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THE HEALTH LAW PARTNERS

RAC SHEET

The Health Law Partners, P.C. (HLP) is pleased to send you the July 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.

Inside This Issue:

CMS PUBLISHES NEW RAC REVIEW PHASE-IN SCHEDULE

As The Health Law Partners, P.C. (HLP) originally reported in last month's issue of The RAC Sheet, CMS now has published a new Review Phase-In Schedule for the permanent Medicare Recovery Audit Contractor (RAC) program.

Pursuant to the recently published Review Phase-In Schedule (which references the CMS "Expansion Schedule"), "automated reviews" in 23 states will soon begin. An "automated review" is a review of claims data without a review of the medical records supporting the claim. Generally speaking, RACs may conduct automated reviews only in situations where there exists both (a) a certainty that the service is not covered or is incorrectly coded, and (b) a written Medicare policy, article, or coding guideline applicable to the claim. RACs also may use automated review, even if there is no specific Medicare policy, article or coding guideline on point, in some "clinically unbelievable" situations or when identifying duplicate claims and/or pricing mistakes.

"Complex reviews," are scheduled to begin later this year. A "complex review" is a review of medical or other records in situations where there is a high probability (but not a certainty) that a claim includes an overpayment. Specifically, coding and diagnosis-related group (DRG) claim reviews are anticipated to begin in August or September 2009. Medical necessity reviews are not expected to begin before January 2010. As of the date of this publication, CMS has not yet approved any medical necessity issues for review.

HLP'S MONTHLY RAC TIP

Start Planning Now to Get Your Doctors on Board

Although it may seem early in the process given that CMS has yet to approve any complex review categories of medical necessity issues, in preparing for the RAC scrutiny of short stay inpatient hospital cases, hospitals may consider planning now for securing medical testimony at the Administrative Law Judge (ALJ) stage of appeal. In many cases, given the high volume of cases coupled with large numbers of admitting physicians, it may not be practical to expect testimonial involvement in each case by the admitting physician. Notwithstanding, experience tells us that physician testimony can be a critical aspect of securing a favorable ALJ opinion. During the demonstration program, some hospitals contracted with physicians who were actively involved in reviewing and testifying in short stay cases. These physicians were often case management advisors, medical directors of various departments and other physicians involved in hospital utilization review functions.

RAC RECORD REQUEST LIMITS TO BE FURTHER CLARIFIED

During the RAC demonstration program, many providers felt overwhelmed by the volume of record requests received from the RACs. In an effort to address this concern, in the permanent RAC program, CMS imposed limits on the number of records RACs may request per 45 day-period. However, the Medical Record Limits guidance published by CMS is ambiguous, and further clarification is necessary.

Pursuant to published Medical Record Limits guidance, the number of records the RACs may request is based upon provider type:

- For inpatient hospitals, inpatient rehabilitation facilities, hospices and skilled nursing facilities, the maximum number of records a RAC may request is based upon an average of the provider's monthly Medicare paid *claims*. RACs are authorized to request from these types of providers 10 percent of the average monthly Medicare paid claims, or 200 records, whichever is less.

- For other Part A billers (e.g., home health agencies), a RAC may request 1 percent of the providers average monthly Medicare paid *services*, or 200 records, whichever is less.

- For physician groups, the maximum number of records a RAC may request per 45-days is based upon the size of the physician practice:

    - Solo Practitioner: 10 medical records per 45 days
    - Partnership of 2-5 individuals: 20 medical records per 45 days
    - Group of 6-15 individuals: 30 medical records per 45 days
    - Large Group (16+ individuals): 50 medical records per 45 days.

- For other Part B billers (e.g., durable medical equipment providers), a RAC may request 1 percent of the providers average monthly Medicare paid services, or 200 records, whichever is less.

The currently-published Medical Record Limits guidance is unclear regarding the number of records that a RAC may request from a hospital that has both inpatient and outpatient claims (i.e., it is unclear whether the maximum will be based upon the hospital's inpatient claims only, or inpatient claims and outpatient services).

On July 14, 2009, this office spoke with Commander Marie Casey, the Deputy Director of the Division of Recovery Audit Operations at CMS. Commander Casey confirmed that additional guidance regarding record request limits will be published, prior to the commencement of complex reviews, to address the unanswered questions.

RECENT AND UPCOMING EVENTS

- On July 10, 2009, HLP published a guidance document related to the RAC program, which was featured on CNBC.com and Forbes.com, among other media outlets.
- 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.