

CLIENT ADVISORY

RAC Claims Reviews May Result in Uncovered Costs. Are Your Clients Protected?

Are your Health Care clients Medicare fee-for-service (FFS) providers? If so, their Medicare claims are subject to review by Recovery Audit Contractors (RACs) and they are exposed to the associated costs that are typically not afforded under traditional medical professional liability or directors and officers insurance policies. Affected providers include inpatient and outpatient hospitals, long-term care hospitals, inpatient psychiatric, inpatient rehabilitation, skilled nursing, home health, hospice, physician services and durable medical equipment suppliers.

What is a Recovery Audit Contractor (RAC)?

The RAC program is a nationwide program that was developed to help the Centers for Medicare and Medicaid Services (CMS) identify improper payments made by Medicare. Section 302 of the Tax Relief and Health Care Act of 2006 made the RAC Program permanent and required the Secretary to expand the program to all 50 states by no later than 2010. RACs are private companies hired and paid by the government. They are paid a contingency fee based on a percentage of the improper payments they identify and collect. The American Hospital Association (AHA) and the American Medical Association (AMA) have expressed concerns regarding the fact that RACs are paid on a contingency basis, since it provides financial incentive for them to aggressively identify claims for review.

What is the risk for your clients?

According to a January 2008 report by the Office of Management and Budget (OMB), Medicare's improper payments totaled an estimated \$10.8 billion in 2007. The CMS reported that RACs found and corrected more than \$1.03 billion in Medicare improper payments, during the initial three-year, five-state demonstration program, between 2005 and 2008. Approximately 96% (\$992.7 million) of those improper payments were overpayments. However, the true expense to providers is larger than repaying these improper payments. With 14% of the RAC decisions appealed, the legal expenses, fines, and penalties that result from a billing error are increasingly a concern for hospitals and physicians.

How can you protect your client?

Although traditional medical professional liability or directors and officers insurance policies will often not cover the legal expenses, fines, and penalties that result from a billing error, many carriers will consider an endorsement while others are offering stand-alone coverage. Consider whether one of those two options would benefit your client.

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To learn more about how you can protect your clients from this uncovered exposure, reach out to your AmWINS contact or send email to marketing@amwins.com.

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