American Hospital Association™
Advancing Health in America

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October 4, 2023

The Honorable Shereef Elnahal, M.D.
Under Secretary for Health
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, DC 20420

Submitted Electronically

Re: Cotiviti Audit Process

Dear Under Secretary Elnahal:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinician partners — including more than 270,000 affiliated physicians, 2 million nurses and other caregivers — and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) recognizes the importance of fiscal stewardship and the fiduciary responsibility that the Department of Veterans Affairs (VA) has in assessing improper payments. Indeed, the Payment Integrity Information Act of 2019 put in place government-wide requirements for agencies to identify and reduce improper payments. Accordingly, the VA contracted with Cotiviti to support the requirements outlined in the act and perform recovery audits of claims from fiscal year (FY) 2018 through FY 2023.

We applaud the VA's efforts to conduct recovery audits in order to return overpayments in accordance with the law. **However, our members have expressed significant concerns about Cotiviti's audit and appeals process, including its inadequate appeals procedures, the scope of audits being performed and the untenable timelines that are being executed.** It is adding confusion and unnecessary administrative burden to a workforce that is already significantly strained. **Therefore, we urge the VA to issue proposed rulemaking not only to allow for public input but also to formalize clear standards and expectations governing the audit and appeals processes.**

Lack of a Defined Audit and Appeals Process. We are very concerned about the general lack of information on the audit process, as well as lack of follow-through on promised public input. For example, the VA website states that: "Before the start of each new audit, Cotiviti will post a preliminary audit plan to their public-facing website for 30 calendar days for public review and comment. VA and Cotiviti will review comments and make appropriate

adjustments before the plan is finalized. The final audit plans will be posted to Cotiviti's public website before each audit begins."[1] However, Cotiviti has posted no information to its website, despite the fact that the audits began well over a year ago.

In addition, a Cotiviti Frequently Asked Question indicates: "The type of review is determined by the claim type and audit plan. All audit plans Cotiviti develops must first be approved by the Office of Community Care and will be posted on Cotiviti's Recovery Audit Contract (RAC) provider website (www.cotiviti.com/varac) for a 30-day comment period. Once the audit plan receives final approval, it will be posted to www.cotiviti.com/varac prior to Cotiviti initiating an audit."[2] However, this is a provider portal and is not public facing; it is therefore unclear how it could allow for public comment.

Indeed, other federal agencies have statements of work and processes posted on their public-facing websites. They outline the timelines for notices and appeals, identify independent third parties that support the appeals process, and specify the scope of audit procedures. Additionally, the processes are defined by the agency, not the third party responsible for executing the audit. This reinforces the role of the agency in determining the scope of the appeals, the process, and ultimate disposition of claims and denials, providing clear expectations for all parties involved. **Rulemaking is necessary for the VA to do the same for this program.**

Inadequate Appeals Process. We are also concerned that the appeals process is inadequate. Specifically, based on the limited information that is available, Cotiviti audits appear only to have one opportunity for appeal after the initial denial. However, other federal audit programs, such as those conducted on behalf of the Medicare program, have at least three opportunities for appeal. Cotiviti also utilizes independent entities to conduct certain levels of appeals, helping ensure opportunities for objective review. **Therefore, we recommend that as part of rulemaking, the VA propose both to create multiple levels of appeals and also to utilize parties unaffiliated with the VA and third-party auditor to conduct some of these appeals.**

Scope of Reviews. Members have reported to us that the Cotiviti audits have included medical necessity reviews. Yet, the VA website indicates that the scope of the reviews is to be limited to claim reimbursement rates, reimbursement of non-covered or unauthorized services, incorrectly coded services and duplicate services.[3] In addition, we note that medical necessity reviews are subjective and a matter of professional medical judgment. As such, they are particularly negatively affected by the lack of an adequate, independent appeals process, as noted above.

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[1] https://www.va.gov/COMMUNITYCARE/revenue_ops/provider_payments.asp
[2] https://info.cotiviti.com/hubfs/varac/Cotiviti_VA_RAC_FAQs_12.16.21.pdf
[3] https://www.va.gov/COMMUNITYCARE/revenue_ops/provider_payments.asp

Members also have reported that audits have included Community Care Network (CCN) claims. Yet, per the VA's website, the scope of the audits is intended to exclude these claims.[4] This is because CCN contracts include their own requirements for recovery/recapture audits. **As such, it appears that Cotiviti is conducting audits beyond the scope of its authority, meaning some organizations may be receiving claims denials and letters of indebtedness that are inappropriate. Therefore, as part of the rulemaking process, we also recommend that the VA clarify that these audits are limited to coding and technical reviews, per its website.**

Delays in Timely Notifications. Finally, our members have expressed concern regarding the timelines for notification and appeals. For example, many have received letters (either Notices of Indebtedness or denial letters) with 30-day windows to appeal but did not receive these letters until over 14 days into the 30-day window. Providing two weeks for organizations to pull records and package appeals is operationally untenable and inconsistent with timelines established by other federally funded programs. **Therefore, we recommend that the VA establish, in rulemaking, a 60-day window for appeals that begins on the date of letter receipt. This will ensure that providers have adequate time to gather and transmit the appropriate information.**

Conversely, some providers have appealed claim denials but did not receive replies for excessively long time periods. For example, some organizations received letters of indebtedness in 2022 and submitted appeals documentation within 30 days, but still have not received notification of disposition, approval or denial. In general, organizations that have received replies indicated that it took over 18 months. This is simply too long for such matters to be outstanding at an organization and speaks to the need for clarity on timelines for notifications, appeals and determinations. **As such, as part of its formal rulemaking process, we urge the VA to propose timelines for appeals disposition.**

We appreciate your consideration of our requests. Please contact me if you have questions or feel free to have a member of your team contact Jennifer Holloman, AHA's senior associate director of policy, at jholloman@aha.org, or Joanna Hiatt Kim, AHA's vice president of payment policy, at jkim@aha.org.

Sincerely,

/s/

Ashley Thompson
Senior Vice President
Public Policy Analysis and Development

[4] Ibid.