



## RAC Audits: Preparing for Medicare's Hired Guns

### Malpractice Insurance

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If you haven't heard, Medicare is utilizing third parties, otherwise known as Recovery Audit Contractors ("RACs"), to identify services provided by doctors that do not meet the many documentation requirements now required by Medicare for reimbursement. For instance, we have seen patient's visit denied based on lack of qualitative measures of patient improvement in plans of care or failure to identify a medical reason for a visit, both convictions leading to a determination of failure to provide medical necessity for care. Conveniently, RACs are reimbursed a percentage of the reimbursement recouped from the services they identify as unsubstantiated for Medicare reimbursement and, therefore, determinations of unsubstantiated care are rampant.

By all accounts, the Recovery Audit Contractor review process is not a fair process. Given a big enough haystack, you are bound to find some needles. Records are requested and, thereafter, dissected and recalibrated in ways that rattle the best of documenters. Of late, the results we have seen presented by our clients is that the RACs are looking to establish that the majority of chiropractic medically necessary visits submitted for reimbursement are, in fact, maintenance visits and, therefore, not reimbursable by Medicare.

You may be reading this and thinking that, if you are not the target of this type of audit as of yet, there is still time to take "preventative measures."

True. However, the RAC is authorized to look back at your records for 3 years. And, as attorneys, we must inform you that any intentional alterations to medical records after the fact may be construed as fraudulent behavior. We're serious. (Of course, this reference is not meant to stop you from amending a record appropriately, which would include adding a new entry that is signed and dated contemporaneously in an old visit.)

#### **What to do if you are contacted by a Medicare RAC:**

First things first; if you are targeted by Medicare, do not panic. There are a number of defenses available to substantiate documentation practices; for instance, as the treating doctor you are, of course, in the best position to diagnose and treat the patient, which warrants a certain amount of deference from the get-go that is typically not acknowledged in an initial RAC review.

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Secondly, be advised that the Medicare system has in place a number of appeals processes, of which we highly recommend availing yourself. It has been our experience that, in the majority of instances more favorable determinations have been levied during the appeals process than as a result of an initial review.

Finally, you should not go through this process alone. Experienced healthcare counsel should be retained at the start of the audit process to ensure your rights are protected and potential damages are mitigated. Typically, malpractice carriers cover the cost of legal defense work in RAC audits and the doctor does not incur additional expenses.

While the audit process may seem daunting, it is important to keep in perspective what the process is about. Every claim you send to Medicare is a bill to the federal government that every tax payor, yourself included, is responsible for. Not one of us has an expectation of going to a store and not being able to inspect what we are purchasing. So, it's not unfathomable to understand Medicare's perspective with the RAC audits—Medicare wants to know that the services for its beneficiaries that it is paying for are quality goods. However, Medicare has apparently adopted the mantra that the customer is always right and similar to Winona at Barney's, Medicare no longer wants to pay for its goods. Bottom line, if no one calls security and the store detectors are turned off, Medicare is walking away with an arm load of goodies, which is why, if you are audited, it's important to question any negative results and stand up for your right to be reimbursed for medically necessary services rendered. This may be easy to forget in the midst of an audit, but you, as the treating doctor, are the only person in charge of care, and you are entitled to reimbursement for all appropriately rendered and substantiated care.

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