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The RAC Sheet

The Health Law Partners, P.C. ("The HLP") is pleased to send you the September issue of *The HLP RAC Sheet*. This monthly newsletter will provide up-to-date developments regarding the Medicare Recovery Audit Contractor ("RAC") program as it expands nationwide. If you have questions regarding RACs, Medicare audits, Medicaid audits or other payor audits, please call us at (248) 996-8510 or email [Abby Pendleton, Esq.](#) or [Jessica L. Gustafson, Esq.](#) Please also visit the [RAC page](#) of the [HLP website](#).

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MEDICAID RACs ARE COMING TO A STATE NEAR YOU!

On September 10, 2010, the Centers for Medicare and Medicaid Services ("CMS") released a [Notice](#) in the Federal Register, taking its first steps toward implementing a Medicaid Recovery Audit Contractor ("RAC") program. Building on the success of the Medicare RAC program, which, according to CMS data, identified and corrected over \$1 billion in improper Medicare payments, the Patient Protection and Affordable Care Act of 2010 requires States to adopt similar RAC programs for Medicaid claims.

According to the CMS Notice, "[u]nder section 1902(a)(42)(B)(i) of the Social Security Act, States are required to establish programs to contract with one or more Medicaid RACs for the purpose of identifying underpayments and recouping overpayments under the State plan..." Like Medicare RACs, the States are required to make payments to the Medicaid RACs on a contingency-fee basis. States also must have an adequate appeals process in place to challenge RAC determinations. The Medicaid RAC programs are not required to be fully operational until after December 31, 2010; however, some States are already utilizing such contingency-fee based recovery contractors. According to the Notice, "States will have broad discretion regarding the Medicaid RAC program design and the number of entities with which they contract."

The Notice specifically cites to a draft Form, CMS 10343, which would be used by State Medicaid plans to attest to their compliance with

adopting and implementing a Medicaid RAC program. The draft form is available from the [CMS website](#).

Note that the Medicaid RAC program is an additional layer of auditing activity, supplementing existing Medicaid Integrity Contractor ("MICs") audits (another national Medicaid auditing program).

The HLP's Monthly RAC Tip: Focus on Compliance

Providers and suppliers cannot prevent RAC audits from happening; however, having an effective compliance program places providers and suppliers in the best position to avoid claim denials and overpayment demands. The HLP encourages all health care providers and suppliers to have a renewed focus on compliance, take a critical look at their documentation and billing practices, and make improvements where necessary.

While previously, the adoption and implementation of a compliance plan was "voluntary" for physician practices, The Patient Protection and Affordable Care Act of 2010 ("PPACA"), mandates that providers and suppliers adopt a compliance program containing certain "core elements" as a condition of Medicare enrollment. Pursuant to a recently-issued [proposed rule](#), the requirements would include:

- The development and distribution of written policies, procedures and standards of conduct to prevent and detect inappropriate behavior;
- The designation of a chief compliance officer (and other appropriate bodies) to operate and monitor the compliance program. The compliance officer and/or other governing body must report to high level personnel;
- Using reasonable efforts not to include any individual in a position of authority that the organization knew or should have known has engaged in illegal activities or conduct inappropriate for an individual in such a position;
- The development and implementation of regular and effective education and training programs for the governing body, all employees and agents, as appropriate;
- The maintenance of a complaint process, which protects the anonymity of complainants and protects whistleblowers from retaliation;
- The development of a system to respond to allegations of improper conduct and enforce appropriate disciplinary action against employees who have violated internal compliance policies, statutes, regulations and Federal health care program requirements;
- Using audits and/or other evaluation techniques to monitor compliance and reduce identified problem areas; and
- The investigation and remedy of identified systemic problems, including making any necessary modifications to the organization's compliance and ethics program.

UPCOMING EVENTS

- On September 25, 2010, Abby Pendleton will be presenting on numerous topics, including Recovery Audit Contractors, to the Society of Pain Practice Management ("SPPM").
- On April 10, 2011, Abby Pendleton and Jessica Gustafson will co-speak with Donald H. Romano, a partner at Arent Fox and former division director of CMS, at the 2011 Health Care Compliance Association ("HCCA") Compliance Institute on the topic of "Compliance in the Age of EMR."

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