

American Medical Association Fact Sheet Recovery Audit Contractors (RACs)

Background

Congress created the recovery audit contractors (RAC) program to help the Centers for Medicare and Medicaid Services (CMS) identify improper payments made by Medicare. The RAC contractors are private entities that are retained by the government to identify overpayments or under payments made to physicians and other healthcare providers, as well as, to recoup overpayments or return underpayments. Reportedly, \$10.8 billion in improper Medicare payments were made in 2007, the third highest amount of improper payments among federal programs surpassed only by the Earned Income Tax Credit and Medicaid programs. It is also estimated that 3.9 percent of the Medicare dollars paid did not comply with one or more Medicare coverage, coding, billing, or payment rules. This equates to \$10.8 billion in Medicare fee-for-service (FFS) overpayments and underpayments.

The RAC was created by Congress first as a demonstration program and was subsequently expanded as a permanent, nationwide program. The RACs focus on reimbursements for traditional Medicare FFS and not Medicare managed care or the prescription drug benefit. Rather than being paid an upfront fee to perform these functions, the government pays these contractors a contingency fee for each inappropriate payment identified and recovered. For example, for every \$100 in payments identified as improper and recovered by the RACs, CMS pays the RAC a percentage of the recovery.

The AMA remains deeply opposed to utilization of contingencies for RACs since it is a bounty hunter-like program that creates a financial incentive for RACs to over-identify payments. The AMA has been very vocal with both the Administration and Congress about our concerns. The AMA has successfully advocated for improvements to the program that reduce the burdens on physicians. CMS has incorporated many of the changes we have asked for but there are many others that remain and we continue to press CMS to make further changes.

RAC Demonstration (2006-2008): How it all started

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) established the RAC program under Section 306 as a three-year demonstration program. The demonstration program began in the three states with the largest volume of Medicare claims: Florida, New York, and California. The RAC Demonstration began on March 28, 2005 and ended on March 27, 2008. During the last year of the demonstration program, CMS also expanded it to Massachusetts and South Carolina, however, physicians only saw recoupments in the first three states. The RAC entities under the Demonstration focused in large part on hospitals and other non-physician health care providers. But, for those physicians who were audited, the process was extremely disruptive, costly, and very burdensome.

During the initial stages of the pilot, CMS only rewarded the RACs for locating overpayments. However, thanks to significant AMA advocacy CMS also began rewarding these contractors for locating underpayments as an improper payment could also have resulted in a physician being underpaid. More than midway through the Demonstration, the AMA was also successful in getting CMS to limit the “lookback” period (how far back a RAC can recoup monies) from four years to three.

Fast Facts on the RAC Demonstration

While millions of overpayments were recovered from different healthcare providers under the Demonstration, physician recoupments represented only a fraction of the overall overpayments identified by the RACs. Below are some fast facts on figures covering the life of the Demonstration:

- RACs found and corrected more than \$1.03 billion in Medicare improper payments. Approximately 96 percent (\$992.7 million) of them were overpayments, while the remaining 4 percent (\$37.8 million) were underpayments.
- Of a total \$317 billion in Medicare claim payments available for review by the RACs, they found and corrected improper payments on only 0.3 percent (\$1.03 billion) of the claims received.
- 24.5 percent of all RAC Part B (includes physicians) RAC overpayment decisions were appealed, a rate higher than the Part A (includes hospitals) RAC appeal rate of 20.6 percent. Of those Part B overpayment decisions 8.65 were overturned on appeal compared to 6.8 percent for Part A.
- 85 percent of overpayments were collected from hospitals while only 2 percent were collected from physicians.

And, despite all the resources utilized and expended by physicians and their staff to gather medical records dating in some cases as far back as four years, the RACs on average only recovered very small sums from physicians as evidenced by the below chart from CMS:

Table 11. Average Overpayment Amounts: Cumulative Through 3/27/08, Claim RACS Only

| Type of Provider | Average Overpayment Amount | | | | | |
|----------------------------|----------------------------|-----------------------|------------------------|-----------------------|------------------------|-----------------------|
| | Connolly | | HDI | | PRG | |
| | Per Claim ^a | Per Provider per Year | Per Claim ^a | Per Provider per Year | Per Claim ^a | Per Provider per Year |
| Inpatient hospital/IRF/SNF | \$ 12,157 | \$ 483,774 | \$ 3,917 | \$ 118,834 | \$ 6,309 | \$ 850,502 |
| Outpatient hospital | \$ 327 | \$ 10,398 | \$ 567 | \$ 6,465 | \$ 398 | \$ 24,640 |
| Physician | \$ 140 | \$ 372 | \$ 103 | \$ 1,441 | \$ 214 | \$ 602 |
| Ambulance/Lab/Other | — | — | \$ 88 | \$ 429 | \$ 231 | \$ 2,631 |
| Durable medical equipment | \$ 174 | \$ 1,361 | \$ 466 | \$ 1,039 | \$ 126 | \$ 1,943 |

^aAverage overpayment amount per claim based on number of overpayments collected from 10/1/06 to 3/27/08, where the collection amount was greater than \$0.

Source: Self-reported by the RACs.

Sources:

- [The Medicare Recovery Audit Contractor Program: An Evaluation of a 3-year Demonstration](#)
- [The Medicare Recovery Audit Contractor Program: Update to the Evaluation of the 3-year Demonstration](#)

For more information on the RAC Demonstration visit CMS' website at:

http://www.cms.hhs.gov/RAC/02_ExpansionStrategy.asp#TopOfPage.

RAC Permanent, Nationwide Program

Congress expanded the RAC program to make it permanent under Section 302 of the Tax Relief and Health Care Act of 2006. The expanded RAC program will be up and running in its entirety by January 1, 2010. However, some physicians could be audited in the latter part of 2009 as the expanded program starts kicking off. **Due to considerable advocacy by the AMA, CMS made several changes to the expanded RAC program including:**

- **“Look-back Period”:** CMS shortened the timeframe a RAC can go back and recover monies from four years to three. **Certified coders:** Were not mandatory in the demonstration. In the permanent program each RAC must have certified coders.
- **Medical Record Request Limit:** There was an optional medical record limit set by the individual RAC in the demonstration. Under the expanded program RACs will only be able to request up to 10 medical records per single practitioner within a 45 day period. We continue to advocate however for reducing this further to no more than 3 within a 45 day period.
- **Medical Directors:** Each RAC is now required to have a Medical Director.
- **RAC Websites:** Under the demonstration the RACs were not required to maintain a website. Under the expanded program each RAC is required to maintain a web presence. Also, physicians will be able to look up the status of their audits involving medical record reviews.
- **Sharing Problems:** Under the demonstration there was little information shared with physicians about the types of improper payments they were auditing. Under the expanded program, there will be much more transparency and problem areas to be reviewed by each RAC (referred to as “vulnerabilities”) will be required to be posted on their respective websites.
- **Contingency Fees:** During the demonstration, the RACs only had to pay back the contingency fee if they lost at the first level of appeal. This has been changed to all levels of appeal for the permanent program. Also, now the rate RACs receive for locating improper payments will be public.
- **Validating Areas Targeted by RACs:** An independent external validation process to help ensure that the audit areas the RACs planned to focus on are appropriate, is now mandatory.

What are the RACs Permitted to Review?

RACs may pursue the following types of improper payments:

- Incorrect payment amounts
- Non-covered services (including services that are not reasonable and necessary)
- Incorrectly coded services
- Duplicate services

What are the RACs Precluded from Reviewing?

RACs are precluded from recouping improper payments that involve:

- Services provided under a program other than Medicare Fee-For-Service (i.e. RACs may NOT attempt to identify improper payments in the Medicare Managed Care program, Medicare drug card program or drug benefit program)
- Cost report settlement process
- Indirect Medical Education (IME) and Graduate Medical Education (GME) payments.
- Claims more than 3 years past the date of the initial determination
- Claim paid dates earlier than October 1, 2007
- Claims where the patient is liable for the overpayment because the provider is without fault with respect to the overpayment
- Random selection of claims (see below for more information on extrapolation)
- Claims Identified with a Special Processing Number (i.e. claims involved with a Medicare payment demonstration)
- Prepayment Review (RACs are only allowed to use post payment review)

How will the RACs identify Improper Payments?

The RACs use proprietary software to identify improper payments. Under the demonstration the RACs often chose to review services that have been highlighted as problem areas by the [U.S. Department of Health & Human Services \(HHS\) Office of the Inspector General \(OIG\)](#) and by the [Government Accountability Office \(GAO\)](#). The [OIG](#) and [GAO](#) issue many reports each year, some of which highlight specific Medicare services that are vulnerable to improper payments. The RACs utilized recent and past [OIG](#) and [GAO](#) reports in their efforts to identify claims most likely to contain improper payments. Below are some websites for the [OIG](#) and [GAO](#) that may be helpful.

- [OIG: http://oig.hhs.gov/](http://oig.hhs.gov/)
- [OIG listserv sign-up: http://oig.hhs.gov/maillinglist.asp](http://oig.hhs.gov/maillinglist.asp)
- [OIG Office of Audit Services Reports: http://www.oig.hhs.gov/oas/cms.asp](http://www.oig.hhs.gov/oas/cms.asp)
- [GAO: http://www.gao.gov/](http://www.gao.gov/)
- [GAO reports and testimony webpage: http://www.gao.gov/docsearch/repanctest.html](http://www.gao.gov/docsearch/repanctest.html)
- [GAO listserv sign-up: http://www.gao.gov/subscribe/index.php](http://www.gao.gov/subscribe/index.php)

RACs are guided by Medicare policies, regulations, national and local coverage determinations and manual instructions when conducting claim reviews. In certain instances where there is no Medicare policy, RACs review claims based on accepted clinical standards of medical practice at the time of the claim submission. RACs must follow Medicare coverage, coding or billing policies; they do not develop or apply their own coverage, coding, or billing policies.

RACs will use proprietary automated review software algorithms to review all the claims in order to identify overpayments and underpayments that can be detected without medical record review.

Two Types of RAC Audits

There are two kinds of RAC audits: automated and complex. An automated review is one where the improper payment is straightforward and does not involve a need for a human to review claims data or medical records in order to determine that an improper payment. Complex medical reviews on the other hand, are less black and white as they involve a manual review of the medical record or related documentation.

Who Reviews Claims and Medical Records During a Complex RAC Audit?

Despite protests by the AMA that RAC audits involving complex medical reviews be performed by a physician of the same specialty and state of the physician under review, CMS will treat these RAC audits similar to the way they treat other Medicare claims processing contractors. RACs will use medical personnel such as nurses, therapists, and certified coders to review claims. In addition, as mentioned previously, each RAC has a physician Medical Director to oversee the medical record review process, assist nurses, therapists, and certified coders upon request during complex review, manage the quality assurance procedures, and inform provider associations about the RAC program.

Will the RAC review evaluation and management (E&M) services on physician claims under Part B?

According to a “Frequently Asked Question (FAQ)” on CMS’ website:

“Yes, the review of all evaluation and management (E & M) services will be allowed under the RAC program. The review of duplicate claims or E & M services that should be included in a global surgery were available for review during the RAC demonstration and will continue to be available for review. The review of the level of the visit of some E & M services was not included in the RAC demonstration. CMS will work closely with the American Medical Association and the physician community prior to any reviews being completed regarding the level of the visit and will provide notice to the physician community before the RACs are allowed to begin reviews of evaluation and management (E & M) services and the level of the visit.”

Can the RACs Engage in Extrapolation?

Yes, but only under certain circumstances. Section 935 of the MMA prohibits the use of random claim selection for any purpose other than to establish a Medicare payment error rate. Instead, the RAC must utilize data analysis techniques in order to identify those claims most likely to contain overpayments. This process is called “targeted review.” The RAC may not target a claim solely because it is a high dollar claim, but may target a claim because it is high dollar AND contains other information that leads the RAC to believe it is likely to contain an overpayment.

Contact Information for the RACs

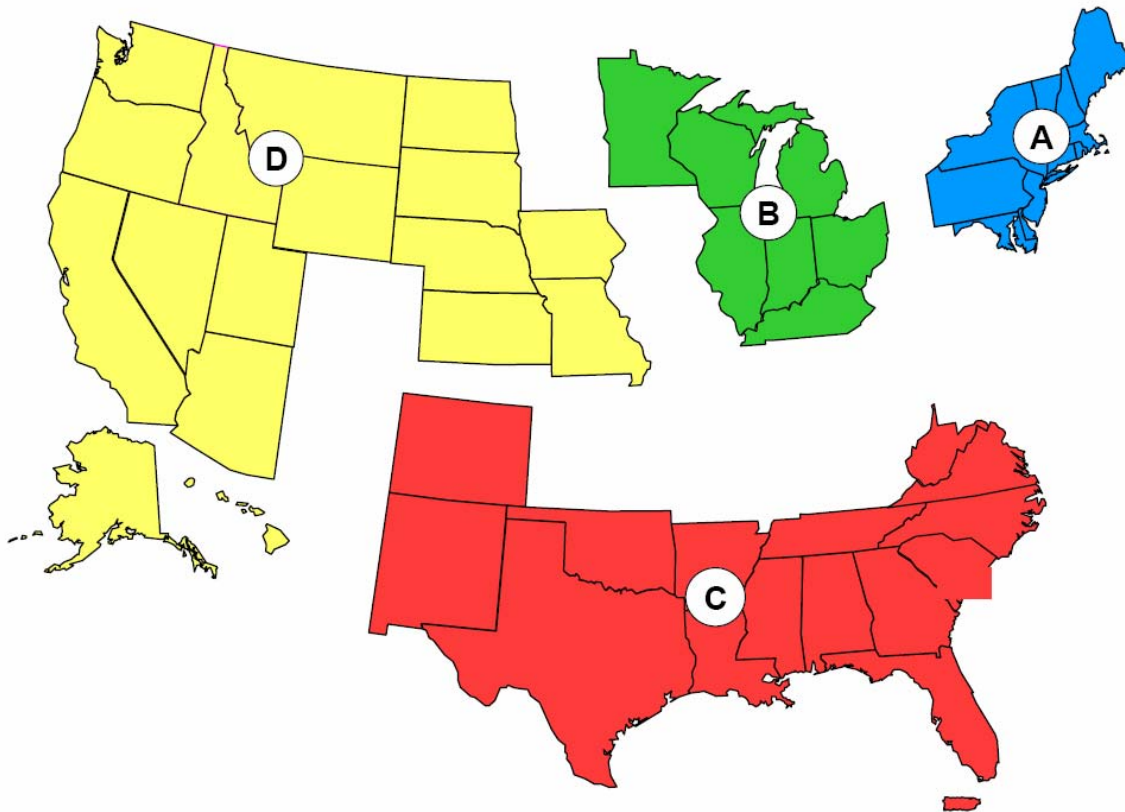
Contact information for the RACs can be found below.

| RAC | Website | E-mail | Telephone Number |
|---|---|--|---------------------------------------|
| Region A: Diversified Collection Services | www.dcsrac.com | info@dcsrac.com | 1-866-201-0580 |
| Region B: CGI | http://racb.cgi.com | racb@cgi.com | 1-877-316-7222 |
| Region C: Connolly Consulting | www.connollyhealthcare.com/RAC | RACinfo@connollyhealthcare.com | 1-866-360-2507 |
| Region D: HealthDataInsights | http://racinfo.healthdatainsights.com | racinfo@emailhdi.com | Part A: 866-590-5598 Part B: 866-3 |

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Map of RAC Regions

The country is broken up into four regions for the purposes of the RAC. A map depicting Regions A-D can be found below. Also, the RAC program will be rolled out in different states first. To determine if your state will be one of the first to see audits check [here](#).



Where to go for more information

Check the CMS website for more information and FAQs by visiting www.cms.hhs.gov/rac.