



By Kim Licata

## Recovery Audit Contractors: New Insights From the Government and Steps to Being Prepared

It's undeniable—the Centers for Medicare & Medicaid Services' (CMS) bounty hunters (aka Recovery Audit Contractors, or RACs) are coming, and they are ready, willing, and able to ferret out potential overpayments (and underpayments). But what about potential fraud? Interestingly, a recent report of the Office of Inspector General (OIG) of the Department of Health and Human Services (HHS) titled "Recovery Audit Contractors' Fraud Referrals" found that during the demonstration project, the RACs may not have been as knowledgeable about identifying potential fraud and CMS not as diligent in pursuing the few referrals sent by RACs, as they should have been. CMS has stated that RACs' primary focus is identifying and correcting improper payments, not identifying potential fraud. In contrast, given RACs review of records and their "first person on the scene" access to potential fraud, the OIG report states that RAC reviews "also serve to identify instances of potential fraud."

What is the fix for RACs finding (more) fraud, you may ask? According to the OIG report, several recommended changes to the RAC Program that should be made:

- Mandatory training by CMS for the RACs to identify and refer fraud to CMS to increase knowledge of potential fraud, as well as to overcome any disincentive. Several sessions of training have occurred, with additional sessions "under development."

- Implementation of a tracking system for the RAC claims review (from new issues approved for review, corrective actions taken and referrals to/from RACs). Surprisingly, the OIG report notes that two referrals of potential fraud were made by one RAC auditor during the demonstration project (as evidenced by a copy of the letter sent by the RAC auditor to its CMS project officer) that CMS not only did not follow up on during the demonstration project, but it also did not seem to know that the referrals had been made. The tracking system should provide a mechanism for resolving these issues and improving the permanent RAC program.
- Investigation and referral of the two referred fraud cases to appropriate authorities. This had occurred by the publication of the OIG report.

As Mike Hale noted in his December 1, 2009 *EndNotes* article, "Hospice Care Plans a Likely Target for Medical Review," the OIG's release of two reports in September 2009 identifying significant non-compliance with Medicare requirements for hospice care provided to beneficiaries in nursing facilities increases the likelihood that RAC audits (and potentially, fraud investigations) will include more reviews of hospice and home care services. More specifically, the OIG's September reports found that 82% of hospice claims did not meet at least one of the Medicare requirements, which in actual dollars translates into a \$1.8 billion overpayment. By far the most frequent problems identified were the failure to provide services as provided in a plan of care and the failure to establish a plan of care.

### Are You RAC Ready? How to Prepare for a RAC Audit

Briefly, you can help yourself in advance of a RAC review. As you likely know, while hospice and home care services were excluded from the demonstration project, the RAC auditors have already requested that CMS include hospice issues as a new issue in future RAC reviews. So, with this in mind, what can you do? Under the direction of risk management and/or legal counsel (to preserve your maximum legal protection), you should consider taking the following steps:



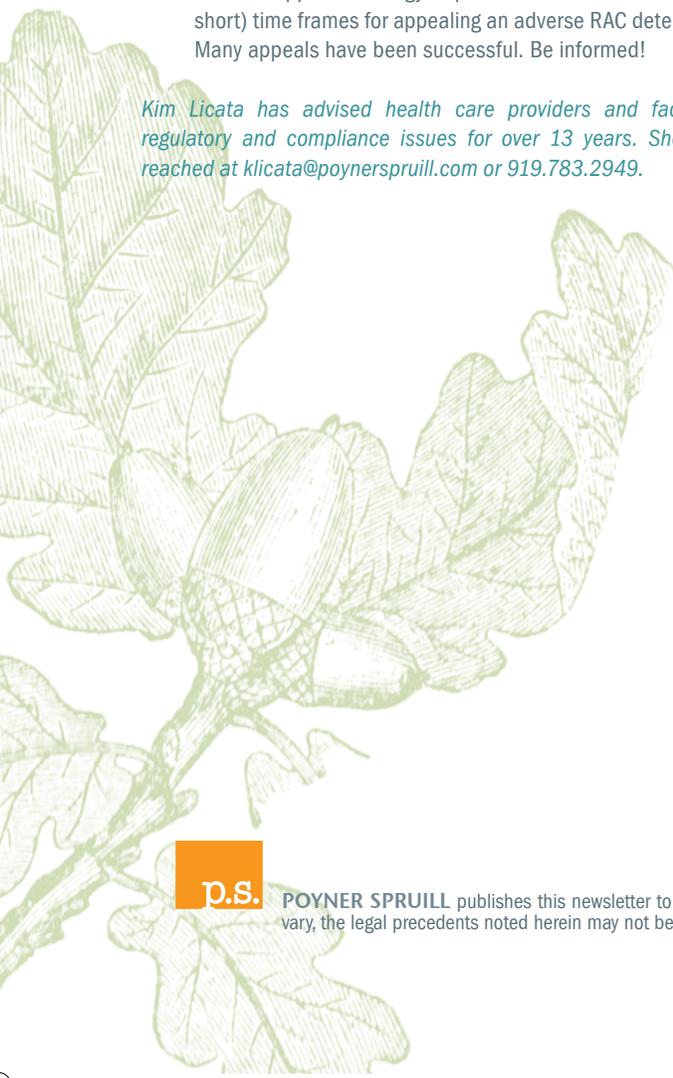


1. Conduct a preaudit risk assessment.
2. Identify and educate key operational personnel throughout the organization.
3. Be aware of and use the resources available to organizations (from CMS, AHA, AHIMA, the RACs, etc.).
4. Develop and implement policies and procedures for handling RAC record requests (will likely differ for an automated versus a complex review).
  - This includes assigning roles and responsibilities (along with appropriate time frames for completion) to tasks associated with each review.
  - This includes having a means of tracking and documenting the process.
    - By RAC request, by outcome.
    - This is essential for an organization to be able to implement improvements and prove to CMS or whichever organization is asking that fixes are in place.
5. Have an appeals strategy in place. There are well-defined (and short) time frames for appealing an adverse RAC determination. Many appeals have been successful. Be informed!

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