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The RAC Sheet

The Health Law Partners, P.C. ("The HLP") is pleased to send you the May 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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What All Medicare Providers and Suppliers Need to Know about Recoupments and RAs

If a Recovery Audit Contractor ("RAC") issues a claim denial and overpayment demand to a provider or supplier, the Medicare Affiliated Contractor is permitted to recoup this alleged overpayment 41 days from the date of demand letter, if the provider does not first appeal (i.e., file a request for redetermination). The alleged overpayment may be withheld from future Medicare payments due and owing to the provider or supplier.

Recovered amounts are reported by way of Remittance Advice ("RA"). CMS recently issued [Transmittal 659](#), which sets forth the process of utilizing RAs to report amounts to be recovered. The RA reports actual recoupments in two steps:

- **Step I:** Reversal and Correction to report the new payment and negate the original payment (actual recoupment does not happen at this step)
- **Step II:** Report the actual recoupment

The Transmittal acknowledges that previously, during the RAC demonstration, CMS was not providing enough detail in the RA to enable providers and suppliers to track and reconcile Medicare payments. When the RACs made a denial, they would simply recoup the alleged overpayment amount from future Medicare payments, but the amount was not tied back to a particular claim, making tracking difficult for providers and suppliers.

Transmittal 659 requires that CMS provide enough detail in the RA to enable providers and suppliers to track and update their records to reconcile Medicare payments. In order to do so, Step One is for the Medicare system to first assign a control number for the claim being recouped (but recoupment does not occur at this first step). This control number is later used on the RA when the funds are recouped from the provider or supplier (Step Two), allowing providers and suppliers to track denials and reconcile payments.

CMS is hosting a National Call on the issue of recoupment on May 26, 2010 from 1:30 p.m. to 3:30 p.m. EST. For more information, visit the CMS RAC website at http://www.cms.gov/RAC/03_RecentUpdates.asp#TopOfPage.

The HLP's Monthly RAC Tip: Create, Update and Implement an Effective Compliance Program

With RAC medical necessity reviews just around the corner, and with increasing audit scrutiny by Medicare Affiliated Contractors ("MACs"), Medicaid Integrity Contractors ("MICs"), Program Safeguard Contractors ("PSCs") and Zone Program Integrity Contractors ("ZPICs"), the presence of an effective compliance program has never been more important.

While in the past, adopting and implementing a compliance program was voluntary, Section 6401 (a) (7) of the recently-passed [Patient Protection and Affordable Care Act](#) (the health care reform legislation), makes adopting and implementing a compliance program mandatory for Medicare and Medicaid providers. The law requires that the Secretary of the Department of Health and Human Services (HHS) establish the core elements that must be included in a compliance program and a timeline for compliance program implementation. Although the implementing regulations have yet to be issued, providers are well advised to have a renewed focus on compliance activities.

Providers and suppliers cannot prevent a RAC audit from happening; however, having an effective compliance program in place places providers and suppliers in the best position to avoid claim denials and overpayment demands. The HLP encourages all health care providers and suppliers to have a renewed focus on compliance, take a critical look at their documentation and billing practices, and make improvements where necessary.

UPCOMING EVENTS

- From August 22 through August 26, 2010, Abby Pendleton and Jessica Gustafson will be presenting to the Association for Medical Imaging Management (“AHRA”) on the topic of Recovery Audit Contractors (“RACs”) and Medicare appeals.