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RAC: The Time is Now

The Recovery Audit Contractor ("RAC") Program under the Centers for Medicare & Medicaid Services ("CMS") has been made permanent and has officially arrived in Texas. Under this program, CMS is using private contractors (called "Recovery Audit Contractors," or "RACs") to review claims of providers that receive Medicare fee-for-service payments and to make determinations regarding alleged improper payments.

RACs, which are compensated on a contingency fee basis, can seek recovery of purported overpayments resulting from services that were allegedly not medically necessary, improperly coded, provided as duplicate services, or incorrectly paid. Moreover, subject to certain limitations, RACs can review 10 percent of the average monthly Medicare claims of an inpatient facility up to a maximum of 200 claims per 45 days per National Provider Identifier ("NPI"). Accordingly, hospitals and other providers should be prepared for a significant increase in auditing frequency as the RAC program is implemented.

What Will RAC Attack?

The demonstration project that preceded the permanent RAC program may provide some significant insight into the types of claims on which the RAC auditors will focus. In the demonstration project, approximately 85 percent of the claim denials involved inpatient hospital claims while six percent of the claims involved inpatient rehabilitation services. Only four percent of the denials involved outpatient hospital claims. As for the breakdown between coding and medical necessity, 35 percent of the denials involved improper payments resulting from incorrect coding and 40 percent of the claims were denied due to an alleged failure to meet medical necessity criteria. Accordingly, utilizing this information from the demonstration project and tracking denied claims will be important for providers to develop compliance systems to help them in dealing with the RAC program. Under the permanent program, RAC findings will be posted on the RAC Web site which providers can access and will allow them to address and identify compliance areas for review.

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Further, CMS' Web site will list areas of improper payments which can and should be reviewed frequently.

Internal RAC Preparation

Establishing efficient and appropriate programs and internal operations will allow providers to more smoothly handle the increased volume of audits likely resulting under the RAC program. Some suggestions are:

1. Designate a RAC coordinator for RAC with responsibility for responding to RAC record requests, meeting RAC deadlines and managing the appeals process;
2. Prior to RAC audits, determine internally through computer tracking or otherwise the types of claims that are or may be subject to review;
3. Establish a tracking system for all RAC-related records requests, deadlines and responses;
4. Once RAC audits begin, track internally the claims and areas subject to review;
5. Implement education protocols with respect to record documentation, coding and other issues that have been identified through tracking as areas subject to review by RAC auditors;
6. Identify clinicians to participate in appeals process; and
7. Establish protocols and algorithms to determine which claims to appeal and the appropriate mechanism under the appeals process.

RAC Appeals Process

There are five different levels of appeal under the RAC Appeals Process. These include a redetermination following a denial, a request for reconsideration with a qualified independent contractor ("QIC"), an appeal to an Administrative Law Judge ("ALJ"), an appeal to the Medicare Appeals Council ("MAC") and, finally, an appeal to the Federal District Court. The provider must meet deadlines and satisfy specific requirements at each level of appeal. Also, when a provider wants to avoid immediate recoupment, the deadlines for requesting redetermination and reconsideration differ. Monitoring the status of the appeal and tracking all deadlines are imperative to successfully managing the appeals process. Setting up the appropriate internal protocols with the help of outside counsel will help increase the chances of succeeding at the various appellate levels.

Initially, legal counsel can provide assistance in drafting appeal letters that not only supply the legal arguments necessary, but also ensure that the appropriate evidence needed to support the medical necessity for the services rendered is included in the materials provided to the

reviewers. While it is essential that the provider meet the procedural requirements necessary for the appeal process, it is also extremely important that the provider have guidance with respect to how to respond to the denial. Providers should be as specific as possible in their responses as they move through each phase in the process, both in their written documentation and at the hearings before the ALJ.

Conclusion

The RAC program has potentially significant financial ramifications for hospitals and other providers. Providers need to prepare now for these audits and implement the internal measures necessary to efficiently and competently comply with the RAC program. As part of this preparation, providers should consider effective strategies to utilize in the RAC audit appeals process if and when subjected to such a RAC audit.

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