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The RAC Sheet

The Health Law Partners, P.C. ("The HLP") is pleased to send you the March 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.](mailto:Abby.Pendleton@hlp.com) or [Jessica L. Gustafson, Esq.](mailto:Jessica.L.Gustafson@hlp.com) Please also visit the [RAC page](#) of the [HLP website](#).

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Get Ready: The RAC Program Soon May Be Expanding

As Medicare providers and suppliers are acutely aware, the Centers for Medicare and Medicaid Services ("CMS") has determined that the use of Recovery Audit Contractors ("RACs") is a "cost-effective" way to identify and correct improper payments, in part as a result of the contingency-fee-based structure of using these auditors. Primarily because of the program's cost-effectiveness, Section 302 of the Tax Relief and Health Care Act of 2006 made the RAC program permanent required its operation nationwide.

The RAC program soon may be expanding even more. In Section 6411 of H.R. 3590, the "[Patient Protection and Affordable Care Act](#)" (*i.e.*, the health care reform bill), Congress has proposed to expand the RAC program, specifically the use of contingency-fee-based RAC contractors, to audit not only Part A and Part B Medicare claims, but also to review Medicare Advantage (Part C), Medicare Prescription Drug (Part D) and Medicaid claims. This bill is in line with a recent [White House Memorandum](#) which states President Obama's support of the use of "high-tech bounty hunters" to help find health care fraud in government-run Medicare and Medicaid programs.

The House of Representatives passed H.R. 3590 on March 21, 2010. The bill was approved by the Senate last December and was signed into law today, March 23, 2010. It is unclear which provisions will survive a separate "compromise package of changes" to the bill.

The HLP will continue to provide updates as any changes to the RAC program are adopted and implemented.

The HLP's Monthly RAC Tip: Build the Best Appeal Possible – Monitor RAC Decisions for Compliance with Medicare Policy

As The HLP has reported in previous editions of *The RAC Sheet*, once the RACs begin reviewing claims data for medical necessity purposes, the RACs are required to use all National Coverage Determinations ("NCDs"), Coverage Provisions in Interpretive Manuals, national coverage and coding articles, Local Coverage Determinations ("LCDs"), and local coverage/coding articles in their jurisdictions in rendering such determinations. Therefore, Medicare providers and suppliers should be cognizant of these authorities, and ensure that their documentation complies with such policy guidance. Such policy guidance is available from the [CMS website](#).

However, in addition, RACs also are permitted to develop "internal guidelines" for use in the complex medical records review process. These internal guidelines are meant to assist the RACs to operationalize established Medicare policy and set forth what information should be reviewed by the RAC reviewers and the appropriate resulting determinations.

As this office saw repeatedly during the RAC demonstration program, when the RACs establish their internal guidelines, occasionally this is done without respect to published Medicare policy, but rather based upon some other criteria. At least one of the RACs in the permanent program, [CGI Technologies and Solutions, Inc.](#) (the RAC for [Region B](#), covering several Midwestern states), has indicated on its [website](#) its intent to use the Screening Criteria of McKesson InterQual criteria when looking at inpatient hospital claims.

Note that InterQual criteria are not criteria adopted by Medicare. Thus, any reliance on such criteria by a Medicare contractor in making a payment denial is inappropriate, and should be challenged as part of the appeals process. During the RAC demonstration program, when the RAC in California similarly used McKesson InterQual criteria as part of its reviews of inpatient hospital claims, this office was successful in challenging the propriety of such reliance.

UPCOMING EVENTS

- On March 24, 2010, Abby Pendleton and Jessica Gustafson will speak at the 2010 Health Care Association of Michigan ("HCAM") Leadership Conference on the topic of "How RAC and MIC Audits Will Affect LTC Facilities."
- 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](#).