

## Report on Medicare Compliance Volume 30, Number 18. May 10, 2021 More RAC Audits Are Coming, This Time From VA for Community Care

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By Nina Youngstrom

Another recovery audit contractor (RAC) is coming to town, this time by way of the Department of Veterans Affairs (VA). Providers who treat veterans through community programs, which free them to get care outside of VA medical centers, should prepare for audits, an attorney said. The VA has identified billions of dollars in overpayments for physician-administered drugs, critical access hospitals, home health services, skilled nursing facility admissions and other services.

“I have half a dozen settlements in process from J code audits,” said attorney Stephen Bittinger, with K&L Gates in Charleston, South Carolina. Providers may be able to work directly with the VA, however, if they self-audit, he said. That will probably reduce their overpayment amount.

The VA hired the RAC, HMS Federal Solutions, to recoup overpayments that the VA Office of Inspector General (OIG) identified in audits. The OIG focused on payments to community care providers, which are based on Medicare rates. For example, in a 2017 audit<sup>[1]</sup> of physician self-administered drugs in Florida prompted by a tip to the OIG hotline, OIG found the VA’s Florida claims processing centers “did not reimburse a non-VA care provider based on the applicable Medicare rates, when appropriate.” The initial review concluded there were \$28,295 in overpayments stemming from 52 of the 55 “examples” provided by the tipster. The OIG expanded its review to all payments for non-VA care providers by Florida VA facilities for physician-administered drugs from Oct. 1, 2012, through March 31, 2016. The findings: they were overpaid about \$17.2 million.

The genesis of overpayments like those identified in the report was the shift of claims processing away from VA facilities to a central adjudication system nationally, Bittinger said. The story is convoluted, because along the way there were third-party administrators that managed the community care programs until the passage of the VA MISSION Act of 2018.<sup>[2]</sup> The development of community care programs gave veterans greater access to private health care, but as the VA discovered, providers may be unwittingly paid above the Medicare fee schedule for the services provided to veterans, Bittinger said.

As a result, the VA hired HMS (after ending a RAC contract with a different company), he said. “The general counsel for the VA said HMS is activating all of their audits,” he said. “In the near future, providers should expect to get ADRs [additional development requests] from HMS if they treat veterans.”

### The Focus Is on the Margin Analysis

The focus of the overpayments is the amount the VA paid community care providers above the Medicare fee schedule. “Although the RAC can question the validity of the service, it is predominately focused on a margin analysis,” he said. If the Medicare rate for a service is \$75 and the provider’s bill rate was \$100, the VA would have paid \$100 and is recovering the difference.

But RACs also are permitted to question the entire dollar amount, including the validity of the service, which is perilous for providers, Bittinger said. They don’t want the RACs to go there, which is why it’s preferable to

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negotiate a resolution directly with the VA. “We have been able to take practices out of the RAC audit and do the analysis ourselves,” he said. For example, one oncology group was paid \$6.6 million above the Medicare rate, but the total value of the claims was \$40 million. “If they went through the RAC audit, the RAC is allowed to question the \$40 million and make recoveries against the whole \$40 million,” Bittinger said. By self-auditing and dealing directly with the VA, the oncology group’s settlement amount was negotiated down from \$6.6 million, instead of the whole amount.

Bittinger said the RAC audits also will focus on emergency care, community mental health centers, rural health clinics, outpatient rehabilitation and durable medical equipment, prosthetics and orthotics supplies.

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**1** Veterans Health Administration, *Review of Alleged Overpayments for Non-VA Care Made by Florida VA Facilities*, 15-01080-208, June 5, 2017, <https://bit.ly/3f5aQBz>.

**2** VA MISSION Act of 2018, Pub. L. No. 115-182, 132 Stat. 1393 (2018), <https://bit.ly/3xSMjrU>.

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