

CMS Auditing Series: Establishing Medicaid RACs

On September 16, 2011, the Centers for Medicare and Medicaid Services (CMS) released its final rule on Medicaid RACs.¹ The revised regulations take effect January 1, 2012 and attempt to alleviate concerns expressed by medical professionals, administrators and leaders of medical group practices, that they unequipped and ill-prepared to handle the implementation of Medicaid RACs after the staggering success of the Medicare Recovery Contractor (RAC) demonstration project that recovered \$1.03 billion in improper Medicare Payments.² In part two of the *CMS Auditing Series*, this article examines the CMS final rule on Medicaid RAC audits and the industry's response.

As part of the Patient Protection and Affordable Care Act (ACA), states were mandated to create and implement a Medicaid RAC program by December 31, 2010. The ACA instructed states to partner with another RAC to review submitted Medicaid claims and investigate instances of overpayment or underpayment.³ In a letter to CMS, the Medical Group Management Association (MGMA) addressed a number of concerns regarding the implementation of Medicaid RACs.⁴ Their concerns revolved heavily around the review process, the manner in which files were requested, and the professional demographic composition of the Medicaid RACs.

Many of the MGMA concerns revolved around the ability of Medicaid RACs to work effectively. Medicare RACs are required to employ a medical professional to assist in the review of claims. The MGMA argued Medicaid RACs should also be required to employ a physician medical director to aid in this process. The MGMA also took issue with the lack of governance in the record request process and the lack of regulation surrounding the frequency of medical record requests.⁵ Without record request limits, providers could be inundated with several unsubstantiated record request. The MGMA was also concerned with the "look back" period governing the extent of RACs ability to look back at past claims. Accordingly, the MGMA requested a rule prohibiting RACs from reviewing claims from the past twelve months.⁶

The revised CMS rule, issued September 16, 2011, addressed several of the MGMA concerns. The final rule requires each Medicaid RAC to hire at least one full time Medical Director that is either a licensed Doctor of

Medicine or Doctor of Osteopathy.⁷ RACs are also required to hire a medical coder to assist with claim review, unless otherwise deemed unnecessary. While there is no twelve month claim buffer, the final rule does set a three year look-back limitation, prohibiting RACs from reviewing claims that are more than three years old. Each RAC must establish a limit on the number and frequency of requests made to any one provider. The final rule mandates that RACs include measures for customer service, such as providing a customer service number or website where providers and customers can obtain information about records in review.⁸ Additionally, RACs are required to educate participating providers and management groups on their policies and procedures.⁹

Ultimately, the CMS final rule for Medicaid RACs addressed the majority of concerns voiced by physician advocate group. The MGMA requested that CMS revise the Medicaid RAC program regulations to more closely align with the Medicare RAC guidelines, as providers are more accustomed to following the already established guidelines. While CMS did not accommodate the MGMA request in its entirety, the final rule awards states the flexibility to customize their RAC programs in four areas: (1) *medical necessity reviews*; (2) *extrapolation of audit findings*; (3) *external validation of accuracy of RAC findings*, and; (4) *types of claims audited*.¹⁰ This flexibility should encourage states to work with local providers to finalize a program that meets the expectations of the Federal Government, while also addressing local provider concerns. In the next article of the *CMS Auditing Series*, HC Topics will examine the next phase in fraud and abuse enforcement, the identification of high-risk billers.

1 "Medicaid Program; Recovery Audit Contractors," Centers for Medicare and Medicaid Services, FR Vol. 76, No. 180, (September 16, 2011).

2 "CMS Releases Medicaid RAC Final Rule," CIMO, TriMed Media Group, Inc., September 20, 2011, http://www.cmo.net/index.php?option=com_articles&article=29587 (Accessed 9/22/2011); "Letter to CMS from MGMA RE: Medicaid RAC" By William F. Jessee President and CEO-Medical Group Management Association, To Donald Berwick Administrator-Centers for Medicare and Medicaid Services, (1/10/2011)

3 "CMS Releases Medicaid RAC Final Rule," CIMO, TriMed Media Group, Inc., September 20, 2011,

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- http://www.cmio.net/index.php?option=com_articles&article=29587 (Accessed 9/22/2011).
- 4 “Letter to CMS from MGMA RE: Medicaid RAC” By William F. Jesse President and CEO-Medical Group Management Association , To Donald Berwick Administrator-Centers for Medicare and Medicaid Services, (1/10/2011)
- 5 “Letter to CMS from MGMA RE: Medicaid RAC, By William F. Jesse President and CEO-Medical Group Management Association , To Donald Berwick Administrator-Centers for Medicare and Medicaid Services” (1/10/2011)
- 6 “Letter to CMS from MGMA RE: Medicaid RAC, By William F. Jesse President and CEO-Medical Group Management Association , To Donald Berwick Administrator-Centers for Medicare and Medicaid Services” (1/10/2011);
- 7 “CMS Releases Medicaid RAC Final Rule,” CIMO, TriMed Media Group, Inc., 9/20/2011, http://www.cmio.net/index.php?option=com_articles&article=29587 (Accessed 9/22/2011).
- 8 “CMS Releases Medicaid RAC Final Rule,” CIMO, TriMed Media Group, Inc., 9/20/2011, http://www.cmio.net/index.php?option=com_articles&article=29587 (Accessed 9/22/2011)
- 9 “CMS Releases Medicaid RAC Final Rule,” CIMO, TriMed Media Group, Inc., 9/20/2011, http://www.cmio.net/index.php?option=com_articles&article=29587 (Accessed 9/22/2011).
- 10 “CMS Releases Medicaid RAC Final Rule,” CIMO, TriMed Media Group, Inc., September 20, 2011, http://www.cmio.net/index.php?option=com_articles&article=29587 (Accessed 9/22/2011).



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Robert James Cimasi, MHA, ASA, FRICS, MCBA, AVA, CM&AA, serves as President of **HEALTH CAPITAL CONSULTANTS (HCC)**, a nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, MO, serving clients in 49 states since 1993. Mr. Cimasi has over thirty years of experience in serving clients, with a professional focus on the financial and economic aspects of healthcare service sector entities including: valuation consulting and capital formation services; healthcare industry transactions including joint ventures, mergers, acquisitions, and divestitures; litigation support & expert testimony; and, certificate-of-need and other regulatory and policy planning consulting.

Mr. Cimasi holds a Masters in Health Administration from the University of Maryland, as well as several professional designations: Accredited Senior Appraiser (ASA – American Society of Appraisers); Fellow Royal Intuition of Chartered Surveyors (FRICS – Royal Institute of Chartered Surveyors); Master Certified Business Appraiser (MCBA – Institute of Business Appraisers); Accredited Valuation Analyst (AVA – National Association of Certified Valuators and Analysts); and, Certified Merger & Acquisition Advisor (CM&AA – Alliance of Merger & Acquisition Advisors). He has served as an expert witness on cases in numerous courts, and has provided testimony before federal and state legislative committees. He is a nationally known speaker on healthcare industry topics, the author of several books, the latest of which include: *“The U.S. Healthcare Certificate of Need Sourcebook”* [2005 - Beard Books], *“An Exciting Insight into the Healthcare Industry and Medical Practice Valuation”* [2002 – AICPA], and *“A Guide to Consulting Services for Emerging Healthcare Organizations”* [1999 John Wiley and Sons].

Mr. Cimasi is the author of numerous additional chapters in anthologies; books, and legal treatises; published articles in peer reviewed and industry trade journals; research papers and case studies; and, is often quoted by healthcare industry press. In 2006, Mr. Cimasi was honored with the prestigious *“Shannon Pratt Award in Business Valuation”* conferred by the Institute of Business Appraisers. Mr. Cimasi serves on the Editorial Board of the Business Appraisals Practice of the Institute of Business Appraisers, of which he is a member of the College of Fellows.



Todd A. Zigrang, MBA, MHA, ASA, FACHE, is the Senior Vice President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where he focuses on the areas valuation and financial analysis for hospitals and other healthcare enterprises. Mr. Zigrang has significant physician integration and financial analysis experience, and has participated in the development of a physician-owned multi-specialty MSO and networks involving a wide range of specialties; physician-owned hospitals, as well as several limited liability companies for the purpose of acquiring acute care and specialty hospitals, ASCs and other ancillary facilities; participated in the evaluation and negotiation of managed care contracts, performed and assisted in the valuation of various healthcare entities and related litigation support engagements; created pro-forma financials; written business plans; conducted a range of industry research; completed due diligence practice analysis; overseen the selection process for vendors, contractors, and architects; and, worked on the arrangement of financing.

Mr. Zigrang holds a Master of Science in Health Administration and a Masters in Business Administration from the University of Missouri at Columbia, and is a Fellow of the American College of Healthcare Executives. He has co-authored *“Research and Financial Benchmarking in the Healthcare Industry”* (STP Financial Management) and *“Healthcare Industry Research and its Application in Financial Consulting”* (Aspen Publishers). He has additionally taught before the Institute of Business Appraisers and CPA Leadership Institute, and has presented healthcare industry valuation related research papers before the Healthcare Financial Management Association; the National CPA Health Care Adviser's Association; Association for Corporate Growth; Infocast Executive Education Series; the St. Louis Business Valuation Roundtable; and, Physician Hospitals of America.



Anne P. Sharamitaro, Esq., is the Vice President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where she focuses on the areas of Certificate of Need (CON); regulatory compliance, managed care, and antitrust consulting. Ms. Sharamitaro is a member of the Missouri Bar and holds a J.D. and Health Law Certificate from Saint Louis University School of Law, where she served as an editor for the *Journal of Health Law*, published by the American Health Lawyers Association. She has presented healthcare industry related research papers before Physician Hospitals of America and the National Association of Certified Valuation Analysts and co-authored chapters in *“Healthcare Organizations: Financial Management Strategies,”* published in 2008.