

## **RECOVERY AUDIT CONTRACTORS (RAC): MORATORIUM LEGISLATION CONTINUES TO GAIN SUPPORT**

The Recovery Audit Contractor (RAC) Program was established by CMS to ensure that correct payments are being made to providers, and to protect the overall interests of the Medicare Trust Fund. Section 306 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) mandated CMS to conduct a three-year demonstration project to evaluate whether RACs could provide a cost-effective means of identifying and reconciling improper payments. Under this demonstration project, RACs are reimbursed on a contingency-fee basis and keep a percentage of overpayments, therefore giving them a strong financial incentive to search out improper payments. The RAC demonstration project started in 2005 in California, Florida and New York and ended in March 2008. CMS recently reported that RACs collected \$357 million in overpayments from Medicare providers in these three demonstration states during fiscal year 2007. As a result of the financial success of the project, Congress decided to make the program permanent and required CMS to perform RAC reviews in all 50 states. By 2010, CMS plans to have four RACs, each responsible for approximately one-fourth of the country. So far, the RAC program has expanded to Massachusetts, South Carolina and Arizona.

Late last year, Medicare providers and members of Congress began expressing their concerns over the audit process of the RAC Demonstration Program. In November, 2007, these members introduced legislation HR 4105, the Medicare Recovery Audit Contractor Moratorium Act, in the House of Representatives to impose a one-year moratorium on the expansion of the program. In addition, representatives Lois Capps (D-CA) and Devin Nunes (R-CA) introduced legislation which required CMS and the Government Accountability Office (GAO) to evaluate the RAC program and report their findings to Congress. CMS would be required to report specific information about the number and types of claims reviewed, the types of reviews, and the outcome of appeals. The GAO evaluation would examine the RAC program's compliance with current Medicare policy as well as compare its efficiency with existing Medicare quality improvement programs and contractors. CMS would also be required to submit quarterly reports to Congress once the RAC program resumes.

HR 4105 continues to gain support within the House of Representatives. There are currently 77 co-sponsors of the legislation. In addition to Congress, other organizations such as the American Hospital Association (AHA), American Health Information Management Association (AHIMA), and American Association of Healthcare Administrative Management (AAHAM) have given their support of the legislation and are urging Congress to delay expansion of the program until the report findings can be evaluated. While these organizations are supporting a delay in the expansion of the RAC program, they are not protesting the overall auditing of claims but rather the audit process during the pilot state demonstration program plus the scope of work required to expand the RAC process to all 50 states. To read more about the RAC program, go to: <http://www.cms.hhs.gov/RAC/>. To read more about HR 4105, go to: <http://www.govtrack.us/congress/bill.xpd?bill=h110-4105>.

### **FOR FURTHER INFORMATION**

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