

HEALTH LAW

Update

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Ready, Set GO! RACs Given Green Light to Proceed

February 9, 2009

On February 6, 2009, the Centers for Medicare & Medicaid Services ("CMS") announced that it is now moving forward with the roll-out of the 50-state permanent Recovery Audit Contractor ("RAC") program.¹ Implementation was delayed last year when two unsuccessful bidders for the RAC Permanent Program filed protests with the Government Accountability Office (GAO).² The two companies, PRG-Schultz, Inc. and Viant Payment Systems, Inc., now will work as subcontractors to supplement the work of the four RACs.³

CMS previously announced the following four national RACs:

- **Diversified Collection Services, Inc.**, in Region A, initially working in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and New York.
- **CGI Technologies and Solutions, Inc.**, in Region B, initially working in Michigan, Indiana and Minnesota.
- **Connolly Consulting Associates, Inc.**, in Region C, initially working in South Carolina, Florida, Colorado and New Mexico.
- **HealthDataInsights, Inc.**, in Region D, initially working in Montana, Wyoming, North Dakota, South Dakota, Utah and Arizona.⁴

Additional states will be added to each RAC region throughout the rest of this year with every state assigned to one of the four RAC contractors by January 1, 2010.⁵ RACs will begin work after holding Town Hall meetings in each state with health care providers and CMS staff and representatives to discuss the program.⁶

The RAC Permanent Program was the result of a demonstration project conducted by CMS, which resulted in over \$900 million in overpayments being returned to the Medicare Trust Fund between 2005 and 2008.⁷ Under

¹ See <http://www.cms.hhs.gov/RAC>

² *Id.*

³ *Id.*

⁴ See October 6, 2008 Press Release announcing new Recovery Audit Contractors, found at http://www.cms.hhs.gov/apps/media/fact_sheets.asp

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

the Tax Relief and Health Care Act of 2006, Congress required a permanent RAC program be in place in all 50 states by January 1, 2010.⁸ The RAC program "has provided CMS with a new mechanism for detecting improper payments made in the past, and has also given CMS a valuable new tool for preventing future payments."⁹

All Medicare providers, such as hospitals, skilled nursing facilities, physicians, laboratories, ambulance companies, and durable medical equipment companies, are subject to RAC audits. Payments made to Medicare Advantage or the Medicare Prescription Drug Benefit Program are not subject to RAC review. However, based upon the results of the demonstration project, it is anticipated that the vast majority of RAC audits will involve inpatient hospital claims.¹⁰ Thus, hospital and health systems should expect to receive particular scrutiny under the RAC program.

RACs will select their areas of review based upon data mining techniques, reports from government agencies, such as the OIG or the GAO, CERT reports, and the experience and knowledge of the RAC staff. RAC reviews can be either automated or complex. An automated review will not involve a review of medical records and will rely solely on data analysis to determine improper payments. Alternatively, a complex review will involve the review of medical records to further analyze a claim when data analysis is insufficient. If a provider disagrees with the RAC's determination of a claim, the provider has the right to appeal the decision through Medicare's five-level appeal process.

With the RAC Permanent Program now moving forward, providers should ensure that they have taken appropriate steps to prepare for the RAC audits before receiving the first requests. These steps include the following:

- Establishing a process to ensure that the provider responds to the RAC requests within the required time frames;
- Assembling a multi-disciplinary team to assist in collecting the complete documentation needed to support the audited claims;
- Identifying potential target areas through review of the RACs' websites and other guidance, such as the OIG Work Plan, and conducting periodic audits of similar claims to ensure appropriate coding and documentation;
- Keeping track of denied claims and correcting previous errors; and
- Developing a strategy for handling appeals of denied claims.¹¹

If you have any questions concerning the RAC program or how it could affect your business, please contact any of the attorneys in our Healthcare Industry Practice Group listed below.

⁸ *Id.*

⁹ See <http://www.cms.hhs.gov/RAC>

¹⁰ See "The Medicare Recovery Audit Contractor (RAC) Program: An Evaluation of the 3-Year Demonstration," at p. 18, June 2008, available at: <http://www.cms.hhs.gov/RAC/Downloads/RAC%20Evaluation%20Report.pdf> (noting that approximately 85 percent of collected overpayments involved inpatient hospital claims and CMS anticipates that the permanent RACs initially will continue this focus)

¹¹ *Supra.* at Note 4.

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