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February 25, 2011

Department of Health and Human Services
Centers for Medicare and Medicaid Services
Attention: CMS-6041-NC
P.O. Box 8013
Baltimore, MD 21244-8013

Dear Dr. Berwick,

The American Health Information Management Association (AHIMA) would like to submit to you comments and recommendations on the request for information published in the *Federal Register* Monday, December 27, 2010 regarding the development of a Recovery Audit Contractor (RAC) Program for the Medicare Part C and D Programs [75FR81278].

AHIMA is a not-for-profit professional association representing more than 61,000 health information management (HIM) professionals who work throughout the healthcare industry. AHIMA's HIM professionals are educated, trained, and certified to serve the healthcare industry and the public by managing, analyzing, reporting, and utilizing data vital for patient care, while making it accessible to healthcare providers and appropriate researchers when it is needed most. We respectfully submit our comments as many of our members are and will continue to be active participants in the implementation, maintenance, and compliance with the RAC s program.

If AHIMA can provide further information or if there are any questions regarding our recommendations, please contact me at (202) 659-9440 or allison.viola@ahima.org, or Dan Rode, vice president, policy and government relations, at (202) 659-9440 or dan.rode@ahima.org.

Sincerely,

A handwritten signature in black ink that reads "Allison Viola". The signature is written in a cursive style and is placed on a light gray rectangular background.

Allison Viola, MBA, RHIA
Director, Federal Relations

cc: Dan Rode, MBA, CHPS, FHFMA, Vice President, Policy and Government Relations

II. Proposed Approach and Solicitation of Comments for Section 6411 of the Affordable Care Act

- Methods for RACs to identify underpayments and overpayments in the Medicare Part C and Part D programs.
Recommendation: CMS should leverage the current system that has been established for the Medicare Fee-For-Service (FFS) program and ensure the methods for identifying underpayments and overpayments are uniformly implemented. Implementing a consistent approach for the RAC program will reduce confusion, uncertainty, and burden on the provider responding to the RAC's requests for claims review.
- Utilizing a phased-in approach for RACs in the Medicare Part C and Part D programs, similar to the development of RACs in the Medicare FFS program.
Recommendation: AHIMA supports the phased approach method that was conducted for the Medicare FFS program.
- The criteria or qualifications necessary to enable a RAC to knowledgeably and appropriately review the payments in Medicare Part C and Part D plans. (We note that in order to meet the qualifications, the Medicare FFS RACs must obtain the services of certified coders, nurses, or therapists, and a Contractor Medical Director.)
Recommendation: AHIMA strongly endorses the requirement to have a certified coders, medical director, nurses, etc. We encourage CMS to ensure the educated and credentialed coders hired by the RAC has and can demonstrated experience in the setting in which he/she will be working to review medical records.
- Establishing an oversight entity for Medicare Part C and Part D RAC Issue Approval. We are considering establishing a review board for the Part C and Part D RACs. (We note that FFS RACs have the authority to pursue clear cut vulnerabilities that can lead to improper payments. However, for more complex vulnerabilities, a review board is utilized. This board decides whether FFS RACs can proceed with the proposed review.)
Recommendation: AHIMA supports establishing an oversight entity for Medicare Part C and Part D RAC programs. CMS should consider including an experienced health information management professional who has either worked with audit programs in the past or who is knowledgeable in the coding issue that can arise in billing or chart audits. AHIMA also notes that RAC programs must be prepared for ICD-10-CM/PCS changes in October 2012.
- Methods for resolving underpayments and how payments related to underpayments identified by the RAC would be implemented in the Part C and Part D programs.
Recommendation: We encourage CMS to construct a consistent approach for resolving payment issues which should also include a rebuttal period. By conducting this process in a uniform manner it will reduce uncertainty, confusion, and burden among the providers.

- Potential for allowing Part C and Part D plans to use RACs within their own plans to identify overpayments in its operations. Working through us, the RAC contractor would come to an agreement with interested MA organizations (MAO) to conduct claims review. The claims review would be conducted on claims submitted to the MAO for payment to providers serving the MAO enrollees. The RAC would be paid by the MA organization on a contingency fee basis and overpayments the MAO recoups as a result of the RAC activities would be retained by the MAO. In approaching this work, the RAC contractor would consider the use of complex and automated review of claims.
Recommendation: AHIMA members working in provider organizations with Part C plans are currently experiencing their Part C plans implementing RAC activities outside of the CMS program. This current process establishes an intimidating environment whereby the providers feel they cannot maintain the volume and depth or request nor resolve the payment dispute as they have contractual agreements with the Part C payers which may not be renewed, thus causing a financial loss for the providers. In this situation, members tell us they are not experiencing a willingness on the part of the RAC to come to a rational resolution. We also suggest applying a different term for Part C and D plans to use RACs within their own plans as we believe this may cause confusion.

General Comments and Recommendations

In meeting with and discussing your request for information with members, AHIMA has the following comments and recommendations that align with the Medicare Part C program:

- **Record requests:** Regarding record requests, AHIMA strongly urges CMS to consider and utilize the current process for requesting records. We believe CMS has learned from the demonstration project that was conducted over a three year period where initially RACs had the opportunity to set their own limits. Providers were overwhelmed with the number of requests from the RACs and we believe the boundaries established in the permanent program where CMS set uniform limits is appropriate for this program as well.
- **Lessons learned:** RACs for the Part C and D programs should perform their functions similar to the current Medicare FFS program and processes. We believe the lessons learned documented in the “*The Medicare Recovery Audit Contractor (RAC) Program: An Evaluation of the 3-Year Demonstration*” report submitted in June 2008¹ should be reflected in the new RAC program for parts c and D.
- **Beneficiary communication:** Perform beneficiary communication to help them understand what the RAC program is about and how it may impact them. This effort is not conducted in the current RAC program.
- **Provider education:** CMS to conduct ongoing education for the providers to help them better understand the program and its nuances as well as the requirements that are necessary to be compliant with the program.
- **Encounters:** Regarding the Medicare Part C program AHIMA encourages CMS to consider the look-back period be closed before records are requested of this timeframe. We also

¹ “The Medicare Recovery Audit Contractor (RAC) Program: An Evaluation of the 3-Year Demonstration,” Centers for Medicare and Medicaid Services, accessed February 24, 2011, <http://www.cms.gov/RAC/Downloads/RACEvaluationReport.pdf>.

request CMS provide further information how the RACs will identify specific encounters for review in order to reduce the process of requesting all medical records for a patient. We believe CMS ensure the RAC has the ability to specify what encounter is needed for review.

- **Minimal RAC contractors:** AHIMA encourages CMS to consider limiting the number of contractors/companies that may take on the RAC activities. Our members believe this will reduce variation in their activities and suggest this program be managed by a centralized approach.
- **Consistency in communication:** Communication from RACs to the providers should consist of a certain level of uniformity. Currently, our members experience a wider variety of messages in their letters to the providers and this causes confusion and burden to assess and determine what is being requested. AHIMA suggests CMS establish standard language or template to ensure consistency in communication by all RACs.
- **Response from RACs:** RACs should respond to providers in a timely and consistent basis whether the information is positive or negative for the provider. Our members experience a wide variety of response times from RACs, particularly periods of several months where they do not receive feedback from the RAC at all. This creates confusion and uncertainties on the status of a specific claim therefore it would greatly benefit the provider to have consistent communication and methods of communication from the RACs. Establish a framework for oversight and accountability to ensure their compliance with the program requirements.