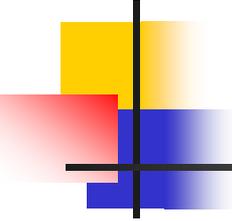


# RUG Audits, Reconsiderations, Appeals, and Waivers

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Presented by:  
Brandy Schnautz Mann  
Jackson Walker L.L.P.

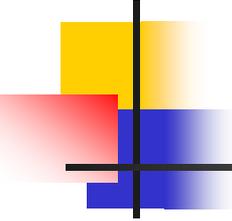




# RUG Audits



- Resource Utilization Group (“RUG”) audits officially replaced TILE audits in 2008
- However, after two years of delay, RUG audits actually only began in the fall of 2010
- RUG audits are conducted by HHSC-OIG’s Utilization Review (“UR”) teams



# RUG Audits



- UR reviewers examine facility records on-site and look retroactively back to October 9, 2008
- Note that MDS 2.0 was the MDS version in effect when HHSC converted from TILES to RUGS in 2008; however, MDS 3.0 (the current version) went into effect in October 2010

# RUG UR Procedures



- Utilization Review Rules: 1 TAC §371.214(n)
  - Onsite review basically same as TILE reviews
  - Nursing facility must provide documentation to validate items claimed on MDS forms
  - Lack of documentation=error and RUG group reclassification for residents

# Extrapolation of RUG Errors



- RUG errors are extrapolated to total NF population to calculate “overpayment”
- Some recent examples from clients
  - 6.29% extrapolated to \$72,000
  - 6.82% extrapolated to \$91,000
  - 18.08% extrapolated to \$227,000
  - 18.25% extrapolated to \$267,000
- Note none above 25% or even 20%

# Extrapolation of RUG Errors



- Initial good intentions or HHSC-OIG “throwing a bone” to providers?
  - Extrapolation was to be phased-in for rates under 25%, 20%, and finally 15% for first two years of RUG audits
  - This was intended to allow both UR reviewers and providers to acquaint themselves with the process

# Extrapolation of RUG Errors



- However... HHSC delayed start of RUG audits for over two years
  - Phased-in dates for extrapolation of error rates in the rules have passed due to this delay
  - HHSC-OIG made no attempt to change the phased-in dates to accommodate the delayed start

# Reconsideration Review of RUG Error Rates



- Provider may request reconsideration of error rate from on-site UR review **in writing on or before 15<sup>th</sup> calendar day after date of exit conference**
  - Use following day if 15<sup>th</sup> day falls on a Sunday or national holiday
- If no request for reconsideration is filed, on-site error rate will be used to calculate overpayment and recoupment can begin

# Reconsideration Review of RUG Error Rates



- Provider should carefully follow the instructions for requesting reconsideration
  - Letter form
  - Any additional clinical records must include a “Fact and Business Records Affidavit”
- Notice of reconsideration decision is sent to provider in writing

# Appeal of RUG Error Rate



- Provider may appeal adverse reconsideration decision **in writing on or before 15<sup>th</sup> calendar day** after receipt of notice of reconsideration decision
  - Unless “overpayment” is very small or there are other factors involved, providers are advised to appeal even if their case is rather weak

# Appeal of RUG Error Rate



- Why appeal?
  - Although not clearly stated in the rules, HHSC-OIG has indicated that recoupment of overpayments are not scheduled to begin if an appeal is filed until the appeal is concluded
  - An appeal allows for possible reduction in overpayment through settlement negotiations

# Appeal of RUG Error Rate



- Why appeal?
  - It is the only way to keep the matter pending until the provider can request a “waiver” of extrapolation
  - What is a waiver of extrapolation?

# Waiver of Extrapolation of RUG Errors



- Rather than proposing a new phased-in period for extrapolation, HHSC has proposed a new rule for waivers of extrapolation of error rates
  - The proposed rule, 1 TAC §371.216, was published in the January 21, 2011 edition of the *Texas Register* (36 Tex. Reg. 191)
  - The comment period ended on February 20, 2011

# Waiver of Extrapolation of RUG Errors



- The proposed waiver rule
  - The rule requires providers to request a waiver of extrapolation **in writing on or before the 15<sup>th</sup> calendar day** after receipt of final notice of overpayment
  - HHSC-OIG has **sole discretion** to grant waiver, and its decision is not subject to administrative or judicial review

# Waiver of Extrapolation of RUG Errors



- Proposed waiver request requirements
  - Request for waiver must show “good cause” for the waiver
  - “Good cause” is not defined, but financial hardship is mentioned by HHSC-OIG in the proposed rule preamble
  - Should have more information when final rule is published in the *Texas Register*
    - Could be as early as tomorrow’s edition

# Waiver of Extrapolation of RUG Errors



- Current issues with requesting a waiver
  - Most importantly, the waiver rule is not final, so simply requesting a waiver now is probably not sufficient to protect your rights
  - HHSC-OIG anticipates that the waiver rule will become effective in **mid to late April of 2011**

# Waiver of Extrapolation of RUG Errors



- How do you request a waiver if the rule is not final?
  - There is no set procedure because waivers do not technically exist today
  - The best course of action is to request a formal appeal and note in the appeal letter that the facility is interested in applying for a waiver

# Waiver of Extrapolation of RUG Errors

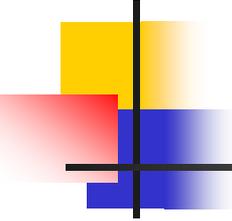


- How do you request a waiver if the rule is not final?
  - HHSC-OIG has indicated that waiver requests can be discussed as part of appeal settlement talks
  - This means the appeal must be stretched out until April (which should not be a problem), when the waiver rule becomes effective

# Waiver of Extrapolation of RUG Errors



- Waiver vs. phased-in extrapolation
  - Requesting a waiver does not guarantee that a provider will receive one – it is not guaranteed by rule the way the phased-in period was
  - But... as the proposed waiver rule currently reads, it is not set to expire after a few years of RUG audits the way that the phased-in period would have



# Cautions



- Follow all instructions in letters from HHSC-OIG and UR reviewers
  - Meet all deadlines, note addresses, etc.
- Do not rely on sending formal appeal/waiver requests to UR reviewers as part of a request for reconsideration
  - The UR reviewers will not respond to them and it is unclear if they will forward them to the proper recipient

# Cautions



- It is unclear in the current rules if a provider must first request a reconsideration in order to request a formal appeal/waiver
  - Because of this uncertainty, it is best to request a reconsideration even if your argument is not particularly strong
  - This way, you will receive a reconsideration denial letter providing for appeal rights

# Cautions



- When to request a formal appeal/waiver
  - A provider can request a formal appeal/waiver at the same time as a reconsideration but note that they are sent to different recipients
  - If a formal appeal/waiver and reconsideration are requested concurrently, be sure to supplement/withdraw the formal appeal/waiver request after the results of the reconsideration are received



# Questions?

**Brandy Schnautz Mann**  
**Jackson Walker L.L.P.**  
**100 Congress Avenue, Suite 1100**  
**Austin, TX 78701**  
**512.236.2310 (direct dial)**  
**512.691.4410 (direct fax)**  
**bmann@jw.com**

**Carla J. Cox**  
**Jackson Walker L.L.P.**  
**100 Congress Avenue, Suite 1100**  
**Austin, TX 78701**  
**512.236.2040 (direct dial)**  
**512.236.2000 (direct fax)**  
**cjcox@jw.com**