

Final Rule on Medicaid RACs

- States must coordinate recovery audit efforts with other auditing entities. CMS does not want states to duplicate or compromise other auditors' efforts. RACs should not audit claims that have already been audited or are currently being audited by another entity. CMS will not require states to monitor such coordination. Sometimes duplication will be unavoidable.
- States must establish a limit on the number and frequency of medical records requested by a RAC. However, RACs can request exceptions from the states.
- Each RAC must hire a minimum of 1.0 FTE Contractor Medical Director who is a Doctor of Medicine or Doctor of Osteopathy in good standing with the relevant State licensing authorities and has relevant work and educational experience. A state may seek waiver of this requirement from CMS. RACs must also employ trained medical professionals, as defined by the state, to review Medicaid claims.
- RACs must hire certified coders unless the State determines that certified coders are not required for the effective review of Medicaid claims.
- RACs must work with the State to develop an education and outreach program component, including notification of audit policies and audit protocols for auditing bodies and providers to have clearly defined roles and expectations. CMS is encouraging transparency.
- RACs must include customer service measures, including: providing a toll-free customer service telephone number in all correspondence sent to providers; compiling and maintaining provider approved addresses and points of contact; mandatory acceptance of provider submissions of electronic medical records on CD/DVD or via facsimile at the providers' request; and notifying providers of overpayment findings within 60 calendar days.
- There is a three-year maximum claims look-back period from the date of the claim unless the RAC receives approval from the state to go back further.
- There must be return of contingency fees within a reasonable timeframe as prescribed by the State if a Medicaid RAC determination is reversed at any level of appeal.
- States are permitted to exclude Medicaid managed care claims from review by Medicaid RACs.
- States must adequately incentivize the detection of underpayments.
- States must notify providers of underpayments that are identified by the Medicaid RACs.

- States must provide appeal rights under State law or administrative procedures to Medicaid providers that seek review of an adverse Medicaid RAC determination. States can either use existing appeals processes or submit new appeals processes to CMS for approval.
- CMS is strongly encouraging states to adopt the following:
 - Medical necessity reviews. CMS encourages states to monitor these reviews for accuracy.
 - Formation of state review teams for Medicaid RACs that can approve new audit issues prior to review.
 - Extrapolation of audit findings.
 - External validation of accuracy of RAC findings.
 - Types of claims audited.
- States have complete flexibility on:
 - Underpayment methodology.
 - State appeals processes.
 - Contingency fee rates. However, the contingency fee rate cannot exceed the highest fee paid to a Medicare RAC, unless the state can provide sufficient justification. States where contingency fee rates are prohibited by law are exempt from the contingency fee requirement. States are not required to make public their RAC payment rates.
 - State exclusion of claims.
 - Bundling of procurements.
 - Coordination of the collection of RAC overpayments.
- States should rely upon internal processes and procedures for notification requirements and identify specific timeframes for required responses between the Medicaid RAC and providers.
- CMS disagreed with our suggestion to require RACs to accept hospital, doctor or other authorized practitioner records to validate pharmacy record and prescription accuracy.
- CMS disagreed with our suggestion to required RACs to hire licensed pharmacists for claim review.
- CMS will not penalize RACs for unfounded overpayment findings.
- CMS says that states should, but are not required to compensate providers for underpayments. It is governed by state law.
- Only the states, not the RACs, have responsibility to make fraud referrals to the MFCU or law enforcement.
- Implementation is set for January 1, 2012.