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CLIENT ADVISORY

February 21, 2014

In Small Win for Providers, CMS Announces Pause in RAC Audit Activity and Changes to RAC Program

On February 18, 2014, the Centers for Medicare and Medicaid Services ("CMS") [announced a "pause in operations"](#) of the Recovery Audit Contractor ("RAC") program. This announcement comes on the heels of last week's Medicare Appellant Forum, where providers from all over the country shared serious concerns with the RAC program and appeals process. As it continues the procurement process for new RAC contracts, CMS will phase out the current RACs' activity as follows:

- **February 21** is the last day a RAC may send a postpayment Additional Documentation Request ("ADR").
- **February 28** is the last day a MAC may send prepayment ADRs for the RAC Prepayment Review Demonstration.
- **June 1** is the last day a RAC may send improper payment files to the MACs for adjustment.

This should give providers a time period of relief from responding to ADRs while CMS continues to finalize the next round of RAC contracts. Once new RAC contracts are awarded, the new RACs will be authorized to review claims with dates of service during this pause in auditing activity. In addition to the pause in auditing, CMS [announced several program improvements](#) to address some of providers' concerns with the discussion period and ADR limits, including:

- RACs must wait 30 days to allow for a discussion before sending the claim to the MAC for adjustment. Providers will not have to choose between initiating a discussion and an appeal.
- RACs must confirm receipt of a discussion request within three days.
- RACs must wait until the second level of appeal is exhausted before they receive their contingency fee.
- CMS is establishing revised ADR limits that will be diversified across different claim types (e.g., inpatient, outpatient).
- CMS will require RACs to adjust the ADR limits in accordance with a provider's denial rate. Providers with low denial rates will have lower ADR limits while provider with high denial rates will have higher ADR limits.

The provider community generally sees these developments as a small win in the fight for fairness and due process in the RAC program. But, like the [initiatives announced by the Office of Medicare Hearings and Appeals](#) ("OMHA") last week, these changes will do nothing to ease the burdens providers face related to the huge and growing backlog of Medicare appeals. In January, the American Hospital Association ("AHA") [urged CMS to make additional changes](#) to the RAC program to alleviate burdens on providers, including permitting providers to retain disputed funds through the third (ALJ) level of appeal, enforcement of statutory timeframes for appeal decisions with default judgments in favor of providers, and addressing systemic issues that lead to avoidable claim denials clogging up the appeals process.

HDJN's Reimbursement team is closely following developments in this area and will provide updates as CMS continues to implement changes to the RAC program and awards new RAC contracts. If you have any questions regarding the RAC program, please contact a member of HDJN's Reimbursement team:

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