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**Note:** This article was updated on October 1, 2012, to reflect current Web addresses. All other information remains unchanged.

## **MMA – The Centers for Medicare & Medicaid Services (CMS) Recovery Audit Contractor (RAC) Initiative**

### **Provider Types Affected**

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Physicians, providers, and suppliers, especially in California, Florida, and New York

### **Provider Action Needed**

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Based on comments received during provider open door forums and community meetings, CMS has amended the payment methodology for the Recovery Audit Contractors to include payment for the identification of Medicare underpayments.

### **Background**

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The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), Section 306, directs the Secretary of the U.S. Department of Health and Human Services (HHS) to demonstrate the use of RACs under the Medicare Integrity Program in: 1) identifying underpayments and overpayments; and 2) recouping overpayments under the Medicare program (for services for which payment is made under Part A or Part B of Title XVIII of the Social Security Act).

### **Update**

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The RACs are paid on a contingency basis; that is, the RACs receive a portion of what they identify and collect. Beginning with underpayments identified on or after March 1, 2006, the RACs will receive an equivalent percentage for all underpayment and overpayment identifications.

The RACs will use the same methodologies of automated and complex reviews to identify potential Medicare underpayments.

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### ***Important Things Providers Need to Know About the Underpayment Identification Portion of the Recovery Audit Contractor Demonstration***

- The RAC may request a medical record for an underpayment determination. However, the medical record request letter will not indicate if the medical record is being requested for overpayment or underpayment review. When responding to a medical record request from the RAC, the provider may attach its own opinion regarding an underpayment. However, the findings from the RAC may differ from that of the provider.
- Upon identification of a potential underpayment, the RAC will forward the claim and all supporting documentation to the appropriate Medicare fiscal intermediary, carrier or durable medical equipment regional carrier (DMERC) for their review. An underpayment identification will not be final unless the fiscal intermediary, carrier or DMERC agrees with the identification. The RAC or the fiscal intermediary, carrier or DMERC will NOT ask the provider to correct and resubmit the claim. Under the RAC demonstration, the RAC contractors have no authority to make refunds. Therefore, once the underpayment has been validated by the appropriate fiscal intermediary, carrier or DMERC, the RAC will send the provider written notice of the underpayment determination. This notice will include claim and beneficiary details.
- The RACs do not have the authority to review unsolicited cases from providers where underpayment is thought to have occurred. Outside of the RAC program if a provider feels they have received an underpayment they may resubmit a corrected claim if the timely filing limit has not yet passed.
- The provider does not have any official appeals rights in relation to an underpayment determination. The provider may utilize the RAC rebuttal process and discuss the underpayment determination with the RAC. If the provider disagrees with the RAC that an underpayment exists, the RAC will defer to the billing provider's judgment.

### ***Definition of an Underpayment***

For purposes of the RAC demonstration, a Medicare underpayment is defined as those lines or payment groups (APC, RUG) on a claim that were billed at a low level of payment but should have been billed at a higher level of payment. The RAC will review each claim line or payment group and consider all possible occurrences of an underpayment in that one line or payment group.

If changes to the diagnosis, procedure or order of diagnoses would change a line or payment group on the claim from a low level of payment to a higher level of payment (and the medical record supports such a change), an underpayment

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exists. Service lines or payment groups that a provider failed to include on a claim are **not** considered underpayments for the purposes of this demonstration.

Note: CMS has excluded the review of physician evaluation and management codes relevant to the level of an office visit or the medical necessity of the level of office visit from the RAC demonstration. This includes the review of overpayments and underpayments.

### *Examples of an Underpayment*

The following are considered underpayments:

- The provider billed for 15 minutes of therapy when the medical record clearly indicates 30 minutes of therapy was provided. (This provider type is paid based on a fee schedule that pays more for 30 minutes of therapy than for 15 minutes of therapy.)
- The provider billed for a particular service and the amount the provider was paid was lower than the amount on the CMS physician fee schedule.
- A diagnosis/condition was left off the MDS but appears in the medical record. Had this diagnosis or condition been listed on the MDS, a higher payment group would have been the result.
- The physician submitted a claim for a surgical procedure using a code for a simpler procedure when in fact the procedure was a more complex one such as in the case of skin repair which can be billed at a simple, intermediate, or complex level depending upon size and complexity.

The following are **not** considered underpayments:

- The medical record indicates that the provider performed additional services such as an EKG, but did not bill for the service.
- The provider billed for 15 minutes of therapy when the medical record clearly indicates 30 minutes of therapy was provided; however, the additional minutes do not affect the grouper or the pricer. (This provider type is paid based on a prospective payment system that does not pay more for this much additional therapy.)
- The medical record indicates that the provider implanted a particular device for which a device APC exists (and is separately payable over and above the service APC), but the provider did not bill for the device APC.

Questions concerning the recovery audit contractor demonstration may be directed to a special email address CMS has established specifically for the demonstration: [cms.recoveryauditdemo@cms.hhs.gov](mailto:cms.recoveryauditdemo@cms.hhs.gov).

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## Additional Information

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If you have any questions, please contact your carrier/intermediary at their toll-free number, which may be found at <http://www.cms.gov/apps/contacts/> on the CMS website.

This article was revised to add link to SE1024 for more information regarding high-risk vulnerabilities. SE1024 is available at <http://www.cms.gov/outreach-and-education/medicare-learning-network-mln/mlnmattersarticles/downloads/SE1024.pdf> on the CMS website.

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