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The RAC Sheet

The Health Law Partners, P.C. ("The HLP") is pleased to send you the July 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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CMS ISSUES MLN MATTERS ARTICLE IDENTIFYING CLAIMS VULNERABILITIES

On July 14, 2010, the Center for Medicare and Medicaid Services ("CMS") issued the first in a series of MLN Matters articles designed to disseminate information regarding improper payment vulnerabilities. The purpose of the article is to assist providers so that they can avoid improper payments moving forward. Pursuant to this [MLN Matters article](#), two of the highest risk areas for providers include the following:

- (1) Provider non-compliance with timely submission requirements; and
- (2) Insufficient documentation to support that the services were covered, medically necessary and appropriately coded.

Notably, failure to timely submit medical records (within the 45-day timeframe) will result in a denial of the claim, unless an extension has been granted. Submission of information deemed “incomplete” also could result in claim denials.

The question concerning whether all information requested from the RAC must be submitted has gained increased importance, as some of the RACs are requesting information that is not part of the permanent medical record. For example, with respect to hospital claims, some RACs are requesting the “physician query” as part of its standard additional documentation requests. (A physician query obtained post-discharge and post-billing mostly serves to clarify the level of care or the DRG assigned.)

Pursuant to a recently-issued [Frequently Asked Question](#) on its [website](#), CMS has stated its position that a physician query “may” be required to justify the services billed. CMS specifically stated, as part of the MLN Matters article referenced herein, that for a Medicare claim to be paid:

[T]here must be sufficient documentation in the provider’s records to verify that the services were provided to eligible beneficiaries, met Medicare coverage and billing requirements, including being reasonable and necessary, were provided at an appropriate level of care and correctly coded. If there is insufficient documentation for the services billed, the claim may be considered an overpayment and the provider may be requested to repay the claim paid amount to Medicare.

In many cases, the physician query will be an important document to justify the services billed. However, in cases where, for example, a response to the query is not received, this should not necessarily mean that a claim will be denied by the RAC. CMS simply requires that “sufficient documentation” to support coverage of the services billed be submitted. It is our opinion that providers have a reasonable argument that the physician query is not a required document to support coverage of the services billed.

The HLP’s Monthly RAC Tip: *Take Advantage of Shortcuts*

All Medicare providers and suppliers that have experienced RAC reviews understand what a time-consuming process it can be to track and respond to Additional Documentation Requests, track any demand letters received, and monitor and comply with appeals deadlines. When shortcuts are available in this process, these should be utilized to the extent practicable.

Medicare providers and suppliers in Medicare Affiliated Contractor (“MAC”) Jurisdiction 5 (“J5”) (comprised of Iowa, Kansas, Missouri and Nebraska), may now submit requests for redetermination via facsimile transmission, as part of a new [initiative](#) began by the MAC for J5, Wisconsin Physician Services. Providers and suppliers in other jurisdictions should monitor the MACs’, Intermediaries’ and Carriers’ websites for similar opportunities to submit appeals via fax.

Although submitting appeals via fax may be a time-saving/cost-saving way to submit an appeal, providers utilizing this manner of appeals submission should ensure that all fax confirmation sheets are maintained with

the file, in case of disputes related to the time of receipt.

UPCOMING EVENTS

- On August 11, 2010, Abby Pendleton will be presenting to the American Association of Nurse Anesthetis ("AANA") Annual Meeting on the topic of, "Recovery Audit Contractors: Is Your Organization Ready for the RAC Attack?"
- On August 22-26, 2010, Abby Pendleton and Jessica Gustafson will be presenting to the Association for Medical Imaging Management ("AHRA") on the topic of RACs. Information will be available from the [AHRA website](#).