



Client Alert



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RAC Update: New FAQ on CMS Website Reviews Options for Providers Who Receive Overpayment Decisions

The Center for Medicare and Medicaid Services (CMS) recently posted a new FAQ on its recoupment audit contractor (RAC) website. The newly-posted FAQ reflects recent confusion among providers about the different possible responses to unfavorable overpayment decisions from Medicare contractors. The FAQ asks: "What is the difference between the Recovery Audit Contractor (RAC) discussion period and the Rebuttal and Redetermination process?" (please click [here](#) to view¹). In other words, providers have asked CMS to clarify how it defines three terms:

1. the RAC **discussion period**
2. **rebuttals** to unfavorable Medicare payment decisions
3. **requests for redetermination** of unfavorable Medicare payment decisions.

CMS answers the FAQ by defining the three terms and describing the process that providers must initiate to pursue each of the three options. The FAQ likely stems, at least in part, from provider confusion over CMS's past terminology. During the RAC demonstration period, CMS used terminology that did not align with the regulatory definitions for those terms (e.g., during the RAC demonstration, CMS used the term "rebuttal" to describe what the regulations define as a "discussion period"). In the new FAQ, CMS resolves the confusion by aligning its terminology with the regulatory definitions.

First, the FAQ defines the RAC discussion period, which gives providers an opportunity to offer more information about "why recoupment should not be initiated." CMS explains that the discussion period "also offers the opportunity for the RAC to explain the rationale for the overpayment decision." The RAC will review any additional documentation that the provider has submitted and determine whether to reverse its overpayment decision. CMS notes that providers must initiate the RAC discussion period by contacting the RAC within 40 days of receiving a demand letter (for automated review) or review results letter (for complex review).

¹ http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std_adp.php?p_faqid=9994&p_created=1268745194&p_sid=HZSSG3Yj&p_accessibility=0&p_redirect=&p_lva=&p_sp=cF9zcmNoPSZwX3NvcnRfYnk9JnBfZ3JpZHNVcnQ9JnBfcm93-X2NudD0zNCwzNCZwX3Byb2RzPSZwX2NhdHM9JnBfcHY9NC40OTcmcF9jdj0mcF9zZWZwY2hfdHlwZT1hbnN3ZXJzLnNIYXJjaF9ubCZwX3BhZ2U9Mg**&p_li=&p_topview=1

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In contrast to the RAC discussion period, the rebuttal process gives providers an opportunity to submit evidence that the overpayment action should not take place because it will cause financial hardship for the provider. CMS explains that a “rebuttal is not intended to review supporting medical documentation nor disagreement with the overpayment decision.” As with the RAC discussion period, providers must initiate the process by contacting the contractor. Here, however, providers have only 15 days to issue a response after receiving a demand letter.

Finally, a request for redetermination is the first level of appeal for a provider seeking to challenge the contractor’s decision to deny, partially deny or adjust a claim. CMS states that providers “may request a redetermination when they are dissatisfied with the overpayment decision.” Providers have 120 days total from the date of the overpayment decision to submit a request for redetermination; however, providers have only 30 days to file an appeal if they wish to prevent offset on day 41. *Providers should be aware that these appeal deadlines are not “stayed” if they opt to contact the RAC for the discussion period or submit rebuttals challenging recoupments.* If a provider chooses to initiate a discussion period or submits a rebuttal and receives an unfavorable response to either request, the provider may still submit a request for redetermination letter, but it will not receive an extension on the appeal deadlines.

CMS has posted a *Provider Options Chart* on its website (please click [here](#) to view²), which summarizes the three options. Providers need to understand these options to prevent recoupment and to challenge unfavorable overpayment decisions.

² <http://www.cms.hhs.gov/RAC/Downloads/ProviderOptionsChart.pdf>

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