

**AMERICAN COLLEGE OF RHEUMATOLOGY  
POSITION STATEMENT**

**SUBJECT:** Medicare Recovery Audit Contractors

**PRESENTED BY:** Committee on Government Affairs

**FOR DISTRIBUTION TO:** Members of the American College of Rheumatology  
United States Congress  
Medical Societies

**POSITION:**

The American College of Rheumatology (ACR) supports changes implemented by CMS relating to the auditing structure of Medicare claims. Many of these changes were previously published in the 2010 GAO-10-143<sup>1</sup> report:

- RACs are to have a physician medical director.
- RACs are to be staffed with registered nurses or therapists to make coverage and medical necessity determinations and certified coders to make coding determinations.
- RACs are to make credentials of reviewers available to providers upon request.
- Providers will be able to discuss claim denials with the RAC medical director upon request.
- The minimum claim amount that the RACs will review was raised to \$10 minimum per claim (instead of \$10 minimum for aggregated claims).
- CMS will use a validation contractor to independently examine the criteria each RAC plans to use to make its determinations and the accuracy of RAC determinations.
- RACs must return the related contingency fee if a claim is overturned on appeal.
- RACs must use standardized letters to notify providers of overpayments
- The look-back period (from claim payment date to date of medical record request) is reduced from 4 years to 3 years.
- The RACs are allowed to review claims paid in the current fiscal year.
- CMS is putting limits on the number of medical record requests in a 45 day period.
- The time frame for paying hospital medical record photocopying vouchers is to be set at 45 days from receipt of medical record.
- CMS is not including Medicare Secondary Payer claims audits in the National Program.
- RACs are to have quality assurance/ internal control audits.
- RACs are to list the reason for review on “request for records” letters and overpayment letters.
- The status of specific claims are to be posted on RAC Web page.
- RAC contingency fees are to be made publicly available.

These changes have been important to ensure auditing rules are sufficient in weeding out incidents of fraud, while concurrently recognizing and mitigating the stresses put on compliant providers by the uncertainty of the claims process. They also highlight the importance of providers communicating with auditor employed medical professionals, ensuring more appropriate communication of claims reviews.

The ACR feels there are still further actions CMS could take in reforming the Medicare audit system. Specifically, the ACR continues to strongly oppose the contingency fees in audit contracts. Auditors should be neutral arbiters without additional financial incentives to argue claims.

The ACR also recognizes there are direct and distinct costs related to practitioner participation in an audit, and feel that these costs should be borne by the auditor unless willful disregard for CMS billing rules is subsequently established.

### **BACKGROUND:**

The ACR acknowledges that CMS loses billions of dollars every year due to fraud and abuse. In order to help recoup those losses, Congress established a recovery system utilizing various contracted auditors (MACs, ZPICs, PSCs, SMRCs, CERTs, and Medicare FFS Recovery Auditors) under the auspices of CMS. These auditors are private contractors that utilize CMS guidelines to review claims. Per the recently published 2014 GAO-14-474<sup>ii</sup> report, however, there are still areas of concern around CMS's ability to oversee compliance of rules dictating auditor's claims review practices. The report also concludes there are insufficient mechanisms for avoiding improper duplicate claims reviews, causing further burden on providers.

For claims that are not found to be properly supported by medical documentation, RACs have the authority to mandate repayments and, in some cases, may assess additional financial penalties. Importantly, RACs themselves are paid in direct proportion to the amount of monies returned from participating CMS providers. This payment scheme mirrors the system used by various government authorities to arrest criminal fugitives popularly known as "bounty hunting" which, historically, has been feared because of the many documented instances of abuse resulting from overzealous behavior by bounty hunters themselves. It has been our experience that a practitioner who is audited is presumed guilty a priori.

### **RECOMMENDATIONS:**

The ACR urges CMS to reconsider the payment of contingency fees as an incentive for quantity of claims reviewed.

The ACR also supports recommendations made in the published GAO 14-474 report:

- Monitor the Recovery Audit Data Warehouse to ensure that all post payment review contractors are submitting required data and that the data the database contains are accurate and complete.
- Develop complete guidance to define contractors' responsibilities regarding duplicative claims reviews, including specifying whether and when MACs and ZPICs can duplicate other contractors' reviews.
- Clarify the current requirements for the content of contractors' additional documentation request and results letters and standardize the requirements and contents as much as possible to ensure greater consistency among post payment claims review contractors' correspondence.
- Assess regularly whether contractors are complying with CMS requirements for the content of correspondence sent to providers regarding claims reviews.

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<sup>i</sup> (United States Government Accountability Office, 2010)

<sup>ii</sup> (United States Government Accountability Office, 2014)

United States Government Accountability Office. (2014). *Medicare Program Integrity: Increased Oversight and Guidance Could Improve Effectiveness and Efficiency of Postpayment Claims Reviews*. Washington, DC: United States Government Accountability Office.

United States Government Accountability Office. (2010). *Medicare Recovery Audit Contracting: Weaknesses Remain in Addressing Vulnerabilities to Improving Payments, Although Improvements Made to Contractor Oversight*. Washington, DC: United States Government Accountability Office.

Approved by Board of Directors    08/2014                      08/2018