Recovery Audit Contractor Changes will be Major in 2014

(May 7, 2013): The Recovery Audit Contractor (RAC) program is slated to undergo significant changes in 2014. As discussed below, non-hospital health care providers and suppliers are likely to find the Medicare appeals process more complex than ever as RACs enter into the process in an effort to defend their denial decisions.

I. Background of the RAC Program:

The RAC program was first established as part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). The program's stated purpose was to detect and correct improper payments made by the Medicare program to health care providers and suppliers. RACs were initially restricted to performing only post-payment audits of paid Medicare claims. Importantly, the post-payment audits conducted by RACs were not intended to replace ongoing post-payment review efforts already underway by Medicare Administrative Contractors (MACs), Zone Program Integrity Contractors (ZPICs), Benefit Integrity Support Centers (BISCs) or the Department of Health and Human Services, Office of Inspector General (HHS-OIG).

II. The RAC Demonstration Project:

The RAC demonstration project was initially limited to three states, California, Florida, and New York. The demonstration project was subsequently expanded to also include Massachusetts, South Carolina and Arizona. Congress later extended the scope of the RAC program, making it a permanent, nationwide initiative under Section 302 of the Tax Relief and Health Care Act of 2006. While a number of physicians, home health agencies and durable medical equipment (DME) companies have, in fact, been subjected to audit by a RAC, the primary focus of RACs around the country has remained hospitals and other large institutional Medicare providers.

III. Expansion of RAC Duties:

With the passage of the Affordable Care Act (ACA) in 2010, the program was further expanded to cover Medicaid claims processed by State programs around the country. Most recently, the Centers for Medicare and Medicaid Services (CMS) has authorized RACs to conduct ***"prepayment reviews"*** of ***"certain types of claims that historically result in high rates of improper payments."*** Prepayment reviews by RACs are currently focused on seven states where ***"high populations of fraud and error-prone providers"*** have been identified. These seven states include:

1. ***Florida***
2. ***California***

3. Michigan
4. Texas
5. New York
6. Louisiana
7. Illinois

Additionally, CMS has authorized RACs to conduct prepayment reviews of ***short inpatient stays*** in four additional states. These states include:

8. Pennsylvania
9. Ohio
10. North Carolina
11. Missouri

One purpose of this change is to move away from a ***"pay and chase"*** system of review where potential overpayments have already been paid by the government. Instead, RACs will now be conducted prepayment audits, like their ZPIC and MAC counterparts – thereby preventing possible overpayments from being paid in the first place.

IV. Upcoming Changes to the RAC Program:

Over the next year, health care providers and suppliers are likely to find that RACs are both more active and more likely to remain actively involved in overpayment cases appealed by Medicare providers and suppliers. Several upcoming changes include:

RAC prepayment audits will likely be expanded to beyond the 11 states now authorized.

RAC contract with CMS currently run through February 2014. The new RAC contract period will be extended to cover the period 2014 to 2018.

> ***There are currently four RACs operating around the country. CMS is planning on expanding program to include a fifth contractor. The existing four contractors will continue cover their designated regions while the new fifth contractor will assume responsibility for identifying overpayments by home health agencies, hospices and DME suppliers.***
>
> ***If a health care provider or supplier challenges an alleged overpayment (identified by a RAC) through the administrative appeals process, CMS will now be requiring that RACs actively defend their assessments in the appeals process.***

As the 2013 Statement of Work (SOW) for RACs provides:

> ***"For any Recovery Auditor-identified improper payment that is appealed by the provider, the Recovery Auditor shall provide support to CMS throughout the administrative appeals process and, where applicable, (during) a subsequent appeal to the appropriate federal court. This includes participating or taking party status at the administrative law judge (ALJ) level of appeal in a minimum of 25 percent of the cases that reach this level."***

V. Conclusion:

The upcoming changes to the RAC program outlined above are likely to dramatically impact the administrative appeals process. As it currently stands, ZPICs are typically the only CMS to attend ALJ hearing as a "participant." Although ALJ hearings are intended to be non-adversarial proceedings, the participation of ZPIC personnel in the hearing process has sometimes transformed a hearing into a hotly-contested event. The participation of RAC personnel in ALJ hearings are similarly likely to complicate the proceedings. In light of these changes to the appeals process, we strongly recommend that health care providers and suppliers engage qualified, experienced legal counsel to represent their interests in the administrative appeals process.

 Robert W. Liles **and other Liles Parker attorneys have extensive experience representing health care providers and suppliers around the country in the Medicare administrative appeals process. Should you have any questions regarding this process, please call Robert for a free consultation. He can be reached at 1 (800) 475-1906.**