Research

Primer: Recovery Audit Contractor Program and the "Two Midnight" Rule

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Introduction

The Recovery Audit (RA) Program exists to detect and correct improper claims to the Medicare program. The contracted firms are paid a portion of their recoveries, so the program delivers savings to the Medicare Trust Fund at no cost. However, Recovery Audit Contractors (RAC) are currently being weakened by the Centers for Medicare and Medicaid Services (CMS) through several policy changes and are facing a transition period between contracts that will result in a limited scope of recoveries.

The Origin of the Recovery Audit Contracting Program

Detecting Medicare fraud and recovering faulty reimbursements became a priority for the federal government and the Health Care Financing Agency in the early 1990's. *While it was always possible to prosecute those defrauding the federal government under the False Claims Act, in order to recoup wasted funds, the government had to prove the difficult standard of "criminal intent to defraud."[ii] In 1986, the Act was amended to specify that Medicare and Medicaid fell under the False Claims Act and that citizens could bring cases against medical providers and share in the recovered funds.[iii] With harsh penalties for submitting false or incorrect claims, most of the cases were settled rather than fought in court.*
The 1996 Health Insurance Portability and Accountability Act (HIPAA) included Medicare-specific fraud and abuse funding from the Medicare Trust Fund and set up the Health Care Fraud and Abuse Control Account (HCFAC), which distributed money among many agencies including the Health Care Financing Administration, the Office of the Inspector General, the Office of General Counsel, Federal Bureau of Investigations, Department of Justice and other sectors of the Health and Human Services Agency.

The Medicare Modernization Act of 2003 implemented the RAC initiative as a pilot program. In 2009, the RAC program was launched nationwide. RACs are contracted to audit Medicare claims data for proper billing practices and receive a percentage of their recoveries as payment. The country is divided into four regions and each region has a RAC that audits claims in that area. Diversified Collection Services audits Region A, CGI Federal audits Region B, Connolly audits Region C, and HealthData Insights audits Region D. The RACs' audit all claims; the recent focus has been on site of care, upcoding (billing for a higher intensity of services than were provided, and thus, earning greater reimbursement) and medical necessity.[iv] Table 1 below shows their correction totals in fiscal years 2010-2012.

Table 1: Recovery Audit Program Corrections, in Millions

	FY 2010	*FY2011*	*FY2012*	*FY 2013 Through June 30 2013*