



THE
**HEALTH
LAW
PARTNERS**

The RAC Sheet

The Health Law Partners, P.C. (HLP) is pleased to send you the September issue of *The HLP RAC Sheet*. This monthly newsletter will provide you with up-to-date developments regarding the Medicare Recovery Audit Contractor (RAC) program as it expands nationwide and RACs begin auditing activities. If you have any questions regarding RACs, Medicare 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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CMS PUBLISHES TRANSMITTAL ADDRESSING RAC COMPLEX MEDICAL REVIEW

On September 11, 2009, the Centers for Medicare and Medicaid Services ("CMS") published [Transmittal 302](#), which amends the Medicare Program Integrity Manual, CMS Publication 100-08, Chapter 3, Section 3.12, addressing Local Coverage Determinations ("LCD") Exceptions. The Transmittal states that in "rare and unusual circumstances" during a complex medical review, Recovery Audit Contractors ("RACs") are permitted to apply an exception to the reasonable and necessary requirements set forth in a LCD, but only to approve a claim. Complex medical reviews addressing medical necessity are [currently scheduled to begin](#) in 2010.

Although the Transmittal states that certain Medicare contractors (such as affiliated contractors, MACs, and CERT) may use the exceptions process either to approve or to deny a claim, unless directed otherwise by CMS, RACs are only permitted to use the exceptions process "to not deny," or, put more simply, to approve a claim. Thus, generally speaking, unlike other Medicare contractors, RACs may not use the exceptions process to deny claims. As a practical matter, this means that even if a claim does not fully satisfy all elements set forth in a LCD, the RAC is permitted to apply the exceptions process and approve a claim if the claim appears to be reasonable and necessary after a thorough review of the patient's medical record and a consideration of other available evidence in medical literature.

The Transmittal notes that, on a yearly basis, the RACs must create an exceptions report and provide it to the project officer, if requested. If it is found that exceptions to LCDs are not rare, the contractor will reevaluate the LCD clinical criteria to ensure that it is "clear,

comprehensive and current."

The Transmittal is effective October 13, 2009.

HLP's Monthly RAC Tip: It Is Time To Re-Review Medicare's LCDs!

As noted above, CMS recently published Transmittal 302, which prohibits RACs from using the exceptions process to deny a claim if the medical records establish that the services provided were reasonable and necessary as defined by a Local Coverage Determination ("LCD"). Therefore, all Medicare providers and suppliers are well advised to review the LCDs applicable to the services and supplies they provide to ensure that services and supplies are being documented in compliance with the LCDs. LCDs for all states are available from the [CMS website](#).

UPCOMING EVENTS

- On Friday, September 25, 2009, Abby Pendleton will be speaking to the Society for Pain Practice Management (SPPM) on the topic of "The RAC Attack - Medicare Don't Take My Money!" For more information, please visit the [SPPM website](#).
- Abby Pendleton is scheduled to co-speak at the 2009 American Health Lawyers Association Fraud and Compliance Forum, scheduled for October 4 through 6, 2009, on the topic of Recovery Audit Contractors and Medicare Audits: Lessons Learned and the Road Ahead. Ms. Pendleton will be speaking with Don Romano, attorney, and Connie Leonard, Director, CMS Division of Recovery Audit Operations. For a copy of the program brochure, please click [here](#).
- On Thursday, February 25, 2009, Abby Pendleton will be speaking to the Georgia Hospice and Palliative Care Organization ("GHPCO") on the topic of Recovery Audit Contractors. More information is available from the [GHPCO website](#).

Please click [here](#) if you wish to be removed from the mailing list of *The HLP RAC Sheet*.