

MEDICARE COMPLIANCE

CMS Evaluation of RACs Is Lacking; Overpayments Are Reported to OIG

Every quarter, CMS sends the HHS Office of Inspector General a list of all overpayments identified by recovery audit contractors of \$5,000 or more for physicians and \$25,000 or more for hospitals, according to a new OIG report on the RACs and CMS's oversight of them.

"It would be interesting to know what OIG does with those referrals," says San Francisco attorney Judy Waltz, with Foley & Lardner LLP.

That's one of the surprises in the OIG report released Sept 4. There are others, including the fact that CMS — the ultimate auditor of providers — in some cases did not evaluate the RACs based on their ability, accuracy or effectiveness in detecting improper payments.

"Who's watching the RACs? That's the question," says Denise Wilson, director of training and education for Denial Research Group AppealMasters in Lutherville, Md.

In fiscal years 2010 and 2011, RACs reviewed 2.6 million claims submitted by 292,000 providers, OIG says. Half of them — worth \$1.3 billion — had errors, according to the RACs. Inpatient hospitals made 88% of the mistakes and physician or nonphysician practitioners 5%. Almost one quarter of the improper payments occurred in California and New York.

Of the 1.1 million claims that were overpayments (vs. underpayments), providers appealed 6% and won 44% of the appeals; OIG reported late last year that 56% of RAC appeals are overturned by administrative law judges.

46 Vulnerabilities Cost Medicare \$1.9 Billion

Recovery audits led CMS to identify cracks in its payment armor, such as providers billing add-on codes without primary codes or coding the wrong place of service. By June 2012, the 46 types of vulnerabilities had sent \$1.9 billion of Medicare money down the drain, OIG says. While CMS took action to fix 28 vulnerabilities that accounted for most of the waste by implementing new edits and sending provider education letters, among other things, CMS did not fix the other 18. And whether the corrective actions worked is unclear because they were never evaluated, OIG says.

During 2010 and 2011, RACs referred six providers to CMS for possible fraud, but CMS didn't do anything about it as of November 2012, OIG says.

Finally, OIG weighed in on performance evaluations. CMS used all the metrics they included in their performance evaluations. But the metrics don't reflect all contract requirements, the report says. "Specifically, CMS did not evaluate RACs on the extent that they identified improper payments."

OIG made suggestions to improve RAC effectiveness. For example:

(1) Vulnerabilities: Fix the remaining 18 vulnerabilities. In its response, CMS said this was taken care of. OIG also would like to see CMS evaluate whether corrective actions that CMS put in place had done the trick. Figuring this out, CMS says, is hard and takes time. The agency is exploring the possibility of using a combination approach that includes data analysis, error rate measurement and continued identification of overpayments.

(2) Referrals of Fraud Cases: Make sure RACs refer all fraud cases to program integrity contractors, such as zone program integrity contractors (ZPICs), and to help this along CMS "should identify specific examples of fraud." In terms of the six RAC fraud referrals, CMS noted that only four were ripe for investigations, and one of the providers was ultimately kicked out of Medicare. Of the other two referrals, one originated with a Medicare administrative contractor and the other lacked detail.

(3) Performance Metrics: Devise more performance metrics for RAC evaluations, such as accuracy targets for overpayment determinations. CMS agreed and has revised its evaluations "to incorporate metrics on the RACs' identification of improper payments and accuracy rates."

Wilson says she thinks it's "shameful" that CMS blames the failure to evaluate its corrective actions on lack of resources and the challenge in connecting corrective actions to error reductions. "Anyone who understands the basics of process improvements understands that you don't put a corrective action in place without defining how the success of the corrective action will be measured," she says.

Although it's surprising there were only six fraud referrals from across the country, Waltz says that "it can be hard to identify fraud" if all RACs have to go on is the medical records.

Contact Waltz at jwaltz@foley.com and Wilson at dwilson@appealmasters.com. View the OIG report at <http://go.usa.gov/D48J>. ✦