

WILL YOUR GROUP BE READY?

Major Changes Coming to Medicare Enforcement Landscape

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Hit with improper provider payments that totaled nearly \$11 billion in 2007, the Centers for Medicare & Medicaid Services (CMS) is fighting back with an aggressive new program designed to root out fraud, waste and abuse at virtually every level of the Medicare program.

Known as the Medicare Recovery Audit Contractors Program (RAC), the initiative marks a major shift in the way CMS pursues improper provider payments. In the past, Medicare audits have been conducted primarily by fiscal intermediaries or CMS Part B Carriers. With the RACs, however, independent contractors have been enlisted to ferret out improper payments in exchange for a percentage of the dollars recovered.

Thanks to this incentivized structure, reimbursement investigations will likely be pursued in numbers and with a tenacity not previously seen in the Part B Medicare program. Physicians should therefore take steps today to ensure that their organizations will be ready if and when a RAC investigation is launched.

A SEA CHANGE

The good news for providers is that CMS has acknowledged that the vast majority of improper Medicare payments are due to errors, omissions or negligence and not the result of willful fraud or abuse. That means physicians, hospitals, nursing homes, laboratories and suppliers should not become unduly concerned that improper payments will result in civil sanctions for willful violations or criminal prosecution.

Nonetheless, it is critical that providers understand that the RAC program represents a sea change in the way Medicare reimbursement rules will be enforced. Never before have contractors been empowered and financially incentivized to seek out improper payments across the full breadth of the \$450 billion program. And while safeguards exist to ensure that contractors do not abuse their new-found power, relatively minor payment problems may quickly escalate if physicians do not respond to RAC inquiries in a forthright and timely fashion.

Medical Management Professionals (MMP) has monitored the three-year demonstration program that served as the prototype for the national RAC initiative and is familiar with the processes associated with RAC investigations. As a result, MMP is well-positioned to assist both new and existing clients in developing strategies to meet this major, emerging challenge.

PILOT PROGRAM COLLECTS \$900 MILLION

The RAC program was authorized as part of the Tax Relief and Health Care Act of 2006 to help improve enforcement across the sprawling Medicare program. The sheer scope of the government's fiduciary challenge is staggering: Medicare processes 1.2 billion medical claims a year -- or about 4.5 million per day -- for more than one million registered healthcare providers and suppliers. The volume of claims dwarfs the number of returns processed by the Internal Revenue Service and is expected to increase significantly as the Baby Boomer generation move into retirement.

By paying RAC contractors between 9 percent and 12.5 percent of monies recovered, CMS hopes to significantly reduce improper payments while generating a windfall for the agency. The government's total cost of the RAC program, including administrative overhead and contractor payments, equals about 22 cents on each dollar recovered, according to CMS. Thus, major financial incentives are built into the system for both the agency and the contractors.

Results from the three-year RAC demonstration project suggest the approach will be effective. The program, launched in 2005, returned more than \$900 million to the Medicare Trust fund, despite being limited to only Medicare claims from California, Florida, New York, Massachusetts, South Carolina and Arizona. The program also identified nearly \$38 million in underpayments that were returned to healthcare providers.

It is important to note that although the pilot program did not scrutinize Medicare physician evaluation and management (E/M) services, physician E/M payment audits will be a central part of the permanent RAC program.

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OUTLIER ANALYSIS A PRIMARY TOOL

At the core of the RACs investigative approach are sophisticated data mining applications capable of scouring huge volumes of claim information in search of anomalous utilization and/or payment patterns. This so-called outlier analysis flags significant deviations from the norm and triggers more detailed scrutiny by the RAC contractors.

By statute, RAC investigators are prohibited from looking back no further than October 1, 2007. They also are constrained in the number of patient charts they may request from a physician group during the course of an inquiry. Those limits are prescribed by the group's size.

What remains unclear is whether RAC contractors will be allowed to extrapolate larger, longer-duration patterns of apparent improper behavior based on relatively small error samples. CMS has yet to explicitly state whether extrapolation will be one of the RAC techniques used in the permanent program. But because this methodology was used in the demonstration project, most observers expect it also will be a part of the permanent program, particularly in situations where an error had been identified in a past audit but not corrected.

If extrapolation is used, small errors could quickly mushroom into far more costly problems. Physician groups consequently should begin taking steps today to identify and mitigate potential problem areas involving coding accuracy and medical necessity compliance. They should also develop and clearly communicate procedures for promptly addressing RACs inquiries. Responding to an initial RAC inquiry and/or subsequent communications in a timely manner is essential for managing the investigation and reducing the chances that an inquiry metastasizes beyond its initial area of focus.

SELF-ASSESSMENT A KEY STEP

MMP has developed a program that can review a physician group's claims for a specific period of time to identify potential outlier situations in much the same fashion that RAC contractors assess claims. From this information, physician groups can then determine the nature and extent of potential problems and begin working to mitigate them before a RAC investigation is launched.

According to CMS, groups can take other steps to prepare for the RAC rollout:

- › Identify where improper payments have been persistent by reviewing the RACs' websites.
- › Keep track of denied claims and corrections of previous errors.
- › Determine what corrective actions need to be taken to ensure compliance and avoid submitting incorrect claims in the future.

CMS plans to work closely with national and state medical, hospital and nursing home associations to strengthen relationships and to anticipate the needs and concerns of healthcare providers. Before the program roll-out, town hall-type meetings will be held in each state and will include representatives from the regional RAC contractor, CMS and provider organizations. Physicians can obtain information about these meetings and the date the program will begin in their states by checking the CMS RAC website at <http://www.cms.hhs.gov/RAC/>

AGGRESSIVE APPEALS STRATEGY A MUST

Because RAC investigative results will be subject to the existing Medicare appeals process, it is important that organizations be ready and willing to pursue timely appeals through the five-stage Medicare process in the event an investigation finds for recovery against the physician group.

According to CMS data, only 14 percent of providers in the RAC demonstration project appealed adverse RAC findings. However, of the groups that did appeal, 33 percent received rulings in their favor. Significantly, a provider win at any level in the appeal process reduces the RAC contractor contingency payment to zero. A win also prevents the RAC from coming back at a later date

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to scrutinize the same set of claims. An aggressive appeals stance on the part of providers, therefore, will likely emerge as a significant deterrent against marginal investigations as the program matures.

A BRAVE NEW WORLD

MMP's existing compliance programs have been constructed and continually updated to ensure that documentation, coding and claims procedures conform with both the letter and spirit of Medicare payment rules. The creation of the RAC mechanism, however, introduces a major wild card into the Medicare enforcement mix. Given the financial incentives that exist for RAC contractors to identify and recover improper payments, there is no guarantee that even the most conservative compliance philosophy will preclude a future RAC investigation.

That's why it is essential for provider organizations to conduct self-assessments to gauge areas of potential vulnerability and then implement policies to reduce or eliminate that risk. Providers must also create policies to ensure that all inquiries from RAC contractors are immediately acknowledged and addressed. Finally, they need to be ready to aggressively fight adverse claims through the Medicare appeals process, both to reduce potential financial exposure and to limit the likelihood of repeat investigations.

By virtue of MMP's coding and compliance expertise, knowledge of the CMS appeals process and detailed understanding of the RAC program, the company is exceptionally well-qualified to assist in the development of a comprehensive RAC strategy. But whether physician groups tap MMP or ultimately choose a different course, they should waste little time in preparing for the changes to come. Because for most providers, it isn't a question of if they'll be audited by a RAC contractor, but when.

Edward R. Gaines, III, JD, CCP is the Vice President and Chief Compliance Officer of MMP. He is responsible for the compliance functions at MMP, bringing over 14 years of healthcare experience to the company. Mr. Gaines is a co-founder and member of the Board of Directors and Executive Committee of the Emergency Department Practice Management Association. He also serves on the Board of Directors of the Council of Ethical Organizations. Mr. Gaines is a member of the North Carolina State Bar, North Carolina Bar Association's Health Law Section and the Bar of the United States Supreme Court. In 2006, he received the North Carolina College of Emergency Physicians (NCCEP) Outstanding Emergency Medicine Advocate Award and in May 2008, EDPMA presented him with its highest honor, the EDPMA Founders Award. He can be reached at egaines@cbizmmp.com.

About MMP

Based in Chattanooga, Tennessee, MMP has more than 80 offices and 2,000 employees nationwide. Founded in 1993, MMP serves more than 3,000 hospital-based physicians across the nation and boasts the highest client retention rate in the industry.

For additional information please call **1.877.541.9690** or email emergency@cbizmmp.com