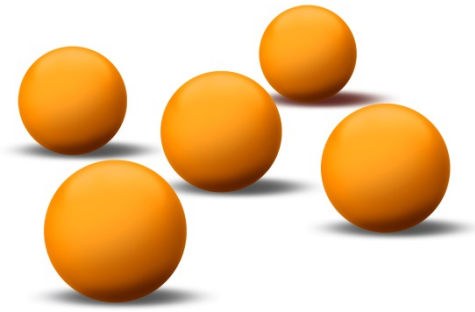


Medicare's Recovery Audit Program (RAC Audits), an Update for Physicians



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As many physicians now realize, Recovery Audit Contractors ("RAC") hired by Medicare have turned their attention from hospitals and are now actively pursuing claims submitted by physicians. An audit by a RAC can put a physician and his/her medical practice in severe financial stress. Physicians are often surprised to find that even if all services provided are reasonable, medically necessary, and within the standard of care, RAC recoupments are still occurring with greater frequency. These audits are not just about fraud or outliers. All types of claims are subject to recoupment. Consequently, it is important that a physician practice be engaged and understand how the RACs operate.

The RAC audit and appeals process includes multiple levels of appeal that generally take many months to work through. For example, if a provider wishes to appeal a RAC's adverse determination the first three levels of appeal include a Redetermination, a Reconsideration and a hearing before an administrative law judge ("ALJ"). Sometimes a Rebuttal is also needed before Redetermination, for example, when a recoupment demand is received even though the audit was completely successful. From past experience, providers generally have minimal success at the first two stages of appeal but have enormous success at the ALJ level of appeal. As a result of this success, many providers appeal a RAC denial through at least the ALJ level.

The United States Department of Health and Human Services, Office of Medicare Hearings and Appeals ("OMHA"), the office responsible for managing the RAC administrative appeals process, has only 65 ALJs assigned to hear almost 400,000 appeals. The RAC audits have caused a rapid and overwhelming increase in the number of ALJ appeals, which has in turn led to a crippling backlog of ALJ hearings. In an effort to reduce the backlog, OMHA temporarily suspended the assignment of most new requests for an ALJ in July 2013. In December 2013, OMHA announced it "[does] not expect general assignments to resume for at least 24 months" and that "post-assignment hearing wait times will continue to exceed 6 months." Consequently, providers are waiting much longer than the prescribed 90 days to have their appeals heard by an ALJ.

Connolly Consulting Associates, Inc. ("Connolly") is the exclusive RAC for Region C, which includes Alabama. Physicians in all areas of surgery and medicine are targets of RAC Audits, and no specialty is immune. Initially, a physician will receive a RAC audit letter that may appear as a routine request for medical records. However, certain deadlines begin to run immediately upon receipt of the letter, so it is critical to identify a RAC letter immediately.

A physician can enhance his/her chances of a successful audit (and hopefully avoid the appellate backlog) by taking an active role in the audit response from the very beginning. It is a huge mistake to allow staff to simply undertake the ministerial task of copying the requested charts and sending them to the RAC without the physician's involvement. It is important for the physician to review the specific RAC document request. A physician will generally understand the issues involved with the particular codes being reviewed and what, if any, documentation is required to support the codes. He/she can use that understanding when reviewing the practice's medical record documentation to ensure that all of the necessary records are included in the response.

The physician should also keep an exact copy of the documents produced to the RAC. The physician will need the copy as a reference during the appeals process. Ideally, the physician should number each page in the response to make identifying a specific page easier, which can be essential on appeal.

Most providers know that reviews are not exactly unbiased or independent because the RAC is working on a contingency fee basis. It is also important not to assume the RAC complies with the legal requirements of an audit. For example, providers generally have 45 days to respond to a RAC request for records. However, providers are finding audit letters dated months before the practice actually receives the letter. In certain circumstances, the physician may be able to obtain an extension of time to respond to the request. Therefore, upon receiving a RAC audit letter, the physician should first note the date of the letter. Also, every provider should log into Connolly's provider portal at <https://cmsprovider.connollyhealthcare.com/> and track any audit activity. To be sure recoupments do not begin just because Connolly does not have your correct contact information; most providers will want to register their contact information with Connolly. See <http://www.connolly.com/healthcare/pages/ProviderContactInformation.aspx>.

When sending charts to a RAC, it is also important to track the shipment, confirm timely delivery of the records, and maintain the documentation for use on appeal. There have been many occasions when the RAC claimed it did not receive the records and began recouping payments. Without proof of delivery, there is no way to later prove the RAC is wrong, but follow-up confirmation is also recommended because the RAC may not act on your proof of delivery, resulting in recoupment by Medicare.

If a provider receives multiple audit letters it is recommended that the provider respond to each letter in separate mailings. The RAC may not read a cover letter to determine the package actually includes responses to multiple audits. Sending separate responses also makes it easier to verify timely delivery of each and maintain order for subsequent appeals or hearings.

A successful audit does not mean the physician will not receive any future audits. Also, physicians will likely receive multiple audit requests. In many cases, providers find that a second or even third audit letter arrives before a prior audit is fully resolved, even if the physician is 100% successful in those reviews.

Physician practices should take immediate action to prepare for and answer RAC audits. While there is no apparent action coming from Congress or OMHA to address the stagnant appeals process or the system overall, there is no apparent slowdown in audits and recoveries. Have you gotten your letter yet?

Update to the article printed in *Birmingham Medical News*:

CMS recently ordered Recovery Audit Contractors ("RAC") and Medicare Administrative Contractors ("MACs") to cease issuing additional documentation requests by February 28, 2014. However, RACs can continue to conduct automated reviews that do not require the solicitation of medical records through June 1, 2014. RACs may also continue to complete reviews implemented prior to February 28, 2014. CMS has stated that the audits and documentation requests will be reinstated once the new RAC contracts are issued.

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