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MEDICARE RECOVERY AUDIT CONTRACTOR PROJECT
UNDERWAY IN FLORIDA

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The Medicare Prescription Drug, Improvement and Modernization Act of 2003 ("MMA") directed the Secretary of the U.S. Department of Health and Human Services to establish a demonstration pilot program to explore the use of Recovery Audit Contractors ("RACs") under the Medicare Integrity Program for purposes of identifying underpayments and overpayments, and recouping overpayments made by the Medicare program. Pursuant to Section 306 of the MMA, a three-year pilot program is now underway in Florida, designed to determine whether the use of RACs will be a cost-effective means of adding resources to ensure that correct payments are being made to Medicare providers in the future.

Physicians, providers, and suppliers of Medicare items and services to beneficiaries residing in the states of California, Florida, and New York, will be subject to the three-year Recovery Audit Contractor pilot program initiative, as those three states have the largest total Medicare program expenditure amounts in the nation. Section 306 of the MMA, which mandated the RAC project, specifically provided that under the project, the Secretary of DHHS shall examine the efficacy of such use with respect to duplicative payments, accuracy of coding, and any other payment policies in which inaccurate payments arise; and payment may be made to such a contractor on a contingent basis. The MMA specifically provides that recovery of an overpayment by a RAC shall not be construed to prohibit the Secretary or the Attorney General from investigating and prosecuting, if appropriate, allegations of fraud or abuse arising from such overpayment.

The Recovery Audit Contractors selected for the pilot program are charged with identifying and collecting Medicare claims overpayments that have not previously been identified by Medicare-Affiliated Contractors ("MACs"), such as the Palmetto DMERC (processing DMEPOS supplier claims for beneficiaries residing in Florida), the CIGNA DMERC (processing DMEPOS supplier claims for beneficiaries residing in California), and the HealthNow DMERC (processing DMEPOS supplier claims for beneficiaries residing in New York). Existing DMERCs, Medicare Carriers, and fiscal intermediaries were ineligible to serve as RACs, although every RAC has significant experience in performing recovery audit work. Each of the three pilot states will have only one Recovery Audit Contractor for Medicare Secondary Payor (MSP) claims overpayment recovery, and another contractor for non-MSP recoveries. The RAC selected in the demonstration for Florida for non-MSP claim reviews is
Other RACs participating in the project for review of non-MSP and MSP claims in California, Florida, and New York are Diversified Collection Services, Inc., Public Consulting Group, Inc., Conolly Consulting, and PRG-Schultz International, Inc. Compensation for the RACs will be provided based on a percentage of overpayment recoveries resulting from the RAC's efforts.

**Claims Eligible for Review.** Not all claims will be subject to review by the RACs. Claims reviewed by RACs will be those that have been submitted to Medicare carriers and intermediaries at least one year before the date of review, to ensure that the ordinary processing of such claims will have been completed by the DMERCs and other MACs charged with processing such claims. The universe of claims which may be reviewed by the RACs include all claims that are less than four (4) years old, however, the pilot project will exclude those claims which are otherwise already under pre- or post-payment medical review by the DMERC. Each of the DMERCs will be required to input all cases and/or claims requiring "suppression" into the RAC database, and all such suppressed claims entered in the database will be precluded from RAC review. The MACs can suppress a claim or series of claims, a supplier's entire claims submission, or a suppliers claim type. The following cases and claims require suppression:

1. A post-payment medical review is already in progress;
2. Claims subjected to complex pre-payment medical review;
3. A fraud/benefits integrity review is in progress; or
4. The DMERC has been instructed by an outside agency (i.e., law enforcement, OIG, DOJ) that an investigation is ongoing.

So long as a claim has not been "suppressed" because of an ongoing pre- or post-payment medical review, fraud, potential criminal investigation, or inclusion in the CERT sample, the RAC will continue with the identification and recoupment process.

Claims dating back four years have already been sent to the RACs for their review pursuant to the Revised Medicare Financial Management Manual Instructions. The RACs, including Health Data Insights, have received a data file from CMS containing national claims history data about claims that have been processed by the three DMERCs for beneficiaries residing in Florida, New York, and California. Throughout the three-year project, Health Data Insights, the Florida non-MSP RAC, will receive a data file updating the national claims history data on a monthly basis, and will enter individual claim information in the RAC database for each claim that contains an overpayment or suspected overpayment.

The RACs will perform data analysis to identify areas of investigation, and may request claims history information from the DMERC. The DMERCs have no responsibility to contact suppliers who do not respond to requests from the Recovery Audit Contractor for medical records. It is the Recovery Audit Contractor's responsibility to retrieve the medical records or to make an overpayment determination. The RACs will be expected to apply national coverage decisions (NCDs), and any local coverage determinations (LCDs) that have been approved by the Medicare Affiliated Contractors. Collection policies applied to the RAC pilot
program will be the same as those currently in effect at the DMERCs, including assessment of interest on the portion of any debt that is unpaid thirty (30) days after issuance of a demand letter. Providers will be permitted to appeal any RAC negative determinations to the DMERC.

For those underpayments which may be determined, RACs are instructed to forward information to the DMERCs for processing and payment. Recent instructions from CMS (as expressed in Transmittal 68, amending the Medicare Financial Management Manual (Publication 100-06), effective June 20, 2005, establish that DMERCs and other MACs must further research and review all potential underpayments identified by the RACs (within 30 days), to determine whether they are legitimate underpayments, and make payment to the supplier as necessary. In contrast, CMS' instructions for DMERCs and other MACs involved in the recovery audit demonstration project provide that MACs may not dispute a RAC overpayment determination unless they identify "a pattern" of overpayment determinations that they believe may not be supportable, in which case they are required to notify the designated CMS project officer for the pilot program of the potential problem.

Collection of Overpayments. The RACs will not have access to the Medicare Common Working File (CWF), or to the standard system utilized by the DMERCs. Therefore, when overpayments are identified, the RAC will be unable to adjust the claim. Instead, the RAC will notify the interested DMERC that an overpayment has been identified via the RAC database, and the DMERC shall adjust the claim and report the overpayment amount into the RAC database. On an ongoing basis, the RAC will enter into the RAC database the claims where it has identified an overpayment, and the RAC-determined overpayment will be sent to the DMERC for processing. It will be the responsibility of the DMERC to perform the necessary claims adjustment within 14 calendar days of it being entered into the RAC database.

Once the DMERC has made the appropriate claim adjustment and updated the RAC database, the DMERC will create an account receivable. The CMS instructions to the DMERCs specifically state that the DMERCs shall not issue a demand letter; however, the DMERCs shall initiate offset on the applicable day following the guidelines in the Medicare Financial Management Manual. The RAC will be required to follow the normal practice for sending a demand letter. If a demand letter is issued, the letter will instruct suppliers to send checks to the appropriate payment address of the DMERC. The DMERC is required to update the RAC database within seven (7) calendar days of applying the payment, whether such payment is collected by check, or by offset. Extended repayment plans (ERPs) may be requested regarding a RAC-initiated overpayment, and if the DMERC receives an extended repayment plan from a supplier for such an overpayment, the DMERC must forward the ERP request to the appropriate contact at the RAC. CMS will issue a separate instruction in the future regarding the point of contact and procedure for processing such an extended repayment plan request.

Overpayments identified by the RAC will follow normal guidelines for referral to the Department of Treasury for collection, which occurs on or before the debt reaches 130 days delinquent. The RAC will continue to attempt to collect the overpayment until the referral to the Department of Treasury is complete, however.

Appeals. The DMERCs are required to process any appeals stemming from a RAC-initiated overpayment, and DMERCs may not automatically uphold or reverse the RAC's
decision. Instead, the DMERC shall ensure that the appeal is processed as with any other appeal request. Upon receiving an appeal request for a RAC-identified overpayment, the DMERC must request the medical records from the RAC. This request must be coordinated through the RAC database within seven (7) calendar days of determining that the appeal request is valid, and that it is for a RAC-identified overpayment. The RAC shall forward or otherwise make available the medical records to the DMERC within seven calendar days of any notification through the RAC database. Even if the DMERC believes they have enough documentation to make a determination on the appeal, the DMERC must still request the medical records from the RAC, as suppliers may submit different documentation to the RAC than to the DMERC upon appeal.

RACs are required to track appeals so that they will know when recoupment must cease during the appeal process. DMERCs are required to update the RAC database within seven (7) calendar days of learning of a new appeal request, and/or any update in the appeal status.

**Supplier Outreach.** CMS has specifically instructed its DMERCs and other intermediaries and carriers that questions and correspondence received from the provider and supplier community regarding RAC-initiated overpayments shall be referred to the RAC. The RAC is required to have knowledgeable customer service representatives to assist the supplier community. In addition, the DMERCs are required to notify the RAC when any community outreach and/or public education is taking place in the area, and while not required, the RAC may decide to attend the function. The RAC may only address their function as recovery auditors at any such outreach events. While the DMERC is required to notify the RAC of the event, it is up to the DMERC's discretion to invite the RAC to speak at any such event. All information disseminated to the supplier community must be approved thirty (30) days in advance by the CMS project officer for the recovery audit program.

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