

Current Law: Physician Audit & Appeals Process

CMS Recovery Audit Contractor (RAC)

- RAC Notifies Physician of Alleged Overpayment Audit
- RACs are Not Required by Law to Provide Certain Information Before and After Audits
- RACs May Use Extrapolation in Certain Circumstances to Identify Overpayments & Physician Cannot Appeal Use of Extrapolation
- RACs Not Required to Provide Notice before Conducting Audit on an Overutilized Code
- RAC Can Review Claims Up to 4 Years Old under Law

*Non-Specialist/ Subspecialist May Review
Medical Necessity Audit*



Physicians

- Physician Disputes Audit Finding on Day 1-30 → Value of Disputed Audit Finding Protected
- Physician Disputes Audit Finding on Day 31-120 → Value of Audit Finding Not Protected (*Statutory Authority in Question*). On Day 41, CMS Begins Process of “Clawing Back” Disputed Audit Finding Amount for New Claims Submitted or Physician Writes Check for Alleged Overpayment Amount

**Physician Appeals Disputed Claim
“Redetermination”**



CMS 1st Level Appeal

- Medicare Administrative Contractor (MAC) Reviews
- MAC Must Act on Appeal Within 60 Days
- MAC Rarely Meets Deadline

**Physician Appeals Disputed Claim
“Reconsideration”**



CMS 2nd Level Appeal

- Qualified Independent Contractor (QIC) Reviews
- QIC Must Act on Appeal within 60 Days
- QIC Rarely Meets Deadline
- QIC Statutorily Permitted to Clawback Physician Payment at this Level (**Legal Team to Confirm**)

Physician Appeals Disputed Claim



HHS 3rd Level Appeal

- Administrative Law Judge (ALJ) Reviews
- ALJ Must Act on Appeal in 90 days
- The ALJ Currently Takes 547 Days to Process Appeal



Physician WINS Appeal:

- Physician Collects Value of Disputed Claim with Interest (if Claim Repaid)
- Physician Cannot Collect Legal Fee
- Physicians Not Reimbursed by RAC for Document Production Costs

RAC LOSES Appeal:

- RAC Returns Contingency Fee to CMS
- RAC Faces no Additional Penalty Under Law
- RAC Faces no Liability for Physician’s Legal Fee
- RAC not Required to Reimburse Physician for Production Costs

Proposed Modifications under the Fair Medical Audits Act (H.R. 2568): Physician Audit & Appeals Process – Physician Wins

CMS Recovery Audit Contractor (RAC)

- RAC Notifies Physician of Alleged Overpayment Audit
- RACs are **Not Required** by Law to Provide Certain Information Before and After Audits, **Including How Overpayments Were Calculated**
- RACs May Use Extrapolation in Certain Circumstances to Identify Overpayments. RACs **are Required to Use Statically Sound Standards and Physician May Appeal Use of Extrapolation**
- RACs **Required to Provide 90 Days Notice** before Conducting Audit on an Overutilized Code
- RAC Can Review Claims Up to **2 Years Old** under Law

*Non-Specialist/ Subspecialist May Review
Medical Necessity Audit*



Physicians

- Physician Disputes Audit Finding on Day 1-30 → Value of Disputed Audit Finding Protected
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CMS Cannot “Clawback” Physician’s New Claims unless Physician Loses at the ALJ Level

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“Redetermination”**



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Physician Appeals Disputed Claim



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Physician WINS Claim Appeal:

- Physician Collects Value of Disputed Claim with Interest (if Claim Repaid)
- **Physician Collects Legal Fees for RAC Error that is Equal to or More than Double Final Overpayment Determination**
- **Physician Reimbursed by RACs for Document Production Costs**

RAC LOSES Claim Appeal:

- RAC Returns Contingency Fee to CMS
- **RAC Liable for Physician’s Legal Fee for Errors that is Equal to or More than Double Final Overpayment Determination**
- **RAC may be Subject to Administrative Penalty**
- **RAC must Reimburse Physician for Document Production Costs**

Proposed Modifications under the Fair Medical Audits Act (H.R. 2568): Physician Audit & Appeals Process – Physician Loses

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*Non-Specialist/ Subspecialist May Review
Medical Necessity Audit*



Physicians

- Day 1-30 – Physician Disputes Claim → Value of Claim Protected
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CMS Cannot “Clawback” Physician’s New Claims unless Physician Loses at the ALJ Level

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Physician LOSES Claim Appeal:

- Physician Repays Value of Disputed Claim after ALJ Decision
- **Physician Reimbursed by RACs for Document Production Costs**
- Physician can Appeal to the Medicare Appeals Council

RAC WINS Claim Appeal:

- RAC Receives Contingency Fee from CMS Based on Disputed Claim Amount
- **RAC is Required to Reimburse Physician for Document Production Costs**