



THE HEALTH
LAW
PARTNERS

RAC SHEET

The Health Law Partners, P.C. ("The HLP") is pleased to send you the June 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 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 The Medicare Recovery Audit Contractor (RAC) Program:

Update to the Evaluation of the 3-Year Demonstration Program

On June 14, 2010, CMS published a report entitled, "[The Medicare Recovery Audit Contractor \(RAC\) Program: Update to the Evaluation of the 3-Year Demonstration Program](#)." This report contains statistics through March 9, 2010 and includes updated appeals data.

The new report reveals a much lower number of appeals than had previously been reflected. Specifically, the new report states that providers chose to appeal 12.7 percent of the RAC determinations made in the demonstration program (76,073 claims appealed). Previously, CMS reported that 22.5 percent of the RAC determinations made in the demonstration program were appealed (118,051 claims appealed). According to CMS, this number decreased for several reasons:

- First, the previous method of totaling claims counted claims appealed to multiple levels of appeal at each stage of appeal. The revised figure counts each appealed claim once, regardless of whether the claim was appealed through multiple stages of appeal.
- In addition, duplicate claims were identified and removed.
- Appeals withdrawn by the provider were removed from the total.
- Finally, claims reversed by the claims processing contractor when additional documentation was submitted ("clerical

reopenings") were removed from the total.

The recently-published data reflects that when providers chose to appeal claims, they oftentimes were successful. For example, of the 76,073 claims appealed, according to CMS's calculations, 48,993 claims were overturned on appeal, constituting an overall appeals success rate of 64.4 percent.

Notably, despite the fact that the RAC demonstration concluded in 2008, there still may be claims decided favorably that are not included in these statistics. Administrative Law Judges were overwhelmed by the volume of appeals they received. As recently as April 2010, our office alone received dozens of favorable decisions arising from RAC denials made during the demonstration program, which would not have been included in the most recent CMS data.

Get Ready for Medical Necessity Reviews

According to data published on the [CMS RAC website](#), CMS anticipates that complex reviews involving issues of medical necessity would begin in calendar year (CY) 2010. This office recently spoke with Connie Leonard, the CMS Director of the Division of Recovery Audit Operations. Ms. Leonard indicated that CMS has approved certain medical necessity issues, and the RACs have sent certain "test cases" to providers regarding medical necessity. It is CMS's expectation that these issues soon will be posted on the RAC vendors' websites.

HLP's MONTHLY RAC TIP: Respond to Records Requests in a Trackable Manner

When a provider or supplier prepares to respond to a request for medical records as part of a complex RAC review, it is essential that the provider or supplier send the RAC the requested documentation in a manner that enables the provider or supplier to confirm receipt of the records (*i.e.*, FedEx, UPS, Certified Mail, etc.). The RACs require that providers and suppliers respond to records requests within 45 days. It is imperative that providers and suppliers are in a position to confirm that this timeframe was met. Failure to do so could result in a loss of appeal rights.

If a provider or supplier receives a claim denial from the RAC and must appeal, it is also important that appeals be submitted in a manner that enables the provider or supplier to establish receipt. Certain Medicare contractors require specific information to be present on the shipping slip before they will accept this documentation as proof of receipt. For example, National Government Services, Inc. ("NGS") has taken the position that a FedEx Proof of Delivery is insufficient to establish NGS's receipt of an appeal, if the provider or supplier is not able also to produce a photocopy of the shipping slip with the subject beneficiary's first name, last initial and dates of service printed on it.

UPCOMING EVENTS

- 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](#).