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## The RAC Sheet

The Health Law Partners, P.C. ("The HLP") is pleased to send you the January issue of [The RAC Sheet](#). This monthly newsletter will provide up-to-date developments regarding the Recovery Audit Contractor ("RAC") program. 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 Posts "High Risk" Overpayment Vulnerabilities for Physicians**

[On December 2, 2010, the Centers for Medicare & Medicaid Services \("CMS"\) published its fourth in a series of MLN Matters articles designed to disseminate lessons learned from the Recovery Audit Contractor \("RAC"\) demonstration program.](#) The purpose of the article is to provide information to physicians regarding areas of overpayment vulnerabilities that were identified during the RAC demonstration program.

The MLN Matters article identified two main areas as "high risk" overpayment vulnerabilities for physicians:

- (1) Excessive units billed – The RACs identified scenarios where the units billed exceeded the number of units per day based on the CPT codes guidelines or other CMS local or national policy; and
- (2) Duplicate claims

Notably, while this article does provide a summary of the main issues identified during the RAC demonstration program, this article's

helpfulness looking forward is limited by a few factors. First, the information procured during the RAC demonstration program with respect to physician claims was very narrow. As noted by way of the [Medicare RAC Program, An Evaluation of the 3-Year Demonstration Program report](#), the vast majority of the overpayments identified during the RAC program were inpatient hospital claims, rather than physician claims. Further, during the RAC demonstration program, the RACs did not review Evaluation and Management codes, a category of claim which is not excluded from review during the RAC permanent program.

Physicians should continue to monitor the [RACs' websites](#) for issues approved for review during the permanent RAC program.

### **CMS Soliciting Comments on the Medicare Part C and Part D RAC Programs**

Section 6411 (b) of the Affordable Care Act expanded the use of Recovery Audit Contractors to all Medicare claims. On December 27, 2010, CMS made a step towards implementation of the Medicare Part C and Part D RAC programs when it issued a [Notice in the Federal Register](#) soliciting comments from industry stakeholders regarding the best way to implement the Part C and Part D RAC programs. Comments are due no later than 5 p.m. on February 25, 2011.

#### **THE HLP's MONTHLY RAC TIP - *Submit Documentation as Requested by Medicare Contractors***

As noted by way of previous *The RAC Sheet* newsletters, it is important to submit medical record documentation in the manner requested by CMS contractors. This is equally true when submitting documentation pursuant to a request for records made by a RAC as it is when submitting an appeal to a CMS contractor, such as a Fiscal Intermediary, Carrier, Qualified Independent Contractor, etc. When submitting documentation to CMS contractors, providers and suppliers should attempt to facilitate the CMS contractors' review.

With respect to submitting information to a RAC, each RAC has on [its website](#) information related to the manner in which it would like to receive documentation (i.e., manner in which to submit CDs of information, if applicable; manner in which to submit paper copies – directions regarding staples, front-and-back copies, etc.).

Other Medicare contractors have preferences as well when it comes to the receipt of documentation. Pursuant to a recent E-blast sent by Wisconsin Physician Services (the Carrier for the states of Wisconsin, Illinois, Michigan and Minnesota), this Carrier requested that its [Redetermination Request Form](#) be used for all first level appeals. According to this Carrier, use of this form assists its employees to timely process the cessation of withholds while a request for redetermination is pending.

### **UPCOMING EVENTS**

- On March 31, 2011, Abby Pendleton and Jessica Gustafson will present on the topic of "How RAC Audits and MIC Audits Will Affect Long Term Care Facilities" at the 2011 Health Care Association of Michigan ("HCAM") Spring Leadership Conference.
- On April 10, 2011, Abby Pendleton and Jessica Gustafson will co-speak with Donald H. Romano, a partner at Arent Fox and former Division Director of CMS, at the 2011 Health Care Compliance Association ("HCCA") Compliance Institute on the topic of "Compliance in the Age of EMR."
- On April 20, 2011, Jessica Gustafson will present on the topic of, "An Unprecedented Era of Claims Scrutiny: Successfully Managing ADR/TMR, RAC Audits and MIC Audits" at the Nebraska Hospice and Palliative Care Organization Annual Meeting.