

# Health Law Bulletin

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## GET READY FOR THE RACS

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CMS has begun nationwide expansion of the use of Recovery Audit Contractors (RACs). After experience with a pilot program, CMS is required to have RACs operational in all states by 2010. In Arkansas, the work of the RAC is set to begin in August 2009. The RAC assigned to Arkansas is Connolly Consulting.

RACs will perform a provider education function, but their more noticeable function will be to review past Medicare claims in order to detect and correct past improper payments, with the stated objective of educating providers to avoid the mistakes that resulted in those improper payments in the future.

RACs will do a post-payment analysis of claims, using the same Medicare policies as the Medicare Administrative Contractors (fiscal intermediaries and carriers)—that is, National and Local Coverage Determinations and the CMS manuals. Some reviews will be automated and will not require the provider to submit any medical records. Other reviews will require the provider to submit medical records for review, although there are limits on how many records can be requested from any particular provider.

If the RAC finds overpayments, it will issue a demand letter to the provider. The provider will have the opportunity to review the results with the RAC informally, outside the appeal process. If a provider agrees with the RAC's findings, the provider can write a check or allow the amounts to be recouped from future payments. If a provider disagrees with the RAC's findings, the provider can utilize the regular Medicare Appeal Process, including the ability to stop any recoupment if an appeal is filed within 30 days.

Even though the RACs have not begun reviews in Arkansas yet, there are a number of things a Medicare provider can do to prepare for the RACs.

First, check the CMS and OIG websites to see what kinds of improper payments have been found in other program integrity efforts. Second, conduct your own internal assessment to identify areas where you may be out of compliance with Medicare rules. Third, identify a person to be in charge of responding to RAC requests for records; and use only that person once the RAC starts making requests. This person should follow up with the RAC to be sure that records are received. Fourth, learn from your RAC denials. Do not just pay the overpayment and keep doing what you were doing. Fifth, appeal the RAC determinations when necessary and

appropriate. The RACs are not infallible, and they may fail to look at all of the medical records that you send them, or they may draw incorrect conclusions based on the records or their automated reviews. If you are dissatisfied after your informal discussions with the RAC, you should consider filing an appeal. If you decide to file an appeal, you may want to consult your attorney for assistance.