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The RAC Sheet

The Health Law Partners, P.C. ("The HLP") is pleased to send you this month's issue of The RAC Sheet. This 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.](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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CMS Refines Guidance Regarding Inpatient Admissions

Previously during the Recovery Audit Contractor ("RAC") Demonstration Program and currently under the RAC Permanent Program, one primary area of RAC auditing focus has been inpatient hospital claims. [In fact, during the RAC Demonstration Program, approximately 85 percent of the claims denied were inpatient hospital claims.](#) RACs routinely deny inpatient hospital claims for reasons of medical necessity, claiming that inpatient hospital services could have been provided as outpatient services. CMS published a description of those inpatient hospital services it views as "high risk" for medical necessity denials by way of [MLN Matters Article](#), and as recently as March 9, 2011, CMS also published a [podcast](#) designed to educate hospital providers on this same topic.

During the RAC Demonstration Program, one primary complaint raised by hospitals experiencing these types of claim denials was that the RACs were not applying CMS criteria published in the Internet-Only Manuals in reviewing claims; rather the RACs were applying proprietary criteria published by private companies, such as Interqual and Milliman, to deny claims, even though CMS had not expressly endorsed nor adopted such criteria as its own.

In order to clarify the criteria CMS uses in reviewing inpatient hospital claims, in late January 2011, CMS issued a [Special Edition MLN Matters Article](#) on the topic. The Special Edition MLN Matters Article states that, "There are several commercially available screening tools that Medicare contractors in specific jurisdictions may use to assist in the review of medical documentation to determine if a hospital admission is medically necessary. These include Interqual, Milliman, and other proprietary systems." To support its assertion that RAC contractors may use Interqual, Milliman and other proprietary systems in reviewing the medical necessity of inpatient hospital admissions, CMS cites to the [Medicare Program Integrity Manual \(CMS Pub. 100-08\), Chapter 6, Section 6.5.1](#), which states that in reviewing claims, a medical reviewer "shall use a screening tool" as part of the review. (However, notably, the Manual specifically does not endorse a particular screening tool such as Interqual

or Milliman. It would stand to reason that when CMS published this Manual, it intended that medical reviewers use a screening tool based on CMS criteria, rather than based on a set of proprietary guidelines which are not intended to be used for coverage decisions, as is the case with the Interqual and Milliman criteria).

While acknowledging that its contractors “may” use such proprietary criteria in reviewing the medical necessity of an inpatient admission, the MLN Matters article further lists CMS’ own published criteria for inpatient admissions, including the [Medicare Benefit Policy Manual \(CMS Pub. 100-02\), Chapter 1, Section 10](#). Hospitals must ensure, as a foremost consideration, that inpatient admissions satisfy this CMS criteria.

Recovery Audit Contractors ("RACs") Will Soon Accept Medical Records Electronically

When Recovery Audit Contractors (“RACs”) request medical documentation to support a claim, they do so by way of paper letter to the provider. The provider then typically has two options to return the requested records: (1) by mail; or (2) by fax. In February 2011, CMS announced the creation of a mechanism to submit medical documentation electronically, known as the [Electronic Submission of Medical Documentation \(“esMD”\) pilot](#).

This pilot program will be rolled out in [two phases](#): (1) During the first phase, now anticipated to begin in July 2011, RACs will continue to send medical documentation requests via paper letters, and the providers will have the option to electronically submit documentation. The RACs for regions A, B, and D anticipate participating in Phase One of the pilot program. (2) During the second phase of the esMD pilot, beginning in 2012, RACs will electronically send documentation requests. The RAC for region C will participate in the esMD pilot beginning in Phase Two.

THE HLP's MONTHLY RAC TIP - *Monitor CMS Compliance Newsletters*

In February 2011, CMS published its second “[Medicare Quarterly Provider Compliance Newsletter](#)” (“Newsletter”), aimed to identify compliance vulnerabilities for health care providers, suppliers and billers. The Newsletter is designed to help providers understand the audit findings of Medicare contractors, including claims processing contractors, RACs, Program Safeguard Contractors (“PSCs”)/Zone Program Integrity Contractors (“ZPICs”) and other governmental organizations.

As noted by CMS: “The newsletter describes the problem, the issues that may occur as a result, the steps CMS has taken to make providers aware of the problem, and guidance on what providers need to do to avoid the issue. In addition, the newsletter refers providers to other documents for more detailed information wherever they may exist.” In this way, the Newsletter is an important resource for health care providers and suppliers.

The February 2011 Newsletter highlights the following issues:

- Coding of tracheostomy procedures
- Coding of “new patients”
- Coding of chemotherapy administration and non-chemotherapy injections and infusions
- Coding of excisional debridement
- E/M billing during a global surgery period
- DME provided to hospice beneficiaries
- Billing of Budenonide

CMS Announces RAC Medical Records Requests Limits for Physicians

On February 14, 2011, CMS updated its [RAC website](#) to include the [Medical Records Requests Limits for Physicians](#). Generally speaking, the number of records that the RACs may request is based on the number of individual physicians/non-physician practitioners reported under a tax identification number (“TIN”) within a certain geographic area in the preceding calendar year:

<u>Group/Office Size</u>	<u>Maximum number of requests per 45 days</u>
50 or more	50 records
25-49	40 records
6-24	25 records
Less than 5	10 records

Significantly, CMS reserved the right to allow the RACs to exceed the above caps. Permission may be granted upon request by a RAC or on CMS’ own initiative. If CMS grants this permission, the practice will be notified in writing.

Notably for physicians, CMS anticipates that “[a]t times it may be difficult for a RAC to accurately determine the size of a [practice]. If a request is received that does not adhere to the above guidelines, the practice should contact the RAC with documentation of the group size.” With this in mind, it is essential that physician practices monitor records requests as they are received. If requests are received outside of CMS guidelines, practices should contact the RACs to communicate the accurate size of the practice.

Medicaid RAC Program Makes Progress

As noted in a previous edition of [The RAC Sheet](#), on November 10, 2010, the Centers for Medicare & Medicaid Services (“CMS”) published its [Proposed Rule](#) regarding the Medicaid RAC program. Section 6411 of the Patient Protection and Affordable Care Act (“Affordable Care Act”) requires each State to establish a Medicaid RAC program similar to the existing Medicare RAC program.

Originally, states were required to contract with Medicaid RACs by December 31, 2010 and implement Medicaid RAC programs by April 1, 2011. However, by way of [Informational Bulletin](#) issued February 1, 2011, CMS stated that, “Out of consideration for State operational issues and to ensure States comply with provisions of the [yet-to-be-published] Final Rule, we have determined that States will not be required to implement their RAC programs by... April 1, 2011. Instead, when the Final Rule is published, it will indicate the new implementation deadline. We anticipate the Final Rule will be issued later this year.”

Recently, CMS launched its new [Medicaid RAC website](#). Pursuant to this website, every State and U.S. territory, with the exception of the District of Columbia, has submitted its State plan to CMS for approval. The vast majority of these plans already have been approved.

UPCOMING EVENTS

- 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.