ohio, the U.S. District Court for the Northern District of Ohio, and the U.S. Sixth Circuit Court of Appeals. He is a member of the Cleveland and Ohio State Bar Associations, American Health Lawyers Association, Leading Age, Health Care Compliance Association.



Medical Review / Audits in the SNF

OHCA / Sept 2012

Carol Rolf & Aric D. Martin
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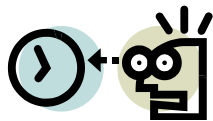
OIG NF Compliance Guidance

2008

OIG NF Compliance Guidance Updated

Deadline →

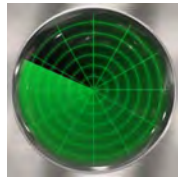
**March 23,
2013**



**What Do We Expect in
the Future?**



**What will put you on
the enforcer's
radar?**



**Medicare Audit
Contractors**

MAC	Medicare Administrative Contractor <i>fka</i> Fiscal Intermediary (FI) / Contractor
MIC	Medicaid Integrity Contractor
CERT	Comprehensive Error Rate Testing
OIG	Office of Inspector General
DOJ	Department of Justice
RA	Recovery Auditor <i>fka</i> RAC: Recovery Audit Contractor
ZPIC	Zone Program Integrity Contractor <i>fka</i> PSC: Program Safeguard Contractor

RA

**Purpose
=
Identify
Overpayments**

- Paid on a contingency basis
- Look-back period = 3 years
- Limited to post-payment review
- Documents request limited
- Extrapolation very rare
- Ohio in Region B (of 4 regions)
- RA = CGI
- Approved issues are posted on website
 - <http://racb.cgi.com>

ZPIC

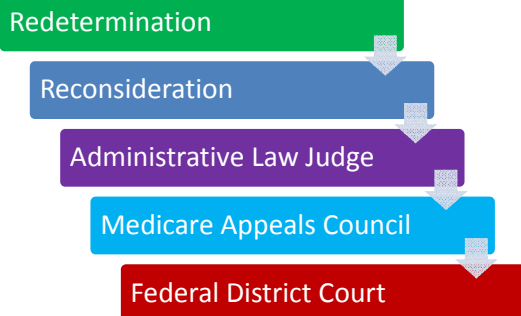
**Purpose
=
Identify Fraud**

- Not paid on a contingency basis
- Look-back period not specified
- Review of claims can be pre or post pay
- Unlimited document requests
- Extrapolation common
- Not required to notify providers before beginning a review
- May suspend payment (*i.e.*, 100% prepayment review) in addition to recoupment

ZPIC Auditors in Action *The Florida Experience*



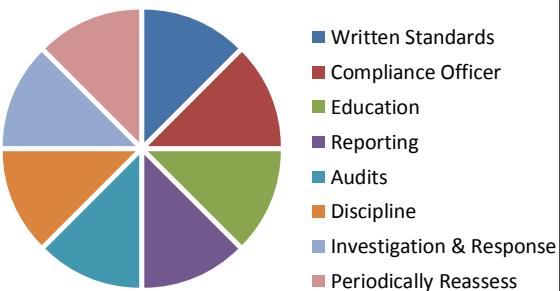
5 Stages of Audit Appeal



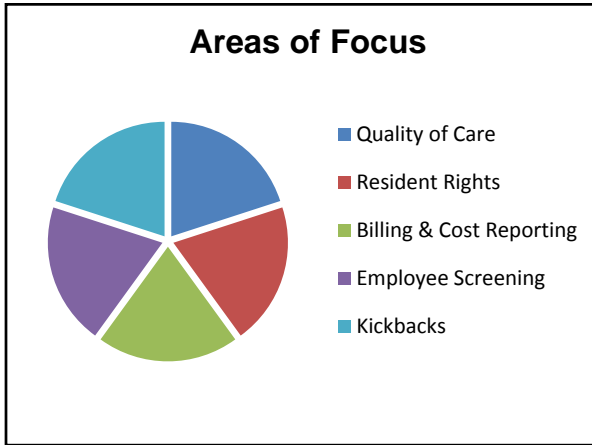
Overpayments

Avoiding, Preparing for, & Responding to an Audit

Compliance Program Components







- ### Areas of Focus Expanded in the Supplemental Guidance
- ☛ **Quality of Care and Residents Rights**
 - Sufficient Staffing
 - Comprehensive Care Plans
 - Medication Management
 - Resident Safety (for all who come in contact with residents)

 - ☛ **Billing and Cost Reporting**
 - Proper Reporting of RUGs scores
 - MDS accuracy
 - Part A services

Areas of Focus Expanded in the Supplemental Guidance

📌 Anti-kickback statute

- Free Goods and Services
- Physician arrangements
- Swapping
- Hospice payments

📌 Employee Screening

- Periodically check for exclusion on employees and contractors

Hot Compliance Topics

📌 OIG report on therapies [PDF]

📌 Questionable Billing by Skilled Nursing Facilities

- oig.hhs.gov/oei/reports/oei-02-09-00202.pdf

📌 OIG report on antipsychotic drugs

- <http://go.usa.gov/wpX>

📌 OIG report on residents on hospice in nursing facilities

- <http://oig.hhs.gov/oei/reports/oei-02-10-00070.asp>
- www.oig.hhs.gov/oei/reports/oei-02-06-00221.pdf

📌 HIPAA enforcement

What Boards Need to Monitor

- 📌 Surveys
- 📌 Sentinel events – especially with potential for media coverage
- 📌 Government investigations
- 📌 Lawsuits
- 📌 Employee, family and resident satisfaction
- 📌 Employee turnover
- 📌 Overpayments subject to 60 day rule
- 📌 CCO quarterly or bi-annual reports
- 📌 Review of certain internal and external audits/findings

**Routine Internal and External Audits
that CCO Should Monitor**

• **Consider external audits on**

- Therapy billing
- Part A billing
- Accuracy of MDS

• **Consider internal audits on the above plus**

- Internal controls and patient fund accounts
- Mock surveys and QA reports
- Employee, resident and family satisfaction
- Screening for exclusions, criminal background
- HIPAA

• **Check for effectiveness of compliance program**

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Slides
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AUDITS / CONTRACTORS / PAYERS

CERT	Comprehensive Error Rate Testing
FI	Fiscal Intermediary
MAC	Medicare Administrative Contractor (<i>formerly intermediary and carrier</i>)
MIC	Medicaid Integrity Contractor
RA	Auditor (<i>fka RAC</i>)
PSC	Program Safety Contractor.
QIC	Qualified Independent Contractor
QIO	Quality Improvement Organization
RAC	Recovery Audit Contractor. (<i>New term is RA – recovery auditor</i>)
ZPIC	Zone Program Integrity Contractor



MEDICAL REVIEW

Claim Denials & Documentation Errors

Common Areas for Claim Denials

- Documentation does not support skilled need
- Initial evaluation doesn't include medical history that could affect plan of care
- Prior level of function not present or not detailed enough
- Treatment lacks complexity that requires the skills of a therapist
- No new goals after a prolonged period with no improvement or change in function
- No new goals set once goals are met
- Goals are vague with no objective measurements
- PT and OT working on the same goals
- Progress note does not reflect progress or justification for continued treatment
- Progress/discharge note – progress since last progress note is not documented or unclear
- Reason for referral is not clearly documented

Common Errors on Documentation

- Insufficient or missing documentation
- Illegible, if the reviewer: can't read it; can't tell who wrote it; can't tell when it was done
- Missing signatures and dates
- Nursing/therapy checklists are blank, or the information is just copied

Suggestions for Effective Documentation

- Make sure medical record entries are legible – with no white outs or blank spaces
- Nursing and therapy documentation doesn't have to match, but it shouldn't contradict
- Nursing needs to be aware of why therapy is working with the patient

- Nursing should document about the patients progress toward therapy goals on the unit
- Nursing should document the reasons the patient is skilled
- Document skilled observation and assessment

Documenting Medical Necessity

- Services must be reasonable and necessary
- Services must be at a level of complexity and sophistication or the condition of the patient must be of a nature that requires the judgment, knowledge and skills of a qualified therapist
- The condition of the patient will improve in a reasonable and generally predictable period of time
- Services are necessary for the establishment of a safe and effective restorative/maintenance program
- The patient requires teaching and training

Documenting Skilled Care

- Document skilled analysis, clinical decision making and problem solving
- Document specific techniques or interventions and not just the task
- Document facts, use objective versus subjective terminology
- Document trial of variety of approaches and effectiveness with patient
- Clearly document why the skills of a therapist are needed
- Document certain techniques that can only be safely performed by a therapist
- When progress is difficult to document, report on subcomponents of function/task/safety



APPEAL TIMEFRAMES

Demand Letter from the MAC	Provider will receive a Demand Notice from MAC, officially requesting repayment
Rebuttal (<i>optional</i>)	15 Days of receiving the demand letter
Redetermination to the MAC	<ul style="list-style-type: none">🌀 120 days of <u>receipt</u> of demand letter🌀 BUT must be within 30 days of <u>date</u> of demand letter to stop recoupment🌀 MAC has 60 days to provide a decision
Reconsideration to the Qualified Independent Contractor (QIC)	<ul style="list-style-type: none">🌀 180 days within receipt of redetermination (or revised demand letter)🌀 BUT must be within 60 days of <u>date</u> of decision to <i>delay recoupment</i>🌀 <i>Interest</i> begins to accrue 30 days after demand letter until overpayment repaid or claims found favorable
ALJ Appeal	Must be filed within 60 Days of receipt of reconsideration
MAC Appeal	Must be filed within 60 Days of receipt of ALJ decision
Federal District Court	Must be filed within 60 Days of receipt of MAC decision