

March 20, 2009

Health Law Alert

The Medicare RAC Program is Set to Begin Finding Your Billing Errors

The Centers for Medicare & Medicaid Services ("CMS") have taken a major step toward the implementation of its new audit program that will affect countless Medicare providers. Congress authorized the Recovery Audit Contractor Permanent Program (the "RAC Program") in the Tax Relief and Health Care Act of 2006. Under the RAC Program, private companies selected by CMS will serve as Recovery Audit Contractors ("RACs"). *RACs will be paid on a contingency-fee basis* to identify and correct improper payments made under Parts A and B of Medicare. The RAC Program is to be implemented nationwide no later than January 10, 2010.

CMS's focus on minimizing improper payments to providers for services that are not medically necessary, improperly coded, or lack sufficient documentation is not new. The Government Accountability Office reported in January 2008 that estimated \$10.8 billion in improper Medicare payments were made in 2007. During the CMS Demonstration project, RACs in three states corrected over \$1 Billion in improper payments covering a three year period. While hospitals will face the most significant burden, other providers should not become complacent. Every provider under Parts A and B of Medicare should prepare to face some form of audit under the RAC Program.

How RAC works

RACs will use automated and complex reviews to identify Medicare underpayments. Any underpayment findings on claims will be communicated to the affiliated contractor. Once the affiliated contractor validates the occurrence of an underpayment, an "Underpayment Notification Letter" will be sent to the provider.

The scope of the reviews will not be unlimited. CMS has excluded several potential sources of information about improper payments from RAC scrutiny, including programs other than Medicare Fee-For-Service, the cost report settlement process, E & M services, and several others. If an overpayment is identified, the RAC will document its rationale for the overpayment determination and include references to Medicare rules and policies.

Once identified and validated, the RAC will seek to correct the overpayment. The overpayment determination can result in full or partial denials. Any potential fraud or quality issues will be reported. The overpayment amounts will commonly be collected through recoupment through present or future Medicare payments. Collection is a crucial component of the RACs' work: the recovery of overpayments is a prerequisite to the RAC's receipt of contingency payments.

Types of RAC reviews

The first way RACs will identify improper payments is through automated reviews. Automated reviews are allowed in circumstances when it is "certain" that payment for services is improper.

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The second way for RACs to identify improper payments is a complex medical review. Complex medical reviews are allowed in circumstances where there is a high probability, rather than a certainty, that the services billed are not covered. A complex medical review involves the inspection of medical records.

While RACs are required to follow Medicare policies, and are required to be staffed by a physician medical director and certified coders, providers should know that RACs will have the authority to use medical literature and clinical judgment to deny claims in the absence of a national or local policy. Providers should be prepared to exercise their Medicare appeal rights in order to challenge such judgments when appropriate.

What to do

1. Designate a RAC Coordinator to facilitate organizational preparation for the RAC Program. The same person can also keep current on reviews, corrective actions, and appeal deadlines.
2. Conduct an internal risk assessment to detect problem areas. The assessment should focus on detecting coverage and coding issues, with special emphasis on the problems identified during the Demonstration. Going forward, providers should also use the "Internal Guidelines" that are to be published by each RAC.
3. If your internal risk assessment reveals any problem areas, take corrective action to ensure an adequate resolution. Corrective actions may involve the development or revision of internal policies or the training of key personnel. CMS has listed several corrective actions that might prevent a number of common problems that result in improper payments.
4. Maintain familiarity with and participate in RAC provider outreach and professional educational opportunities.
5. Participate in any opportunity to provide feedback. CMS has already indicated that it will regularly use provider surveys.
6. Consult with legal counsel if serious issues are identified in the risk assessment or upon receipt of a written notification or demand letter from a RAC.

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