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Medicare Recovery Audit Contractors

Wisconsin hospitals support delay of implementation (HR 4105)

Background

The Medicare Modernization Act of 2003 established the Medicare Recovery Audit Contractor (RAC) three-year demonstration program to identify improper Medicare payments – both overpayments and underpayments. In the *Tax Relief and Health Care Act of 2006*, the RAC program became permanent and the Centers for Medicare & Medicaid Services (CMS) was authorized to expand the program to all 50 states through 2009. The current roll-out schedule has RAC review coming to Wisconsin as early as January 2009.

Under the program, RACs are able to review the last three years of provider claims (but only back to Oct. 1, 2007) for the following types of services: hospital inpatient and outpatient, skilled nursing facility, physician, ambulance and laboratory, as well as durable medical equipment. RACs are paid on a contingency fee basis, receiving a percentage of the improper overpayments and underpayments they collect from providers.

Concerns With RAC Program

- The RAC demonstration program has been operating in California, Florida and New York and each state has experienced a variety of significant problems.
- CMS already employs Fiscal Intermediaries, carriers, Medicare Administrative Contractors (MACs), the CERT program, Program Safeguard Contractors (PSCs) and Quality Improvement Organizations (QIOs) to administer Medicare payment, coverage and medical necessity determinations. Additional oversight is provided by the Office of the Inspector General. Rather than add yet *another* layer to this convoluted process, issues should be addressed within the current contractors already overseeing Medicare payment compliance.
- RAC contractors are paid on a contingency fee basis, giving RACs the incentive to aggressively deny any claims that appear at all questionable. This “bounty hunter” payment system forces providers into an appeals process in order receive appropriate payment. A flat fee unrelated to claims collections would be a far fairer approach.
- Medical necessity determinations should be removed from the RACs’ purview. These are too complex and patient-specific for untrained professionals to assess and make payment determinations on.
- The four year “look-back” period for RAC review, which CMS has recently reduced to 3 years, is still too lengthy. At best, a 12-month window should be in place.

- CMS should play a more diligent role in overseeing the RACs and their activities.
- While the law states that RACs are to look for underpayments (hospitals paid too little), experience with RACs to date shows the vast majority of claims (96% vs. 4%) are overpayments.

WHA Position

To address these issues, WHA supports placing a moratorium on the RAC program as found in H.R. 4105, *The Medicare Recovery Audit Contractor Program Moratorium Act of 2007*. Under H.R. 4105, a moratorium is in effect for one year during which time CMS and GAO are required to assess and report on the RACs. WHA urges Wisconsin Members of Congress to cosponsor this legislation and to advocate to CMS on behalf of Wisconsin hospitals about the unnecessary and unduly burdensome RAC program.