



THE HEALTH
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RAC SHEET

The Health Law Partners, P.C. (HLP) is pleased to send you the inaugural 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 the RACs begin auditing activities. If you have 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](#).

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CMS DELAYS RECOVERY AUDIT CONTRACTOR (RAC) MEDICAL NECESSITY REVIEWS

According to its most-recently published "[Expansion Schedule](#)," the Centers for Medicare and Medicaid Services (CMS) planned to expand the Recovery Audit Contractor (RAC) program to 23 states by March 1, 2009, and the remaining states by August 1, 2009 or later. RAC automated reviews soon will begin, but medical necessity reviews have been delayed.

On Friday, June 12, 2009, HLP partner Jessica Gustafson spoke with Commander Marie Casey, the Deputy Director of the Division of Recovery Audit Operations at CMS. Pursuant to this conversation, Commander Casey indicated that CMS expects RAC "automated reviews" to begin this month or next month in the first 23 states. An "automated review" is a review of claims data without a review of the 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," *i.e.*, reviews of medical or other records in situations where there is a high probability (but not a certainty) that a claim includes an overpayment, are anticipated to begin later this year. Specifically, coding and diagnosis-related group ("DRG") claim reviews are anticipated to begin in September 2009. Medical necessity reviews are not expected to begin before January 2010.

Before the RACs begin conducting medical necessity reviews, they must receive approval of the areas planned for review by CMS's "issue review team." According to the June 12, 2009 conversation with Commander Casey, as of this date, CMS has not approved any medical necessity issues for review.

CMS UPDATES MEDICARE POLICY REGARDING OUTPATIENT OBSERVATION

On May 22, 2009, CMS published changes to the Medicare Benefit Policy Manual and Medicare Claims Processing Manual related to outpatient observation. The changes are set forth in [Transmittal 1745](#) and will become effective July 1, 2009. The changes delete references to "admission" and "observation status" in relation to outpatient observation services. CMS acknowledged that the term "admission" is confusing to hospitals, because hospitals generally use the term "admit" to indicate an inpatient admission. Further, CMS stated that since there is no payment status called observation status, the term "observation status" also could confuse hospitals. Observation care is an outpatient service, which is ordered by a physician and reported with the HCPCS code.

During the RAC demonstration program, many hospitals experienced claim denials where the RAC denied an inpatient hospital service as not medically necessary, but the RAC found that outpatient observation services would have been medically necessary for the patient. While Transmittal 1745 seeks to provide clarification between the two concepts of inpatient hospital services on one hand, and outpatient observation services on the other, the changes fail to provide a meaningful distinction.

HLP's MONTHLY RAC TIP

In preparing for the expected scrutiny of short hospital stay cases, hospitals are well advised to take a critical look at the "order" process for inpatient admissions. [The Medicare Benefit Policy Manual \(CMS Internet-Only Publication 100-02\), Chapter 1](#), Section 10 reflects that:

An inpatient is a person who has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services. Generally, a patient is considered an inpatient if **formally admitted as an inpatient... The physician** or other practitioner responsible for a patient's care at the hospital **is also responsible for deciding whether the patient should be admitted as an inpatient.**

Our experience in appealing denials of short stay cases in the demonstration program often revealed records containing no formal order for inpatient admission signed by the admitting physician. Many cases revealed orders for admission with no specificity as to whether or not the order was for outpatient or inpatient admission, orders for a particular unit where both inpatient and outpatient admitted patients were housed and many cases with no order at all.

Additionally, Transmittal 1745 contains provisions seeking to clarify the use of condition code 44, and a new section entitled "Policy and Billing Instructions for Condition Code 44" was added to Chapter 1 of the Medicare Claims Processing Manual.

UPCOMING EVENTS

- Abby Pendleton will be presenting on the topic of "Managing the RAC Appeals Process" at the World Research Group Healthcare Management Conference entitled, "Preparing for the Next Round of Medicare RAC Reviews: Proven Strategies to Effectively Prepare for and Appropriately Respond to RAC Audits & Denials," which will be held August 3 and 4, 2009 in Baltimore, MD. Please click [here](#) for more information and to register for this conference.
- Abby Pendleton also will be presenting on the topic of "Recovery Audit Contractors (RACs) and Medicare Appeals" at the 2009 AHRA (Association for Medical Imaging Management) Annual Meeting, which will be held August 9 through 13, 2009 in Las Vegas, NV. Please click [here](#) for more information and to register for this conference.

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