New Medicare Auditing System Goes Nationwide

A new program to audit Medicare payments is being implemented nationwide. Recovery Audit Contractors (RACs) are now performing automated and manual reviews of Medicare payments going back nearly three years. RACs, which are paid fees based on the overpayments they recover, are likely to be more aggressive than Medicare carriers or fiscal intermediaries, which were largely responsible for post-payment reviews in the past. Therefore, providers must be vigilant and take several steps to prepare themselves for the new RAC regime.

Key Features of the New RAC System

In 2003, Congress authorized the Centers for Medicare and Medicaid Services (CMS) to conduct a three-year pilot project to test the RAC program. RACs are private entities charged with systematically reviewing historical Medicare data in order to identify payments for noncovered services, incorrectly coded services, duplicate services, and incorrect payment amounts. During the pilot project, RACs performed audits in several states—California, Arizona, Florida, South Carolina, New York, and Massachusetts—and identified over US$1 billion in improper payments over three years. Unsurprisingly, 96 percent of these improper payments were overpayments.

The aggressiveness of RAC reviews can be explained, at least in part, by their payment structure. Unlike other Medicare contractors, RACs are paid on a contingency fee basis: RACs are paid a fee of between 9 percent and 12.5 percent of overpayments they recover. During the pilot, RACs were even paid for purported overpayments that were later overturned on appeal. At the end of the pilot, RAC-identified overpayments resulted in a net gain of US$700 million to Medicare. Meanwhile, RACs were paid more than US$187 million in fees. For this reason, some observers have branded RACs as “bounty hunters.”

In 2006, based in large part on the perceived success of the pilot project, Congress made the RAC program permanent on a nationwide basis, to be phased in gradually. The RAC program is scheduled to be operational in all 50 states by 2010. The incentive fee structure exists largely as it did for the pilot project, except for one change: RACs are no longer paid for alleged overpayments that are reversed on a provider’s appeal. Nevertheless, RACs continue to operate with a strong financial incentive to identify as many improper payments, particularly overpayments, as possible. Therefore, it is important for providers to understand how RACs operate and what they are looking for in their audits.

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Healthcare Reform Chart

US Healthcare Reform: *For more information and access to Arnold & Porter’s latest resources on this topic including advisories, upcoming events, publications, and the US Healthcare Reform Chart, which aggregates information on US legislation, please visit: http://www.arnoldporter.com/HealthcareReform.*

RAC Regions

CMS has created four RAC regions that align with the Medicare Administrative Contractor (MAC) regions. Federal law requires each RAC to obtain CMS approval of the therapeutic areas in which the RAC is focusing its audits. The following chart lists the geographic regions of and websites for each RAC:

Region	States	RAC	Website
A	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont	DCS Healthcare	http://www.dcsrac.com/issues.html
B	Illinois, Indiana, Kentucky, Michigan, Minnesota, Ohio, Wisconsin	CGI Federal	http://racb.cgi.com/Issues.aspx
C	Alabama, Arkansas, Colorado, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia	Connolly Healthcare	http://www.connollyhealthcare.com/RAC/pages/approved_issues.aspx
D	Alaska, Arizona, California, Hawaii, Idaho, Iowa, Kansas, Missouri, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming	Health Data Insights	https://racinfo.healthdatainsights.com/Public1/NewIssues.aspx

Each RAC must post its list of CMS-approved issue areas on its website. This gives providers in each region warning of the areas in which RACs will focus their audits.

Automated Review

One of the more controversial aspects of the RAC program is that much of the RACs' work will be automated. Using data mining methods, RACs will search for improper payments where there exists a "clear policy" for denial, or where a claim should have been denied because of a physiologically impossible service, such as removing two gallbladders from the same patient. Automated reviews do not require medical record review. RACs also are empowered to perform complex reviews—including medical record review—when none of the criteria for automated review are met. Because of the automated reviews, providers will need to be particularly vigilant for payments improperly flagged by automated RAC audits.

Fraud Detection

RACs have no formal role in fraud detection, and they do not receive contingency payments for identifying cases of potential fraud. However, RACs are directed to refer cases of potential fraud to CMS. During the three-year pilot program, RACs referred only two such cases to CMS. A February 2010 report by the US Department of Health and Human Services Office of Inspector General (OIG) found that CMS took no action in response to these two fraud referrals. Indeed, the OIG report notes that CMS "indicated it had received no provider-specific referrals from the RACs during the demonstration project," implying that CMS lost track of these referrals. The OIG also noted that CMS had not provided any training to RACs in fraud

identification methods. The criticism in the OIG report is likely to spur CMS and RACs to be more diligent in the future in identifying cases of potential fraud.

How to Prepare for RACs

Providers should take several steps to prepare for RAC audits. First, providers should pay close attention to the issue areas identified for the RAC in their region. For providers active in these areas, it would be prudent to conduct rigorous internal auditing of charts and coding to identify any potential problems prior to a RAC audit. Providers also should periodically check their RAC's website for updated issue areas, since these lists will change and expand over time.

Second, providers should be aware that RACs may review claims up to three years old, but in no case prior to October 1, 2007. Therefore, in addition to ensuring prospective compliance, providers should take a hard look at past billing practices and be aware of any potential exposure due to past billing irregularities.

Third, providers should be prepared to appeal improperly identified overpayments. Since the beginning of the RAC demonstration, providers have appealed only 12.7 percent of RAC determinations; yet, more than 64 percent of those appealed overpayment determinations were overturned in the provider's favor. Because RACs will perform the bulk of their audits through automated methods, providers should be vigilant and appeal RAC-identified overpayments, where appropriate.

We hope that you have found this advisory useful. If you have additional questions, please contact your Arnold & Porter attorney or:

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