



Client Alert



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MEDICARE RAC AUDITS AND APPEALS: TIPS, STRATEGIES, AND PRACTICAL ADVICE

Medicare recovery audit contractors (RACs) collected over \$797 million in Medicare overpayments in Fiscal Year 2011 alone, and the increasing scrutiny of Medicare claims, particularly on medical necessity, requires providers to develop a comprehensive and cohesive approach when handling audits and appeals. Based on experience assisting clients with these issues, AGG attorneys have developed a quick list of tips, strategies, and practical advice to help providers successfully navigate the RAC process.

Learn to Anticipate the RAC's Next Move

- **Keep current on the RAC websites and look to identify risk areas for internal audit.** In addition to monitoring your own RAC's website, periodically review the other regions' approved issues as they may provide insight as to what is on the horizon. Also consider reviewing other available source documents utilized by RACs, like OIG reports, GAO reports, and PEPPER reports. For example, stemming in part from an OIG Report that found a high level of error in the assignment of Ultra High Therapy Resource Utilization Group (RUGs), at least one RAC has requested additional documentation from nursing homes to perform a test claim sample of Medicare Part A claims involving such RUGs.
- **Look beyond the approved issue.** Awareness of RAC-approved issues is essential, but only a starting point for understanding where the RAC is focusing. Short stays, for example, are a current RAC focus area for hospitals regardless of the official approved issue, and identifying these types of trends is vital to compliance efforts.
- **Use documentation to beat the RAC at its own game.** Once you gain insight on potential RAC focus areas, think proactively about how proper documentation can support a claim. With hospital short stays, for example, make sure any failed attempts at a lower level of care are being documented.

Rally the Troops: Establish an Interdisciplinary Team to Handle Process from Start to Finish and Proactively Follow an Organized Plan

- **Clearly designate the responsibilities for each team member.** Consider using the same contact person for all RAC/MAC correspondence to minimize confusion and miscommunication.
- **Engage legal department early in the process.** While running RAC audits and appeals through the compliance department may make sense from an operational perspective, it is important to involve the legal department early on given the legal complexities of the appeals process.
- **Track communications and process.** Starting with the first document request through the various levels of appeal, there are many deadlines to meet along the way. Calendaring these deadlines and tracking all communications is critical to staying organized, and it may be as simple as a spreadsheet or as extensive as developing software or contracting with a vendor to manage. Also maintaining a copy of all communications and records submitted is critical.
- **Review all RAC/MAC correspondence carefully.** It is important to recognize the type of RAC audit (automated, semi-automated, complex) and to promptly calendar and respond to the various deadlines for audits and appeals.
- **Request credentials of individuals making RAC medical review determinations.** This will provide insight into the credibility and experience of the reviewers and whether the RAC is following proper procedure. Such efforts often support various defense strategies, for example, in establishing an inappropriate level of “peer” review of a medical necessity decision.

Get the Basics Right: Ensure Additional Documentation Request (ADR) Responses are Complete and Organized

- **Be realistic in assessing your ability to respond.** Plan ahead to ask for extension requests in advance and consider requesting a rolling documentation production if needed (also in advance).
- **Bates stamp or number medical records at the outset for ease of reference through the process.** This will facilitate identifying which medical records have been produced, as well as preparing exhibits of medical records, as needed, in case of a subsequent appeal.
- **Request medical records from other facilities/providers, as applicable.** Because of the short time frame to respond to an ADR request, letters requesting medical records from other providers should be sent out as soon as possible to allow time for such providers to respond and for follow-up requests, as needed.

- **Legible documentation is key to audit and appeal.** The old saying goes that if something has not been documented, then it never occurred; thus, ensuring legible documentation is an important defense strategy in preparation for RAC audits, and continuous in-services and training on documentation are beneficial. Physician attestations also can be a useful alternative if the documentation is imperfect.

Be Prepared to Appeal from the Outset

- **Develop a position paper.** Successful appeals often result from a comprehensive narrative/story built on the entire medical record and patient's medical history, with citations to the medical records and expert opinions as support.
- **Cultivate good witnesses.** An articulate and well-prepared witness can carry the day, so start talking to treating/attending physicians early in the process to determine whether they might be willing and able to provide oral testimony or written attestations.
- **The reconsideration level of appeal is the last opportunity to submit new evidence, absent a showing of good cause.** While oral testimony may be provided at the Administrative Law Judge (ALJ) level without a showing of good cause, it is often difficult to retain the treating physician for such testimony. Thus, you will likely have to proceed with a medical expert and some judges may limit such testimony to the existing record.
- **Know your ALJ.** Each ALJ has a slightly different approach, and some ALJs have particular idiosyncrasies that you should prepare for prior to a hearing (for example, some will ask the witness to address specific claims in the QIC denial letter). Talk to contacts who may have had your ALJ before, and learn as much as possible before the hearing.

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