

Physician Legal Alert: The Coming Threat of RAC Audits and How to Avoid Them.

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On October 8, 2008, without great fanfare within the physician community, The Centers for Medicare & Medicaid Services (CMS) has taken the next steps in the agency's "comprehensive efforts" to identify "improper Medicare payments and fight fraud, waste and abuse" in the Medicare program by awarding contracts to four permanent Recovery Audit Contractors (RACs) designed to "guard the Medicare Trust Fund."

RAC Audits: What are they?

- Recovery Audit Contractor (RAC) Audits are specialized Medicare audits that began as a demonstration/pilot program. The demonstration resulted in over \$900 million in overpayments being returned to the Medicare Trust Fund between 2005 and 2008.
- The RAC Program was developed by Medicare to identify "improper" Medicare Payments not detected using previously existing error detection and prevention program efforts.
- Section 302 of the Tax Relief Health Care Act of 2006 makes the RAC program permanent and requires its expansion to all 50 states.

RAC Audits: What do they portend?

- By 2010, CMS plans to have four RACs in place that are responsible for identifying over-payments and underpayments.
- On October 6, 2008, CMS announced the names of the new national RACs. The new RACs are:
 - **Diversified Collection Services, Inc. of Livermore, California**
Region A, initially working in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and New York.
 - **CGI Technologies and Solutions, Inc. of Fairfax, Virginia**
Region B, initially working in Michigan, Indiana and Minnesota.

- **Connolly Consulting Associates, Inc. of Wilton, Connecticut**

Region C, initially working in South Carolina, Florida, Colorado and New Mexico.

- **Health Data Insights, Inc. of Las Vegas, Nevada**

Region D, initially working in Montana, Wyoming, North Dakota, South Dakota, Utah and Arizona.

- Additional states will be added to each RAC region in 2009.

RAC Audits: How are they different?

- RAC Contractors are paid on a contingency fee basis
- RACS are financially incentivized to identify errors.
- RACS can draw on HPMP and CERT methodology and data.
- RACS are permanent and will build an automated, ongoing denial system.

RAC Audits: How do they operate?

- RAC's conduct audits by reviewing medical data and billing data.
- Automatic reviews vs. complex medical reviews:
 - Automatic review: a computerized analysis of claims and coding practices utilizing existing databases. These reviews identify errors such as duplicates in billing and inappropriate bundling or unbundling of claims.
 - Complex medical review: billing and coding experts review samples of medical records and billing documentation. These reviews identify billing errors and also lead to denials in payment based upon assertions of "no medical necessity" and "incomplete documentation."
- RACs will utilize presently existing auditing procedures and will, therefore, have an infrastructure to complete audits and demand overpayment - from their first day of operation.

- RACs determine whether documentation for medical services provided meet the Medicare Guidelines for payment and whether the services are medically necessary.

RAC Audits: How to prepare?

- Consider moving toward and utilizing an EMR (Electronic Medical Record).
- Make sure your billing staff (either internal or external) is properly qualified, trained and provided with continual training/updates.
- Utilize certified billing and/or coding experts on a yearly or biennial schedule to ensure compliance, update templates and train staff.

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