

### *Recovery Audit Contractors Continue Program Phase-in Schedule Amid Provider Concerns*

In the coming months through the beginning of 2010, Recovery Audit Contractors (RACs) will be finishing outreach programs in each state to introduce unfamiliar Medicare providers to the permanent Recovery Audit Contractor program.<sup>1</sup> They will also inform providers of changes to the program, its impact on their businesses, and what they should expect during its implementation.<sup>2</sup> This provider outreach must be performed by RACs before they begin their Medicare payment review programs.<sup>3</sup>

The Recovery Audit Contractor (RAC) program was initiated by the Department of Health and Human Services as a 3-year demonstration project under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).<sup>4</sup> Under the program, third-party contractors would conduct reviews to identify and correct past improper fee-for-service payments under Medicare and provide information to Medicare providers and CMS that could help prevent future improper payments.<sup>5</sup> This included payments for services that are not medically necessary, incorrectly coded, inadequately documented, duplicated payments, payments based on outdated fee schedules, and payments that should have been made by other insurance companies, among others.<sup>6</sup> In 2008, the Office of Management and Budget estimated that there are over \$10.8 billion in improper payments made under Medicare, and even more under other government health programs such as Medicaid.<sup>7</sup> Claims reviewed could be held to two different levels of scrutiny. The first, an automated review, would occur if the provider billed a service clearly in violation of Medicare payment policy. The second, a “complex” review, would occur if the RAC had identified a likely improper bill and then requested and reviewed the medical records for that payment.<sup>8</sup> Payments found to be improper by the RACs could be appealed through a similar method as one used to appeal payment denials from carriers, fiscal intermediaries, or Medicare administrative contractors.<sup>9</sup> The RAC program will also allow the provider an opportunity to provide additional information regarding the payment under scrutiny in a more informal “discussion period” meant to pre-empt unnecessary time spent in the appeal process.<sup>10</sup> These RACs were able to recover \$992.7 million in improper payments and identify and repay \$37.8 million in under-payments,<sup>11</sup>

with the entire program costing approximately \$201.3 million, or 20 cents for every dollar recovered.<sup>12</sup> A poll sampling the providers involved in the trial program who had to repay an overpayment or submit medical records showed that over 70% of respondents felt that the program was fair and reasonable and that RACs correctly applied Medicare policies.<sup>13</sup>

After initial success with the program, the Tax Relief and Healthcare Act of 2006 mandated nationwide adoption of the RAC program no later than 2010.<sup>14</sup> Recovery Audit Contractors now operate under a limit of medical records that they can request based on either a percentage of average monthly Medicare claims for hospitals and other Part A and B billers, or a set number of records per 45 day cycle for physicians and group practices.<sup>15</sup> They also must employ a staff of therapists, nurses, certified coders, and a physician manager in order to ensure legitimate review of the scrutinized claims.<sup>16</sup> RAC program contractors are paid on a contingency fee basis, between 9.00 and 12.45% depending on the RAC program area, for each improper payment they correct.<sup>17</sup> This is a controversial process, with some feeling that it improperly incentivizes the finding of an over-payment.<sup>18</sup> CMS has responded to some of the criticism about this issue, and changed the demonstration project rules that allowed RACs to keep their contingency fees even if the denial in question was overturned at the second level of appeal, to now deny a RAC’s contingency payment if a claim denial is overturned at any level.<sup>19</sup>

The programs participants themselves are also not without controversy, and in the beginning of the program, a temporary stop work order was issued to RAC participants in order to provide time to resolve a dispute about the contractor selection process from two of the losing contractors.<sup>20</sup> This eventually resulted in the inclusion of two companies, Viant and PRG-Schultz, as subcontractors in the program.<sup>21</sup> The Department of Health and Human Services has recently had a lawsuit involving PRG-Schultz filed against them by Palomar Medical Center in California.<sup>22</sup> It claims that PRG-Schultz re-opened a claim without being able to show the “good cause” required by Medicare regulations.<sup>23</sup> The suit also disputed a 2008 ruling by the Medicare Appeals Council that administrative law judges do not have the authority to review whether a claim was re-

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opened lawfully.<sup>24</sup> Previously, providers have been able to bring disputes dealing with this requirement before administrative law judges.<sup>25</sup> Additionally, healthcare reform legislation in the Senate at this time would continue to expand the RAC program, giving it additional responsibilities to address improper payments in Medicaid, Medicare Part D and Medicare Advantage.<sup>26</sup>

To prevent loss of revenues due to RAC payment corrections, providers should ensure that the procedures that they are performing satisfy Medicare's "medically necessary" criteria, are correctly coded, and have sufficient documentation associated with them. Problems with these three factors were responsible for 83% of the improper payments RAC's corrected during the demonstration program.<sup>27</sup> RACs have and will continue to publish specific target areas approved by CMS, so extra care should be taken when filing claims for pharmacy supply and dispensing fees, wheelchair bundling, urological procedure bundling,<sup>28</sup> clinical social worker services, blood transfusions, IV hydration therapy, codes without an associated timeframe, bronchoscopy, once in a lifetime procedures, pediatric codes that are performed past their age parameters, certain injections,<sup>29</sup> knee orthotic bundling, perenteral nutrition, and infusion pump accessories and related pharmaceuticals, all of which have been identified as target areas by RACs.<sup>30</sup>

<sup>1</sup> "Recovery Audit Contractor: Recent Updates" Centers for Medicare and Medicaid Services, US Department of Health and Human Services, [http://www.cms.hhs.gov/RAC/03\\_RecentUpdates.asp](http://www.cms.hhs.gov/RAC/03_RecentUpdates.asp) (Accessed 10/26/09); "RAC Provider Outreach Schedule" Centers for Medicare and Medicaid Services, US Department of Health and Human Services, <http://www.cms.hhs.gov/RAC/Downloads/CMS%20Provider%20Outreach%20Schedule.pdf> (Accessed 10/26/09).

<sup>2</sup> "CA Outreach Program" by Connie Leonard and Marie Casey, Centers for Medicare and Medicaid Services, US Department of Health and Human Services, <http://www.cms.hhs.gov/RAC/downloads/CA%20Outreach%20Presentation.pdf> (Accessed 10/26/09).

<sup>3</sup> "CMS RAC Review Phase-in Schedule" Centers for Medicare and Medicaid Services, US Department of Health and Human Services, June 2009, <http://www.cms.hhs.gov/RAC/Downloads/CMS%20RAC%20review%20strategy.pdf> (Accessed 10/26/09).

<sup>4</sup> "Recovery Audit Program Slide Presentation," Centers for Medicare and Medicaid Services, US Department of Health and Human Services, pp. 5.

<sup>5</sup> "The Medicare Recovery Audit Contractor (RAC) Program: An Evaluation of the 3-Year Demonstration," Centers for Medicare and Medicaid Services, US Department of Health and Human Services, June 2008, pp. 1.

<sup>6</sup> "The Medicare Recovery Audit Contractor (RAC) Program: An Evaluation of the 3-Year Demonstration," Centers for Medicare and Medicaid Services, US Department of Health and Human Services, June 2008, pp. 1.

<sup>7</sup> "Improving the Accuracy and Integrity of Federal Payments," Office of Management and Budget. January 31, 2008, pp. ii.

<sup>8</sup> "The Medicare Recovery Audit Contractor (RAC) Program: An

Evaluation of the 3-Year Demonstration," Centers for Medicare and Medicaid Services, US Department of Health and Human Services, June 2008, pp. 1.

<sup>9</sup> "Recovery Audit Program Slide Presentation," Centers for Medicare and Medicaid Services, US Department of Health and Human Services, pp. 19.

<sup>10</sup> "Recovery Audit Program Slide Presentation" Centers for Medicare and Medicaid Services, US Department of Health and Human Services, pp. 8.

<sup>11</sup> "The Medicare Recovery Audit Contractor (RAC) Program: Update to the Evaluation of the 3-Year Demonstration" Centers for Medicare and Medicaid Services, US Department of Health and Human Services, January 2009, pp. 3.

<sup>12</sup> "The Medicare Recovery Audit Contractor (RAC) Program: An Evaluation of the 3-Year Demonstration" Centers for Medicare and Medicaid Services, US Department of Health and Human Services, June 2008, pp. 3.

<sup>13</sup> "The Medicare Recovery Audit Contractor (RAC) Program: An Evaluation of the 3-Year Demonstration" Centers for Medicare and Medicaid Services, US Department of Health and Human Services, June 2008, pp. 2.

<sup>14</sup> "Recovery Audit Program Slide Presentation" Center for Medicare and Medicaid Services, US Department of Health and Human Services, pp. 5.

<sup>15</sup> "RAC Medical Record Request Limits," Centers for Medicare and Medicaid Services. US Department of Health and Human Services.

<sup>16</sup> "Recovery Audit Program Slide Presentation" Centers for Medicare and Medicaid Services, US Department of Health and Human Services, pp. 6.

<sup>17</sup> "Recovery Audit Contractor (RAC) Federal Business Opportunities" CMS, Oct. 3, 2008.

<sup>18</sup> "Medicare Recovery Audit Contractors: RAC'ing in the Money; IV. RAC Program Concerns" by B. Scott McBride and Summer D. Swallow, BNA Health Law Reporter (18) 573, April 30th, 2009.

<sup>19</sup> "Medicare Recovery Audit Contractors: RAC'ing in the Money; IV. RAC Program Concerns" by B. Scott McBride and Summer D. Swallow, BNA Health Law Reporter (18) 573, April 30th, 2009.

<sup>20</sup> "RAC returns after vendor protests are resolved," by Jennifer Lubell, Modern Healthcare, Feb. 16, 2009.

<sup>21</sup> "RAC returns after vendor protests are resolved," by Jennifer Lubell, Modern Healthcare, Feb. 16, 2009.

<sup>22</sup> "Medicare Recovery Audit Contractors: RAC'ing in the Money; II. Selection of Claims" by B. Scott McBride and Summer D. Swallow, BNA Health Law Reporter (18) 573, April 30th, 2009.

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<sup>25</sup> "Medicare Recovery Audit Contractors: RAC'ing in the Money; II. Selection of Claims" by B. Scott McBride and Summer D. Swallow, BNA Health Law Reporter (18) 573, April 30th, 2009.

<sup>26</sup> "Measure would give states break on repaying feds," by Matthew DoBias, Modern Healthcare, Sept. 24, 2009.

<sup>27</sup> "Medicare Recovery Audit Contractors: RAC'ing in the Money; III. Areas of Interest" by B. Scott McBride and Summer D. Swallow, BNA Health Law Reporter (18) 573, April 30th, 2009.

<sup>28</sup> "CMS Approved Audit Issues" DCS Healthcare Services, <http://www.dcsrac.com/issues.html> (Accessed 11/6/09).

<sup>29</sup> "CMS Approved Audit Issues" Connolly Healthcare, [http://www.connollyhealthcare.com/RAC/pages/approved\\_issues.aspx](http://www.connollyhealthcare.com/RAC/pages/approved_issues.aspx) (Accessed 11/6/09); "RAC B: Issues" CGI, Inc., <http://racb.cgi.com/Issues.aspx?st=1> (Accessed 11/6/09).

<sup>30</sup> "New Issues Approved by CMS" HealthDataInsights, <https://racinfo.healthdatainsights.com/Public/NewIssues.aspx> (Accessed 11/6/09).



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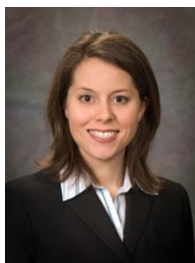
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