

Proactive Steps to Contend With the RAC Threat

In section 306 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), Congress directed the Department of Health and Human Services (DHHS) to conduct a 3-year demonstration program using Recovery Audit Contractors (RACs) to detect and correct improper payments in the Medicare FFS program. The Recovery Audit Contractor (RAC) demonstration program was designed to determine whether the use of RACs will be a cost-effective means of adding resources to ensure correct payments are being made to providers and suppliers and, therefore, protect the Medicare Trust Fund. The demonstration operated in New York, Massachusetts, Florida, South Carolina and California and ended on March 27, 2008.

Section 302 of the Tax Relief and Health Care Act of 2006 made the RAC Program permanent and requires the Secretary to expand the program to all 50 states by no later than 2010. As such, Recovery Audit Contractors (RACs) are and have been in the process of saddling up for the nationwide roll out of their Medicare payment recoupment mission. In fact, complex RAC reviews are set to begin in August of this year according to the CMS website.

So here are twenty-five recommended proactive steps to help you and your healthcare entity circle the wagons and defend the RAC threat.

1. Develop and implement a written audit defense plan- the government bounty hunters are coming your way and they will be looking for the low lying fruit.
2. Select an audit team or responsible persons depending upon the size of your organization. Including if appropriate internal audit, billing and coding, medical records, risk management and the CFO.
3. Assign specific team member responsibilities in dealing with anticipated audit issues.
4. Consider running an internal pre-audit to identify vulnerabilities such as "medical necessity" and "duplication of services."
5. Track major categories of deficiencies that the RAC will likely pursue – the RACs are required to list their areas of inquiry on their web pages and the Inspector General's Annual Work Plan provides some areas of emphasis.
6. Monitor developments from the experience of other providers as patterns become apparent in early data mining ventures.
7. Consider hiring a medical expert to review and, if possible, enhance weaker cases of medical necessity with additional documentation.
8. Have a particular person responsible for tracking deadlines to make sure that all document production time tables and appeal requests are met.
9. Maintain contact with hospitals and other physicians involved in the joint care of patients under review- an attack on the "medical necessity" of admissions will likely affect all.
10. Identify areas of vulnerability in high profile admissions and procedures – Medical necessity, duplication of billings, office injectables, E & M services on the same date as a procedure, services incident to a physician's services, certifications by physicians with financial relationships with DME suppliers.
11. Assure that files are clear and complete with medical histories, appropriate signatures by credentialed providers, etc.

12. Supplement documentation regarding medical necessity where possible.
13. Make sure that billings on big ticket or high frequency items correlate with Medicare Policies, National Coverage Decisions, Local Coverage Decisions and articles and bulletins describing the policies.
14. Ask for additional time in early in the process if you will likely need it.
15. Involve your lawyers early enough in the process to make sure that all available and useful documentation is included in the record before the file goes to the Independent Contractor Review level.
16. Make copies, preferably digital, of all files requested by the RAC so that they can be reviewed by you and your attorneys.
17. Have an expert immediately review all records requested by the RAC to determine if there is a problem and identify the likely basis for the RAC interest in the case. (Note there was a successful RAC recoupment in roughly a third of the cases where there was a chart review in the demonstration project.
18. If the RAC undertakes a "statistical sampling" methodology retains the services of a qualified statistician early in the game. This is the audit equivalent of reconstructing a dinosaur from a footprint. One major mistake in the sampling process can destroy its value to the RAC and they don't always understand what they are doing.
19. Familiarize your team with the rules on statistical sampling set forth in Chapter 3 of the Medicare Financial Management Manual and Section 3.10 of the Medicare Program Integrity Manual.
20. Make sure that the RAC has the right to undertake extrapolation methods which by statute require that there be a) a sustained or high level of payment error and b) documented educational intervention with failure to make corrections.
21. Be prepared to cut your losses on sure losers. If you appeal within the appropriate time periods, CMS will charge you interest on the amount owed. Some providers have indicated intent to appeal every RAC recoupment claim. This would be expensive and doesn't make a great deal of sense.
22. Review options for rebilling items that are miscoded.
23. Set up an appropriate reserve if you determine vulnerability.
24. If a RAC appears at your office requesting documents ask the auditor to speak to your attorney before proceeding. You have no obligation to permit them to enter your offices.
25. Be pleasant, professional and firm in your responses.

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