

RAC 'Em: Medicare Recovery Audit Contractors Coming to Alabama in 2009

By DANIEL MURPHY

Medicare recovery audit contractors (RACs) will begin operating in Alabama during as early as August 1, 2009. The Centers for Medicare & Medicaid Services (CMS) RAC program began in 2005 as a demonstration project in three states and became permanent under a 2006 law that will require expansion to all states by 2010. Under the RAC program, CMS outsources to private companies the audit functions of identifying Medicare Part A and Part B overpayments and underpayments. These private-sector contractors receive reimbursement from CMS based on a percentage of Medicare overpayments recovered from, or underpayments identified and paid to, Medicare providers and suppliers.

The RAC program has thus created a regulatory beast that combines government enforcement power and private profit-seeking. Despite an organized industry backlash, particularly by hospitals, CMS will implement the RAC program nationwide by the end of this

year absent new legislation delaying or terminating the initiative.

What is the Recovery Audit Contractor Program?

The Medicare Modernization Act of 2003 (MMA) created the RAC program as a three-year demonstration project that began in California, Florida, and New York. This law directed CMS to engage RACs to identify improper Medicare Part A and Part B payments based on incorrect payments, non-covered services, inaccurately coded services, and duplicative payments. Non-covered services include medically unnecessary services. The MMA directed the Department of Health and Human Services to select recovery audit contractors who have appropriate clinical knowledge and experience with Medicare program payment rules and regulations. These contractors were paid a contingent fee based on a percentage of overpayments recovered or underpayments returned to providers.

The Tax Relief and Health Care Act of 2006 made the RAC demonstration

project permanent and required that CMS implement the program in all states before 2010. In its most recently published schedule, CMS announced that recovery audits could begin in Alabama as early as August 1, 2009. RACs will initially have authority to review claims submitted on October 1, 2007, or later. After October 1, 2010, the RACs will be able to review claims submitted in the previous three years. It is important to note that under the RAC-authorizing law, the fact that a particular claim or set of claims has undergone recovery auditing will not bar the government from pursuing fraud and abuse investigations with respect to the same underlying activity. In other words, the law would permit the government to use RACs to flag possible fraud and abuse.

What to Expect in the RAC Audit Process

RACs conduct two main forms of audit: automated reviews, and complex reviews. Automated reviews are based solely on claims submissions. RACs may only perform automated reviews when, based on data analysis, the contractor is certain that a claim includes an overpayment. Complex reviews include reviews of medical and other underlying records in addition to claims data. RACs may perform these reviews based on a lower standard of suspicion as to possible improper payment. If the RAC believes that there is a high probability of an overpayment, it may audit a claim under the complex review process. Significantly, RACs may not perform recovery audits based on randomly selected providers or claims. Rather, the

contractors must use data analysis techniques to perform targeted reviews for the purpose of uncovering claims likely to contain improper payments.

In practice, RACs initiate recovery audits through two main forms of contact: demand letters, and information requests. If a provider receives a letter from a RAC demanding repayment of allegedly overpaid Medicare reimbursement as the initial contact, the RAC has likely conducted an automated review process. In these cases, the RAC will have determined that it has enough data based on claims analysis alone to be certain that the examined claims contained excessive reimbursement. On the other hand, if a provider receives requests for medical records or other information from a RAC, the RAC will have likely commenced a complex review because it cannot be certain of an overpayment based on claims data. After examining additional information submitted by the provider, the RAC may ultimately issue a demand letter, return funds if underpayment is discovered, or close the matter without refund or recovery.

Providers may appeal RAC actions using the standard Medicare Part A and Part B appeals system. The Medicare appeals process contains several possible layers of review, beginning with a request for redetermination, followed by a reconsideration review, an administrative law judge hearing, Medicare appeals council review, and, finally, federal judicial review.

Conclusion

The RAC demonstration project results contain reasons for providers to be concerned. According to a report issued by CMS in January 2009, demonstration project RACs "corrected" \$1.03 billion in "improper payments," of which 96% were overpayments recovered from providers. Although the law directs RACs to correct both overpayments and underpayments, the overwhelming value of corrections came through overpayment recoveries. Medicare Part A hospitals have borne the brunt of RAC recovery efforts to date.

Barring passage of legislation delaying or eliminating the nationwide rollout of RAC, Alabama Medicare providers and suppliers should prepare their compliance programs to anticipate and respond to recovery audits, and gear up to aggressively pursue RAC appeals.

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