

## How to “Counter-RAC” the RAC: What Every Provider Should Know

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While the increasingly shrill alarms regarding impending recovery audit contractor (RAC) alerts rival the Y2K frenzy of a decade ago, the reality is that the RAC process is about to begin in Michigan and providers are well advised to prepare. This article briefly highlights recommended RAC readiness requirements.

### **Know Your RAC Contractor**

The RAC Contractor for Region B, in which Michigan is located, is CGI Technology Solutions, Inc. The website is <http://racb.cgi.com>. The email contact is [racb@cgi.com](mailto:racb@cgi.com). The CMS RAC contact for Region B is Scott Wakefield, 410 786 4301.

### **The RAC Scope of Work**

The RAC will conduct two types of reviews. The “automated” review is conducted off site without reference to the medical record. This review, for example, investigates excessive units or incorrect codes. The “complex review” involves medical record review, with a focus on medical necessity and whether the medical record supports the payment claim. Note that the RAC is legally authorized to extrapolate the error rate. CMS has established rules generally limiting the RAC to requesting no more than 200 records per provider per 45 day period. Whether two facilities are considered to be the same provider for this purpose, and thus will not each be required to submit up to 200 records, depends on whether they have the same federal EIN and share the first three numbers of their zip code.

Note the following are excluded from the RAC scope of work:

- Services provided under a program other than Medicare FFS (i.e., Medicare Advantage)
- Cost report settlement process (IME or GME payments)
- Claims more than 3 years past the claim paid date.
- *Claims paid earlier than October 1, 2007.*
- Claims where the beneficiary is liable for the overpayment because the provider is without fault with respect to the overpayment.
- Claims in a demonstration program or with special processing rules
- Prepayment Review

### **The Provider’s RAC Team**

While many an attorney, consultant and vender will “come a calling,” the single best defense is for the provider to establish its internal RAC team, with external expertise engaged as necessary. Ideally, the provider’s RAC Team should be the “defensive” counterpart of the RAC’s own staffing. Thus, just as the

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RAC possesses a variety of expertise, so must the provider in order to “counter-Rac” the RAC. This process involves a multidisciplinary group, with assigned responsibilities, such as the following “who is doing what” considerations:

- Documentation
- Focus on target areas from demonstration states
- Contact person for document requests and responses
- Prepare for low-tech document production and communication
- Include physicians
- Communicate findings and best practices

**Note that a provider’s investment of internal and external resources should be based on the provider’s assessment of exposure to liability.** Thus, for example a provider estimating an exposure to \$100,000 of liability should not spend that much, or more, engaging outside consultants. From review of the demonstration project, as well as review of the issues that the RAC has published on its website, the provider can conduct a self assessment of its exposure to liability. *It is recommended that such an assessment be conducted within the scope of the attorney-client privilege to protect the provider from a potential would be whistleblower in its midst.* Note that the additional benefit of this type of exercise is that it enables the provider to take remedial action on a prospective basis to enhance the provider’s compliance and thus to reduce if not eliminate future exposure to liability.

**Response To RAC Requests For Medical Records**

A request for a medical record results in automatic denial of the underlying claim if the provider does not respond within 45 days. **Thus, if it did nothing else, the provider should assure that a medical record response process is in place.** To assure compliance, the provider should take the following steps:

- Give RAC the address and contact person for Medical Record Request Letters  
Call the RAC  
Use the RAC websites
- Follow up to assure receipt

**Issues Under Review**

CMS must approve the RAC review issues. The CMS-approved issues are posted on the RAC’s website, <http://racb.cgi.com/Issues.aspx>. At present, among other the review issues include the following:

- Blood Transfusions
- Bronchoscopy Services
- CSW During Inpatient Hospital
- Hospital to Hospital Transfer
- Intravenous Infusion Chemotherapy and Non-chemotherapy – Excessive Units Reported
- IV-Hydration
- Neulasta
- Once in a Lifetime Procedures
- Oxaliplatin
- PreAdmission Testing

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- Separately Paid Ambulance Service during Inpatient Hospitalization
- Untimed Codes
- Wheelchair Bundling

### **RAC Appeals**

Ultimately it will be necessary for the provider to appeal RAC determinations, depending upon the amount at stake, the cost of the appeal and the estimated probability of success. The RAC appeals process is identical, except in one respect, to the Medicare claims appeals process (for which CMS recently has published revised regulations with which the provider should familiarize itself). The special provision for RAC determinations is that the first step is a request for discussion, which must be filed within 15 days. The remainder of the Medicare appeals process, as follows, is applicable:

- Fiscal Intermediary: 120 Days; prevent recoupment if file within 40 days
  - Qualified Independent Contractor: 180 Days After FI Decision
  - Administrative Law Judge: 60 Days After QIC Decision
  - Departmental Appeals Board: 60 Days After ALJ Decision
  - US District Court: 60 Days After DAB Decision
- Demo: Average appeal time was 12-24 months

### **Conclusion**

Taking steps to prepare to Counter-Rac the RAC, including the appropriate allocation on internal and external resources, will not eliminate but will serve to reduce a provider's exposure to liability, and will enable the provider to take prospective action to reduce liability to future audits.