

Report on Medicare Compliance Volume 31, Number 42. November 21, 2022

RAC Denials of THA, TKA Over Radiology Reports Clash With CMS Guidance, Experts Say

By Nina Youngstrom

The fate of Medicare claims for major joint replacements may now depend on whether radiology reports are in the medical record, although that's not required by CMS or local coverage determinations (LCDs), an attorney said.

Recovery audit contractors (RACs) are denying claims for total knee arthroplasty (TKA) and total hip arthroplasty (THA) when the medical records include the orthopedic surgeon's notes on findings from the imaging tests rather than the radiologist's interpretation, said attorney Jessica Gustafson, with The Health Law Partners in Michigan.

The RACs are way off base on this one, Gustafson tells *RMC*. CMS guidance on major joint replacement in its 2020 MLN booklet states that Medicare requires the "results of applicable tests" in the documentation and cites a note in the patient's chart "along with a copy of the patient's x-ray reports" as part of an example of a medical record that supports medical necessity.¹¹

In addition, LCDs (and local coverage articles) don't require documentation of the radiology test's interpretation from a different provider (i.e., a radiologist versus the orthopedic surgeon or other treating physician), Gustafson said. RACs have misconstrued an LCD requirement of radiographic evidence of advanced disease to mean that a radiologist must perform an independent external read of imaging, she said. The LCDs actually just require that the imaging demonstrate advanced disease, "so clearly a note in the physician's office must comply with that." The RACs' take on this gives hospitals ample ground for appeal, although it may be an uphill battle.

"I strongly believe the RACs' recent interpretation that the LCDs and CMS guidance more broadly requires a radiology report is not in effect, and I think that it's dangerous," Gustafson said. Other experts see things the same way. "As an attorney representing providers, it frustrates me." It seems like RACs are "making up rules" and telling administrative law judges (ALJs) in hearings on appeals of claim denials that "this is what Medicare requires. It requires a radiology report. It says right here. But the LCDs do not say that." Yet some ALJs are inclined to believe the auditors, Gustafson said. She has taken one of these appeals to the Medicare Appeals Council, which is the last stop on the traditional Medicare appeals train.

The radiologic reports seem to be the prime focus of RAC TKA and THA denials, Gustafson said. Missing preoperative images and reports also were repeatedly cited in recent examples of TKA and THA Comprehensive Error Rate Testing (CERT) error findings by the CERT contractor. And some payers won't accept the physician's interpretation and require the radiology report for prior authorization of TKA and THA even though Medicare Advantage plans are required to follow LCDs, said Denise Wilson, senior vice president of PayerWatch in Towson, Maryland. Ronald Hirsch, M.D., vice president of R1 RCM, added that "requiring a radiologist to interpret an imaging study that has already been formally interpreted by a qualified provider could constitute the submission of a false claim by the radiologist."

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