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The RAC Sheet

The Health Law Partners, P.C. ("The HLP") is pleased to send you this month's issue of [The RAC Sheet](#). This newsletter will provide up-to-date developments regarding the Recovery Audit Contractor ("RAC") program. 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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RAC RECOVERIES ACCELERATE

The Centers for Medicare and Medicaid Services ("CMS") overpayment recovery through its Recovery Audit Contractor ("RAC") program is on the rise. CMS recovered in excess of \$313 million in Medicare overpayments since October 2009, and almost half of that amount (\$162 million) was collected during the first three months of 2011. In comparison, only \$75.8 million was collected from October to December 2010, and \$75.4 million was recovered from October 2009 to September 2010. The majority of overpayments alleged during FY 2010 through March 2011 involved incorrect coding. Notably, as the RAC permanent program was first rolled out, the RACs were authorized only to look at coding issues. More recently, the RACs were permitted to look at issues involving medical necessity. The CMS report may be viewed [here](#).

PART D RAC PROGRAM VENDOR SELECTED

The Centers for Medicare & Medicaid Services ("CMS") is taking steps in anticipation of its Medicare Part D RAC program release; this component of the RAC program is expected to begin in the third quarter of 2011. The director of the Medicare Program Integrity Group, John Spiegel, announced that CMS selected a vendor for the Part D RAC program. CMS has entered into a contract with [ACL Strategic Business Solutions](#), a Michigan company, to perform the recovery audits. In the near future, CMS will provide further information regarding Medicare Part C and D RAC programs through a dedicated website.

SIGNATURE REQUIREMENTS FACT SHEET NOW AVAILABLE

Our attorneys are seeing an increase in Medicare claim denials resulting from the lack of valid practitioner signatures. A new publication from the Medicare Learning Network® titled "Comprehensive Error Rate Testing (CERT) Signature Requirements" provides the guidance necessary to avoid such denials. The fact sheet aims to educate health care providers on signature and supporting documentation requirements relating to claims submitted to Medicare. The fact sheet may be downloaded [here](#).

THE HLP'S MONTHLY RAC TIP: Submit All Documentation Demonstrating Medical Necessity

In reviewing certain inpatient hospital claims, [the RAC for Region B](#) (covering the Midwestern states), CGI, and its subcontractor PRG Schultz, are now requesting that nursing notes not be included in response to additional documentation requests ("ADRs"). Note that this directive is not consistent across all ADRs, as other ADRs specifically ask for nursing records.

All documents proving medical necessity (including nursing notes) should be submitted to the RAC by the health care provider, whether or not such documentation is requested. Nursing notes, in many cases, assist to establish the medical necessity for an inpatient hospital admission. Although the decision to admit a patient to the hospital as an inpatient can only be made by the physician, nursing notes, in many cases, detail relevant factors supporting a physician's decision.

When RACs request medical documentation in support of a Medicare claim, [PPS providers and Long Term Care providers are entitled to reimbursement for the production of the medical records](#). (The current reimbursement rate is 12 cents per page). CGI and PRG have indicated that reimbursement is available for all "requested" pages which are sent, whether or not these pages are used in the actual audit. Some providers are now experiencing difficulty in receiving reimbursement for costs related to producing nursing records, as such records are no longer "requested."

The cost of not submitting all documentation proving medical necessity may prove greater than the cost of producing extra documents, even if the RAC ultimately does not reimburse the provider for this documentation. Concerns related to reimbursement for the production of medical records can be brought to the RAC or to CMS. State provider organizations also may be in a strong position to assist providers to receive appropriate reimbursement for records provided in response to ADRs.

RECENT AND UPCOMING EVENTS

- On August 17, 2011, [Abby Pendleton, Esq.](#) and [Jessica L. Gustafson, Esq.](#) will present to the [AHRA Annual Meeting and Exposition](#) on the topic of "ZPICs, RACs, MICs and More: What Radiology Practices Need to Know about Federal Auditing Programs" in Grapevine, TX.
- On June 15, 2011, [Jessica L. Gustafson, Esq.](#) co-presented with Connie Blachut, MPH, MBA (Manager of BCBSM Utilization Review) a teleconference to the State Bar of Michigan Health Care Law Section on the topic of "The Michigan Audit Landscape: Medicare, Medicaid and Private Payor Audits." This presentation was moderated by [Abby Pendleton, Esq.](#)
- On May 10, 2011, [Abby Pendleton, Esq.](#) presented to NYSARC on the topic of "The Current Audit Landscape, Is Your Organization Prepared?" in Albany, NY.