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Legal Alert

ADVERTISING MATERIAL

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COMPLEX RAC AUDITS HAVE BEGUN: IS YOUR HOSPITAL PREPARED?

The Centers for Medicare and Medicaid Services (CMS) have committed enormous resources to aggressively seek out and recoup overpayments made to hospitals and other health care providers. One initiative, the Medicare Recovery Audit Contractor (RAC) program, is in full swing, having become a permanent fixture on the audit landscape now spanning the nation. In addition to a substantial monetary return to CMS ($1.03 billion in improper Medicare payments were identified during the RAC three-year demonstration project), RAC audits have reportedly spawned a number of False Claims Act whistleblower cases. Moreover, the RACs are now receiving targeted training on how to identify and report suspected instances of provider fraud. Hospitals need to pay attention.

Automated RAC reviews have been on-going since September 2009, but now DCS, the Region A RAC (covering New York, New Jersey, Connecticut and 8 other states) has posted six CMS-approved complex audit issues for inpatient hospital services. Hospitals in the tri-state area have already reported receiving requests for medical records from DCS to support these audit areas. Importantly, hospitals should know that RAC auditors can request records going back to 2007.

Target DRG Audit Areas

The complex audits will encompass MS-DRG validation involving the following procedures and services: (i) tracheostomy, (ii) ventilator support of 96+ hours, (iii) pulmonary edema and respiratory failure (iv) intracranial hemorrhage or cerebral infarction (v) major large and small bowel procedures and (vi) cardiac procedures. Moreover, a new automated review of hospital-to-hospital transfers was announced on March 31, 2010; for this audit, DCS will ensure that transfers of Medicare beneficiaries were not improperly reported as hospital discharges.

Steps Hospitals Can Take Before a RAC Audit

Hospital preparation for a RAC audit cannot be overstated. The financial impact of the RAC demonstration project was huge: 33% of medical record reviews resulted in an overpayment finding. Recommended steps hospitals should consider taking now to prepare include the following:

- Assemble a RAC team responsible for
  - coordinating and overseeing the response to requests for medical record documentation,
  - reviewing all audit results, and
  - evaluating whether to appeal any adverse findings;
- Educate physicians and others about RAC activity;
- Regularly train clinical staff and coding and billing personnel on proper documentation techniques;
- Strengthen your pre-submission claim reviews;
- Review issues uncovered in the RAC demonstration project available at: http://www.cms.gov/RAC/Downloads/RACEvaluationReport.pdf
- Conduct internal audits of approved audit areas prior to the RAC review;
- Institute remedial actions now to correct problems; and
- Monitor the CMS RAC website (www.cms.hhs.gov/RAC) and the Region A RAC website (http://www.dcsrac.com/) for information and updates concerning new audit areas, documentation request limits, and time limits for responding to audit requests and result letters.

continued…

Self-Disclosure

Hospital providers that uncover simple overpayments through their internal auditing processes must promptly refund any improper monies received and can do so through normal administrative processes or by using, for instance, the Medicare Overpayment Refund Form. However, if an audit uncovers an internal practice that potentially violates criminal, civil or administrative laws (i.e., a potential finding of fraud or abuse), the hospital should consider self-disclosing Medicare overpayments through more formal channels, using the Office of Inspector General's Self-Disclosure Protocol (or for Medicaid overpayments, the State Office of Medicaid Inspector General's Self-Disclosure Protocol). Self-disclosing has attendant risks (e.g., the government may widen the audit to other areas or go back further in time) as well as potential benefits (e.g., possible reduction in penalties and sanctions) that must be carefully weighed. Some of the factors that should be considered include not only the amount involved, but whether there are any patterns of errors that demonstrate a deficiency within the hospital's system, the period of non-compliance, the hospital's compliance history, and whether or not the hospital has a corporate integrity agreement (CIA) in place.

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If you have any questions, please contact the GW attorney with whom you regularly consult.

About Garfunkel Wild, P.C.

Garfunkel Wild, P.C. was founded in 1980 with a single purpose in mind: to become a pre-eminent health care law firm attending to the unique business and legal needs of its clients. Since then, the firm has grown to over 80 attorneys devoted to addressing the complex legal, regulatory, business and financial needs of its diverse clients.

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