

## Avoid Being Put on the RAC: Be Prepared for a Recovery Audit Contractor Audit

By Kathleen Stillwell, MPA/HSA, RN, CPHRM, Patient Safety Risk Manager II, The Doctors Company

### What is a RAC Audit?

Any medical practice submitting claims to a government program, such as Medicare, may contend with a Recovery Audit Contractor (RAC). RAC audits are not one-time or intermittent reviews; they are a systematic and concurrent operating process for ensuring compliance with Medicare's clinical payment criteria, documentation, and billing requirements.

The RAC program was signed into law by the Medicare Prescription Drug Improvement and Modernization Act of 2003 and made permanent by the Tax Relief and Health Care Act of 2006. Its purpose is to identify improper Medicare payments—both overpayments and underpayments. The RACs use proprietary software programs to identify potential payment errors in such areas as duplicate payments, fiscal intermediaries' mistakes, medical necessity, and coding. RACs also conduct medical record reviews. In fiscal years 2010 and 2011, RACs identified half of all claims they reviewed as having resulted in improper payments.<sup>i</sup>

The program's mission is to detect and correct past improper payments so that the Center for Medicare and Medicaid Services (CMS) can implement actions that will prevent future improper payments.<sup>ii</sup>

- Providers can avoid submitting claims that do not comply with Medicare rules.
- CMA can lower its error rate.
- Taxpayers and future Medicare beneficiaries are protected.

### Who Is Subject to a RAC Audit?

- Hospitals.
- Physician practice.
- Nursing homes.
- Home health agencies.
- Durable medical equipment suppliers.
- Any provider or supplier that submits claims to Medicare.

### Who is the RAC Auditor?

CMS has contracted with RAC auditors for each region in the United States. It is important to know who the RAC auditor is in your region. ***Never ignore a letter from one of these organizations.*** The United States is divided into four regions. Each region has a designated recovery audit contractor. Oregon is in Region D.

- **Region A RAC Auditors:** *Performant Recovery, Inc., and subcontractor, PRG-Schultz USA, Inc.*
- **Region B RAC Auditors:** *CGI Technologies and Solutions, Inc., and subcontractor, PRG-Schultz USA, Inc.*

- **Region C RAC Auditors:** *Connolly Consulting Associates, Inc., and subcontractor, Viant Payment Systems, Inc.*
- **Region D RAC Auditors:** *HealthDataInsights, Inc. Las Vegas, Nevada, and subcontractor, PRG-Schultz USA, Inc.*

### **What Does the RAC Review?**

The recovery audit looks back three years from the date the claim was paid. RACs are required to employ a staff consisting of nurses, therapists, certified coders, and a physician.

The RAC reviews claims on a post-payment basis. There are three types of review:

- Automated—no medical record needed.
- Semi-automated—claims review using data and potential human review of a medical record or other documentation.
- Complex—medical record required.

### **What Can You Do to Prepare for a RAC Audit?**

Assess your risk for billing issues by performing a risk analysis of your billing practices. Assign a knowledgeable member of your staff to review your billing processes and to develop a billing compliance plan. Consider hiring a contractor for this task. Identify billing issues, keep track of denied claims, and look for patterns and determine what corrective actions you need to take to avoid improper payments. Common billing errors include:

- Inadequately trained staff.
- Lack of time.
- Did not follow recommendations in Federal Register bulletins.
- Did not consult Health and Human Service bulletins.
- Misinterpretation of rules.
- New staff/New billing company.

The person responsible for implementing the billing compliance plan should regularly monitor RAC progress in your region. Each RAC must maintain a website with information on new audit focus areas and the status of a provider's audits. Areas to include in your assessment and monitoring plan include:

- Review denied claims categories by RAC audit.
- Keep abreast of notifications on CMS website.
- Review annual Office of Inspector General (OIG) work plan to identify audit areas.
- Monitor RAC progress at regional RAC (their web postings).
- Perform audit of your billing practices.

### **Potential Issues with Electronic Medical Records**

The OIG is studying the link between electronic medical record (EMR) systems and coding for billing. There is a concern that some EMR systems may upcode billing through automatically generated detailed patient histories, cloning (when you cut and paste the same examination findings), and templates filled in to reflect a more thorough or complex examination/visit. Review these issues with your EMR company and determine if your EMR program has the potential to automatically upcode billing based on EMR documentation.

## **Fundamentals for Compliance**

Establish compliance and practice standards and conduct internal monitoring and auditing to evaluate compliance. Conduct appropriate training and education for staff and respond to deficiencies identified during internal audits. Establish corrective action plans and enforce disciplinary standards when necessary.

Medical billing is complex. Billers and coders must be knowledgeable about many areas pertaining to billing/reimbursement. Be sure your billing staff understands local medical review policies and is knowledgeable of practice jurisdictions. Billing personnel must ~~staff~~ stay current on coding requirements and keep up with industry changes, understand denial and appeal processes, and be able to identify resources for support.

## **What to Do if You Are Audited**

***Do not ignore a letter from the RAC auditor.*** It is recommended you have an attorney assist you with your response to a RAC audit. Check with your insurance company to determine if you can get help with the audit. The Doctors Company, for example, provides RAC audit legal assistance for all members as part of its MediGuard® coverage. Before you send records to the auditor, be sure to review them in a “self-review.” Are there common themes? Are you coding with the correct documentation? Make copies of everything you send to the RAC auditor and be sure to keep a copy of all documentation. Send medical records via certified mail.

Staying on top of the RAC audit process is important as there are multiple policies and procedures governing RAC audits. The RAC can request a maximum of 10 medical records from a provider in a 45-day period. The time period that may be reviewed has changed from four years to three years.

Responses are time-sensitive, and significant penalties may result if they are not handled properly. RACs are paid on a contingency basis for overpayments and underpayments. If you agree with the RAC demand letter you have the choice of paying by check or recoupment from future payments, or you may request an extended payment plan.

If a recoupment demand is issued, you may pay by check within 30 days with no appeal, allow recoupment from future payments, or request or apply for an extended payment plan. There is an appeal process if you do not agree with the audit findings.

Do not confuse the RAC Discussion Period with the appeals process. If you disagree with the RAC determination, do not stop with sending the discussion letter detailing why you disagree with the findings. File an appeal before the 120th day after the demand letter. Send correspondence to RAC via certified mail. It is recommended you have legal representation to advise you in the response to a recoupment demand, to determine if you should appeal, and to ensure you meet the required regulatory requirements of the appeal process.

### **Where to Get More Information on Government Audits**

More information on the growing risk of government investigations and audits can be obtained through five short videos featuring tips from Kevin R. Warren, Esq., of Michelman & Robinson LLP's Healthcare Practice at <http://ow.ly/rP02n>. The videos address how to create an effective compliance program, why it's important to train staff to avoid improper and exaggerated coding, what steps to take if your practice receives a subpoena, and how to properly protect electronically stored information.

---

<sup>i</sup> Medicare Recovery Audit Contractors and CMS's Actions To Address Improper Payments, Referrals of Potential Fraud, and Performance. *Office of Inspector General. U.S. Department of Health and Human Service*. August 2013. <https://oig.hhs.gov/oei/reports/oei-04-11-00680.asp>. Accessed Dec. 16, 2013.

<sup>ii</sup> The Recovery Audit Program and Medicare: The Who, What, When, Where, How and Why? *Centers for Medicare & Medicaid Services*. May 13, 2013. <http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Recovery-Audit-Program/Downloads/The-Recovery-Audit-Program-and-Medicare-Slides-051313.pdf>. Accessed Dec. 16, 2013.