

Update: Recovery Audit Contractors

The phase-in strategy for the Recovery Audit Contractor (RAC) Permanent Program is well underway and providers should prepare for increased RAC audit activity. On June 24, 2009, CMS released a RAC review phase-in strategy schedule. The phase-in strategy shows the earliest possible start dates for the various types of RAC reviews. States in each region were expected to see automated reviews as early as June 2009 and complex reviews of DRG validation and coding errors as early as August or September 2009. Pursuant to the phase-in schedule, DME providers in all states can expect to see complex, medical necessity reviews beginning in fiscal year 2010 and complex, medical necessity reviews for all provider types are set to begin in all states as early as calendar year 2010. The start dates of the various RAC reviews are slightly staggered among the states in each RAC region, but all reviews are scheduled to be underway no later than calendar year 2010. The RACs are also tasked with conducting provider outreach in provider communities to explain the RAC's business, purpose and processes. All provider types within a state are open for RAC review once provider outreach has occurred in that state.

Before the RAC can start reviews, the issues under review must first be approved by CMS and posted on the individual RAC's website. CMS developed a "new issue review process" and contracted with an independent review entity, Provider Resources, Inc., to serve as the RAC Validation Contractor (RVC). Using this process, if the RAC wants to examine a new issue in order to identify potential improper payments, the contractor must first submit information about the issue to CMS. CMS will then review the issue to determine whether the RAC may proceed with the proposed claim review or whether it must first be reviewed by the RVC. If the issue is referred to the RVC, the RAC will provide the RVC with a small sample of claims and medical records, if necessary. After evaluating the issue, the RVC will issue a recommendation to CMS as to whether the RAC should be permitted to continue with full scale reviews. Once approved, the new issues are posted online on the RAC's website prior to the start of any reviews. Currently, all four RACs have approved issues listed on their websites. Issues including blood transfusions, bronchoscopy services, once in a lifetime procedures, wheelchair bundling and untimed codes are listed as approved issues for several RAC regions. The RACs for Regions C and D also listed DRG validation issues that have been approved for review. At this time, both Connolly Consulting, the Region C RAC, and HealthDataInsights, the Region D RAC, have excluded medical necessity from the DRG validation reviews.

RAC reviews can take two forms, automated or complex. Automated RAC reviews involve making an overpayment finding without requesting medical records from the providers. Automated reviews may only be used in situations where there is certainty that the claim contains an overpayment and there is a written Medicare policy, article or sanctioned coding guideline on the issue. The initial approved issues listed for each RAC involved automated reviews. Complex medical necessity reviews involve a review of the medical records related to the claim. Complex reviews are employed when it is likely, but not certain, that a service is not covered or in situations where there is no Medicare policy, article, or sanctioned coding guidelines. According to the RAC review phase-in strategy, complex medical necessity reviews are expected to begin in 2010.

Another aspect of the RAC permanent program that providers and healthcare attorneys should be aware of is the discussion period. CMS recently clarified the timeframe for the discussion period. The discussion period begins when the provider receives the demand letter for automated reviews or when the provider receives notification of the RAC review results for

complex reviews. The discussion period runs until the time for recoupment occurs. If a valid request for redetermination is not received by the contractor within thirty days from the date of the demand letter, recoupment begins on the 41st day from the demand letter date. The discussion period gives providers an opportunity to communicate with their RAC and explain why a claim should not be denied or find out how the RAC made its determination. This information may be helpful down the road if the provider decides to appeal the denial. While the discussion period may provide helpful information, it is important to note that use of the discussion period does not extend a provider's appeal timeframe. Therefore, providers who elect to engage in a discussion with the RAC must still be aware of the deadlines that must be met under the Medicare appeals process.

Providers wishing to remain apprised of updates relevant to the RAC program may do so by visiting the updates section of our RAC website at www.racattorneys.com.