Changes are on the horizon as legislation is introduced to impose a 1-year moratorium on RAC demonstration program.

by Anthony H. Choe, JD, MPH
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Last year, Medicare providers and Congress began expressing their concerns over the Recovery Audit Contractor demonstration program overseen by the Centers for Medicare and Medicaid Services.

In November, troubled that the Recovery Audit Contractor (RAC) program was adversely affecting the quality of patient care, Congress introduced legislation in the House of Representatives to impose a 1-year moratorium on the program. Although it remains to be seen whether CMS can propose appropriate adjustments to the RAC program in time to forestall legislative action, changes to the program are on the horizon.

The RAC demonstration project

Traditionally, Medicare fiscal intermediaries and carriers evaluate a small percentage of claims (less than 5%) to determine whether improper payments were made to providers under Parts A and B of the Medicare program. However, based on concerns that these administrative reviews are insufficient to protect the integrity of the Medicare program, Congress enacted Section 306 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

Section 306 requires CMS to conduct a 3-year demonstration project to evaluate whether RACs could provide a cost-effective means of identifying and reconciling improper payments. Reimbursed on a contingency fee basis, the RACs would keep a percentage of recovered overpayments and have a strong financial incentive to ferret out improper payments. (This demonstration is the first time that CMS has reimbursed a contractor on a contingency basis for claim review and overpayment collection work.)

In early 2005, CMS announced that three RACs would evaluate claims in three states as part of the demonstration: PRG Schultz (California), Health-Data Insights (Florida) and Connolly Consulting (New York). Once the demonstration ends in March, CMS plans to implement the RAC program nationwide by 2010.
Backlash in California

On May 29, 2007, more than half of California’s congressional delegation sent a letter to CMS expressing their concern that the RAC demonstration lacked sufficient oversight. According to the letter, PRG Shultz was denying nearly all claims for the admission of patients with joint replacement procedures to inpatient rehabilitation facilities (IRFs). As a result, IRFs were being forced to divert resources away from patient care to appeal these RAC determinations. The delegation urged CMS to examine PRG Shultz and require it to refund any contingency fees received for cases that are overturned on appeal.

In September, the California delegation became aware of a CMS decision to “pause” PRG Shultz’s evaluation of IRF claims. Although the delegation was pleased that CMS had suspended the California RAC, they were incensed at CMS’s failure to respond to their requests for additional information on the nature of the pause. On Nov. 1, the delegation sent another letter to CMS warning of possible legislation and asking for a written explanation by Nov. 7.

Legislation introduced to impose moratorium on RAC demonstration project

On Nov. 8, a day after the delegation’s deadline elapsed without a response from CMS, Reps. Lois Capps, D-Calif., and Devin Nunes, R-Calif., promptly introduced HR 4105, the Medicare Recovery Audit Contractor Program Moratorium Act of 2007. In addition to placing a 1-year moratorium on the RAC program, the legislation would require CMS and the Government Accountability Office to evaluate the RAC program and report their findings to Congress.

CMS proposes changes to the RAC program

On Dec. 7, CMS Acting Administrator Kerry Weems finally responded to Reps. Capps and Nunes stating that CMS had instituted the pause to give its contractor, AdvanceMed, time to perform an independent review of claims denied by PRG Shultz. Based on this review, AdvanceMed had disagreed with PRG Shultz’s conclusion in 40% of cases. In response to these findings, Mr. Weems acknowledged that all of the parties involved did not consistently apply the Medicare coverage and payment policies for IRF services and proposed to take three steps: provide education training for all the involved parties; require PRG Shultz to re-review all IRF claims that were determined to have an overpayment; and suspend reviews on IRF claims that have not already been reviewed so that these reviews will reflect the information provided in the training sessions.

CMS also indicated that it would implement several changes to the national RAC program. For example, unlike the demonstration, the national program would require RACs to have a medical director. Also, if a RAC determination is overturned, CMS would require the RAC to refund any associated contingency fees.

‘A day late and a dollar short’

On Dec. 10, the American Hospital Association, the California Hospital Association and the Healthcare Association of New York State responded to Mr. Weems’ letter. Although they applauded CMS for taking corrective measures, they expressed their ongoing concerns of RAC program deficiencies, which Mr. Weems did not address in his letter. Similarly, Rep. Capps remarked that Mr. Weems’ response was “a day late and a dollar short,” reasoning that the letter did “not address how [CMS] will rectify many of the problems that have arisen since the beginning of the demonstration program, nor [did] it adequately elaborate on how [CMS] will prevent many of these problems in the future.” Describing the program as “deeply flawed,” Rep. Capps suggested that the RAC demonstration was “already harming health care providers and threatening patient care in California, New York and Florida.”

On the horizon

Various groups, including the American Hospital Association, continue to pressure Congress to impose legislative changes on the RAC program, including the elimination of the contingency fee reimbursement system and improvements to the program’s transparency. Because CMS’s proposals to change the RAC program have not been enough to placate the critics of the RAC program, it is likely that additional changes – whether administrative or legislative – are on the horizon.

For more information:

Anthony H. Choe, JD, MPH, can be reached at Arnold & Porter LLP, 555 12th St. NW, Washington, DC 20004; 202-942-6611; fax: 202-942-5999.