How to Prepare for and Respond to RAC Audits

by

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What is a RAC?

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IMPROPER PAYMENT INFORMATION ACT

- **Requires federal agencies to measure improper payment rates**
- **Focus is on where the mistake changes the payment amount**

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MEDICARE MODERNIZATION ACT (MMA) 2003: SECTION 306

- **Three year demonstration program in three states:**
  - **The Empire State: New York**
  - **The Sunshine State: Florida**
  - **The Golden State: California**

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RACs COME IN TWO VARIETIES

- Claim RACs
- Medicare Secondary Payer RACs

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CALIFORNIA: PRG SCHULTZ

“THE WORLD LEADER IN RECOVERY AUDITING”

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MARCH 2005 TO MARCH 2008

- **December 1, 2007: Last day pilot RAC could issue a medical record request**

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SO, ARE WE DONE YET?

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TAX RELIEF AND HEALTH CARE ACT OF 2006: SECTION 302

- **RAC program is going national and permanent no later than 2010**

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WHY ANOTHER AUDITOR?

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MISSION:

- Reduce improper payments
- Detect and collect overpayments
- Identify underpayments
- Implement systems to prevent future improper payments

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AND TO GO WHERE NO AUDITOR HAS GONE BEFORE!

- **RACs are not intended to replace reviews by FI, Part B and DME carriers, program safeguard contractors, benefit integrity support centers, quality improvement organizations or the OIG**

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DID THE PILOT RACs ACCOMPLISH THEIR MISSION?

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Medicare costs US taxpayers more than $400 billion every year, “ in part because of “Medicare fraud, healthcare providers and patients making false claims and cheating the taxpayers….across the nation, hospitals are sending Medicare improper and fraudulent charges, and it’s costing you big time, nearly $11 billion tax dollars a year.” A government-run “pilot program that sent private auditors to comb through hospital bills in three states looking for Medicare rip-offs” was “able to make hospitals pay back an astounding $240 million” in one year “in just three states.”

KATIE COURIC, CBS EVENING NEWS: FEBRUARY 8

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MAYBE THE “60 MINUTES” RUMORS ARE TRUE?

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HOW IS THE RAC PROGRAM SUCCESS MEASURED?

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FY 2006 RAC STATUS DOCUMENT

- **Page 18: "Achieved a Respectable Return on Investment of 373% in 2006"**
- **2007 RAC Status Document**
  - **ROI dropped to 318%**

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RAC STATUS DOCUMENT FOR FY 2007:

- California
  - Overpayments: $120.1 million
  - Underpayments: $8.4 million

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CMS REPORTED THAT 85 % OF RAC-DETECTED OVERPAYMENTS CONCERNED INPATIENT HOSPITAL SERVICES

- **CMS admitted that because RACs were paid on a contingency fee basis, their claim reviews focused on high dollar improper payments, such as inpatient hospital claims, to give the highest return relative to the costs of reviewing claims and medical records.**

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RAC REVIEW PROCESS

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SAME MEDICARE POLICIES AS FIs AND QIOs

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MUST FOLLOW ALL APPLICABLE MEDICARE REGULATIONS

- Payment policies
- Reopening timeframes
  - Relies on 42 CFR 405.980 to reopen claims with “good cause” up to four years after the initial determination
- Appeal rights for providers

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AUTOMATED REVIEW VERSUS COMPLEX REVIEW

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AUTOMATED REVIEW: DATA MINING

- Uses proprietary software algorithms to identify over/underpayments that may be detected without medical record review
- No human review
- Applies only to coding and coverage determinations
- Written Medicare policy, article or sanctioned coding guideline exists

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COMPLEX REVIEW: HUMAN REVIEW OF SPECIFICALLY REQUESTED MEDICAL RECORDS

- Automated review criteria not met
- High probability that service is not covered
- No Medicare policy, article or sanctioned coding guideline exists
- Provider has 45 days to respond to a request
  - Extension Request within that 45 days
- Reports of Findings
- Demand Letter

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WHAT ARE RACs LOOKING FOR?

- Medical necessity
- Incorrectly coded services
- Incorrect payment amounts
- Duplicate services

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PILOT VERSUS PERMANENT RAC PROGRAMS

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- Pilot: **3 RACS in handful of states**
- Permanent: **Four RACS in the existing DME MAC jurisdictions**
  - **A single RAC will service each region and perform the RAC services for all Medicare claim types in that region**
  - **CMS's intent is to issue an offeror only one RAC jurisdiction**

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STILL BOUNTY HUNTERS:

- RACs paid on a contingency fee basis, they keep a portion of what they identify and collect, if the denials are not contested or are upheld on appeal
  - Contingency fee is negotiated, so varies with RAC
  - Possible incentive for distortion of judgment?
  - Departure from the way other CMS audit contractors are paid

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RAC REPAYMENT OBLIGATION

- **RACs are paid contingency fees for overpayments recouped and for underpayments paid back to providers, but no fees for mere identifications of improper payments**
- Pilot**: Originally, return fees only if lost at the first level of appeal**
- Permanent**: Return if overturned at any appeal level**

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CLAIMS WHICH RAC MAY REVIEW

- Pilot: **No claims from the current fiscal year**
- Permanent: **Claims from the current fiscal year**
- **Complex reviews must be completed within 60 days (RAC SOW 2007)**

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LOOK BACK DATES

- Pilot: **No maximum look back date, so up to four years under the Medicare regulation**
- Permanent: **Three years and no claims paid prior to October 1, 2007**
  - **"To limit the administrative burden on providers and/or physicians." CMS RAC Solicitation Q&A**
  - **Look back period counted starting from the date of the initial determination and ending with the date the RAC issues the medical record request letter (for complex reviews) or the date of the overpayment request letter (for automated reviews)**

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MEDICAL RECORD LIMIT

- Pilot: **RACs could set own limits**
- Permanent: **CMS will set mandatory limits**
  - **Nationwide RAC medical record request limit that will, at a minimum, vary by provider type and size**
  - **Requests cannot be "bunched"**

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CERTIFIED CODERS

- Pilot: **Not required**
- Permanent: **Required**
  - **Also, RNs or therapists must make coverage/medical necessity determinations**

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DISCUSSION OF DENIED CLAIM WHEN REQUESTED BY PROVIDER

- Pilot: **Optional with the RAC**
- Permanent: **Mandatory**

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WEB-BASED APPLICATION

- Pilot: **None available**
- Permanent: **Mandatory by January 1, 2010**

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EXTERNAL AND UNIFORM VALIDATION PROCESS

- Pilot: **Optional**
- Permanent: **Mandatory**

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CLAIMS SUBJECT TO REVIEW

- All audits must be pre-approved by CMS and a validation contractor before review (CMS Solicitation Questions and Answers)
- E&M codes could be reviewed at some point
  - Already could review for duplicate payments, global surgery rule violations, etc.

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CLAIMS NOT SUBJECT TO REVIEW

- Services provided under a program other than Medicare FFS
- Cost report settlement process
- Claims more than three years past the initial determination
  - And claims earlier than October 1, 2007

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- **Claims where the provider is without fault**
- **Claims with special processing numbers, *e.g.*, Medicare demonstrations**
- **Suppressed claims, where claim is part of an ongoing investigation**
- **Claims already reviewed by another Medicare contractor**

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PREPARING FOR A RAC AUDIT

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ORGANIZE A RAC TEAM, ESTABLISH AN INTERNAL PROCESS, AND COORDINATE WITH COMPLIANCE FUNCTION

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TRAIN TEAM ON PROCEDURAL ISSUES

- Timing of response to medical record requests
- Timing of extension requests
- Assessment of what constitutes a burdensome request by the RAC
- Understanding the appeal process and what defenses/arguments may be offered post-audit

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TRAIN TEAM ON SUBSTANTIVE ISSUES

- Review services highlighted by the OIG and GAO; the RACs did
- Review issues identified by the RACs in the pilot
- Perform internal audits
  - Mimic automated reviews?
  - Medical record review
  - Initiate corrective actions/self disclosure?
- Coordinate with medical staff as to possible targeted issues

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ASSESS EASY OPERATIONAL FIXES

- Are the Medicare coverage questionnaires completed on admission (MSP RAC)?
- Emphasize record completion
- Confirm that hospital is up-to-date re: local coverage determinations

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MAINTAIN RECORDS OF ALL PREVIOUSLY AUDITED CLAIMS

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RESPONDING TO A RAC AUDIT:

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RAC TEAM IMMEDIATELY INVOLVED UPON RECEIPT OF RAC REQUEST

- Sensitivity to what is requested
  - Burdensome?
    - Do not assume RAC Auditors are well versed in the applicable Medicare rules
    - Pay attention: RACs request medical records where there is a high probability of an overpayment
- Ask RAC if you have questions about the request
- RACs refer potential fraud situations

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- **Providers may attach statement of its own opinion as to whether an underpayment exists**
  - **No underpayment if under billing does not change the grouper or pricer**
  - **No underpayment if did not bill for additional service, e.g., EKG, or separately billable device**

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- **Proof the response: don't give away the easy ones**
  - **Double sided records properly copied?**
  - **Legible copies?**
  - **All relevant records?**
  - **All RAC forms completed?**
  - **Any additional materials to include to support the service billed?**
  - **Keep record of response transmittal**

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- Track when response is due
  - Is an extension of time required?
  - Technical denial if failure to respond
- Determine what professional input is needed
- Set up a file to track all communications with RAC on the requests, including your response
- Lost documentation: Katrina versus poor record maintenance
- Any of the claims already reviewed by other agencies?

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TEAM SHOULD REVIEW RAC FINDINGS IMMEDIATELY

- Prioritize review
- Audit the RAC audit to assure underpayments are not ignored
  - Mimic automated reviews?
  - Again, do not assume RACs know the rules or used qualified staff to review the response
    - Involve Physicians
  - Rebuttal
    - For underpayments, CMS claims this is only appeal avenue
    - RAC defers to Provider's claim that there is no underpayment

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APPEAL, APPEAL, APPEAL?

- **CMS: Only 5% of RAC determinations were fully or partially overturned on appeal**
  - **But 5% is based on both completed and pending appeals**
  - **California providers appealed 14.4 % of overpayment claims**
    - **17.6 % of appealed claims reversed in providers' favor**
  - **But consider the IRF audit pause**

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FACTORS TO CONSIDER IN ASSESSING WHETHER TO APPEAL INCLUDE:

- Medical necessity denials particularly vulnerable
- RAC's duplicate payment findings faulty
- Recurrent issues versus unique situations
- Interest payment considerations

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- Extent and availability of Medical Staff involvement
- Front loaded appeal process
  - Five appeal levels
  - Good cause needed to add new evidence after second level appeal
    - ALJ hearing is third appeal level

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- **CORRECTIVE ACTIONS TO AVOID FUTURE DENIALS**
- **POST-AUDIT DEBRIEFINGS**
- **COMPLAINTS TO CMS**

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CONGRESSIONAL ACTION?

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WHO WILL BE THE RACs?

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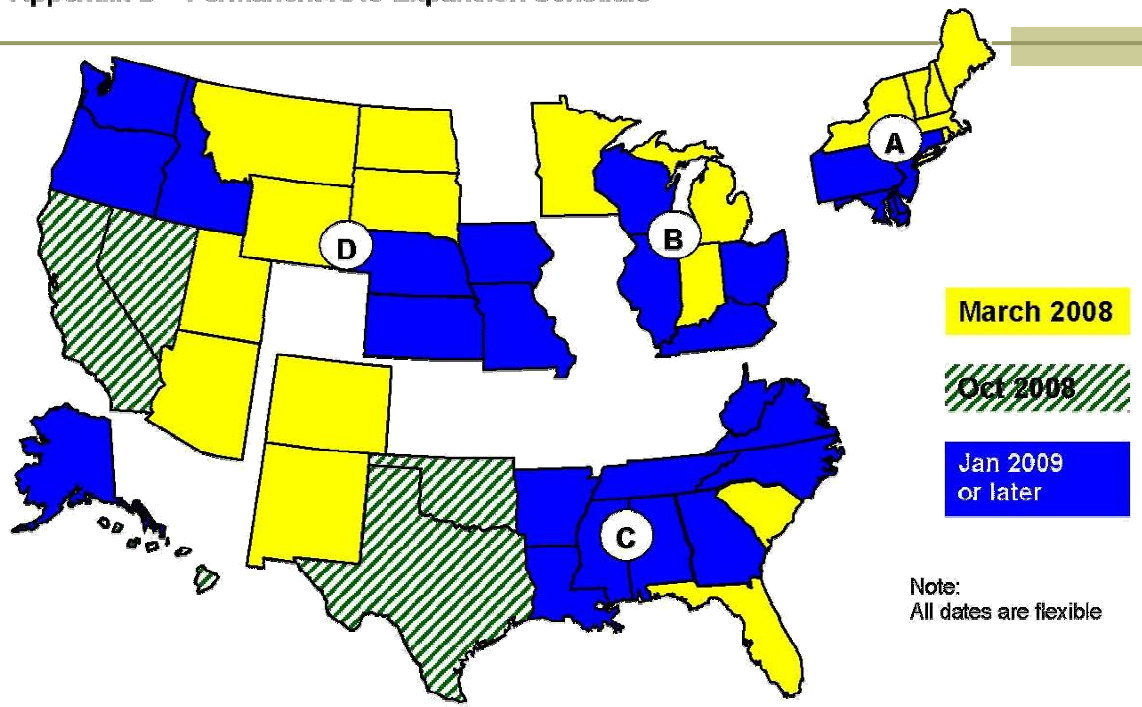
Appendix D – Permanent RAC Expansion Schedule



Although California was a RAC demonstration state, California claims will not be available for RAC review from March 2008- October 2008 due to a MAC transition. A similar RAC blackout period is planned for all states undergoing a MAC transition.

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RAC RESOURCES

- CMS RAC Website: www.cms.hhs.gov/rac
  - Frequently Asked Questions and Answers
  - CMS RAC status documents
    - 2006
    - 2007
  - RFP and Statement of Work for Expansion
  - Expansion strategy and schedule
  - MedLearn Articles

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- **CMS Forms for Appeals: www.cms.hhs.gov/CMSForms**
- **CMS Claims Processing Manual Chapter 29: Appeals of Claims Decisions**
- **CMS Medicare Financial Management Manual Chapter 4: Section 100**
- **RAC Databases and Tracking Tools**
  - **Hospital Associations**

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