Risk Adjustment Audits:
Updated Guidance on Responding to Requests for Records

CPA and the APA Practice Organization, Office of Legal and Regulatory Affairs

Risk adjustment audits continue to be conducted in California by Inovalon on behalf of Anthem and Episource on behalf of Aetna. The Affordable Care Act (ACA) requires insurance plans subject to its market reforms to conduct these audits annually. The purpose of risk adjustment is to ensure that payments to insurers accurately reflect the level of the healthcare needs of the populations covered and to discourage any efforts to cover only healthier patient populations. Unlike traditional insurance audits, the focus of risk adjustment audits is not on the particular psychologist or his/her patient, but on the overall cost of care for the plan’s population.

CPA and the APA Practice Organization’s Legal and Regulatory Affairs Office have been working to persuade officials at Anthem and Aetna to improve how these audits are being conducted. Anthem revised its original request letter two years ago, and now both Anthem and Aetna have affirmed their commitment to providing greater clarity in their communications with providers regarding specific California notice requirements.

Here are our updated recommendations* for responding to risk adjustment audits in California.

Step 1: Obtain Proper Notice or Patient Authorization

California law requires insurers to notify both the psychologist and the patient of any request for records of outpatient psychotherapy. Specifically, California Civil Code § 56.104 requires such notice to include the following elements: (1) the specific information being requested and a description of its intended uses; (2) the length of time during which the information will be kept before being destroyed or returned; (3) a statement that the information will not be used for any purpose other than its intended use; and (4) a statement that the person or entity requesting the information will destroy or return the information before or immediately after the specified time frame.

The law appears to be intended to provide a higher level of confidentiality for outpatient mental health records. However, it is poorly written and does not confer meaningful
If you receive proper notice from the insurance company, there is no requirement under the statute that you must notify the patient – this is the insurer’s responsibility. You can release the records. However, you may decide to inform your patients if you receive a request for records in connection with a risk adjustment audit and/or ask for their authorization to a release of records.

If you obtain a patient’s written authorization, you do not need to receive 56.104 notice and can release the requested records to the insurer.

If your patient objects to the release before you have provided the records, we recommend that you respect that objection and inform the insurer of your reason for withholding the records. If the insurer insists on receiving the records despite the patient’s refusal to authorize a release of information, please contact CPA, APAPO or another trusted resource.

In summary, you may respond to the audit by sending the minimum necessary information listed below after you receive proper notice or patient authorization.

Note: If you have already provided records in connection with a risk adjustment audit without 56.104 notice or patient authorization, you do not need to take any further action. We believe that you reasonably relied on the insurers’ statements that you were legally permitted to comply with their requests. However, we urge you to follow the guidance provided in this document when responding to future audits.

Step 2: Determine what records to provide.

For members who keep separate psychotherapy notes as defined by HIPAA, we recommend you just produce your separate clinical record. Similarly, members who keep a single lean clinical record with no sensitive therapy details can provide that record.

For members who keep a “combined record” containing sensitive therapy information along with basic clinical information, insurers may be willing to accept either a summary or a partial record. Anthem and Aetna have confirmed that psychologists who keep a combined record can exclude sensitive information and provide only the minimum necessary information to support the audit.

The minimum amount of information necessary to appropriately establish a member’s risk score is essentially what HIPAA excludes from the psychotherapy notes protection and may include:

- Clinical documentation (admission, discharge notes, or progress notes)
- Modalities and frequencies of treatment furnished
- Results of clinical tests
- Medication prescription and monitoring
Summary of the following:

- Diagnosis
- Functional status
- Treatment plan
- Symptoms
- Prognosis
- Progress to date

We suggest that members with combined records extract the relevant information in a way that provides a copy of the actual record text. This can be done by copying the record and cutting and pasting the relevant portions into a new file. Alternatively, if your record contains only a small amount of sensitive therapy information, you can white out or black out those details.

We recognize that this extraction could be time-consuming. Therefore, psychologists who accept insurance and keep a combined record may want to reconsider their recordkeeping approach (see "Detailed or lean therapy records? Rethinking your record keeping approach in the wake of Risk Adjustments Audits under ACA"

New Guidance for Anthem Providers

In addition to the prior guidance specific to mental health providers (http://group.anthem.com/BHMRR), Anthem recently amended its provider manual to address risk adjustment audits (https://www.anthem.com/provider/noapplication/f0/s0/t0/pw_e217110.pdf?refer=ahpprovider). In particular, Anthem providers should be aware of new recordkeeping expectations, which are based on HHS guidance and appear to apply to all Anthem providers in ACA compliant plans. The listed documentation requirements, which are likely already addressed in many members’ records, include:

- Patient’s name and date of birth should appear on all pages of record
- Patient’s condition(s) should be clearly documented in record
- The documentation must show that the condition was monitored, evaluated, assessed/addressed or treated
- The documentation must be legible, clear, concise, complete and specific
- When using abbreviations, use standard and appropriate abbreviations
- Signature, credentials and date must appear on record

Audit Requests for Closed Files

Several CPA members noticed language in Anthem EOBs suggesting that they should not provide any information regarding closed files. We raised that issue with Anthem and they clarified that psychologists may provide files on any covered patients they have treated within the last 24 months.
Resources


As always, CPA members who have questions can contact the CPA Director of Professional Affairs, Dr. Elizabeth Winkelman, at ewinkelman@cpapsych.org.

*Note: CPA and APAPO cannot give members legal opinions or legal advice. Those seeking legal advice should retain a licensed attorney in their state with appropriate experience.