

February 6, 2015

The Honorable Kevin Brady
Chairman
Subcommittee on Health
Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

Dear Chairman Brady:

On behalf of the Physicians Advocacy Institute (“PAI”), I appreciate the opportunity to offer comments on the Hospital Improvements for Payment Act discussion draft (“HIP Act Discussion Draft”) legislation. We commend your leadership in addressing critically needed reforms to the Medicare Recovery Audit Contractor (“RAC”) program and stand ready to work with you to advance meaningful improvements to the process.

The PAI is a not-for-profit advocacy organization whose mission is to advance fair and transparent payment policies and contractual practices by payers and others in order to sustain the profession of medicine for the benefit of patients. As part of this core mission, PAI supports efforts to make medical audits and the audit appeals process more fair and transparent. Since its inception eight years ago, PAI has focused considerable attention on helping physicians navigate the audit process more effectively, including providing tools to help physicians avoid common coding and documentation errors that are often identified in audits.

PAI’s Board of Directors is comprised of CEOs and former CEOs from nine state medical societies, including the Texas Medical Association, as well as medical societies from California, Connecticut, Georgia, Nebraska, North Carolina, New York, South Carolina, and Tennessee, as well a physician from Kentucky. Texas is well represented within PAI’s leadership. Louis Goodman, PhD, the Executive Vice President/CEO of the Texas Medical Association (“TMA”) serves as PAI’s Treasurer and Donald “Rocky” Wilcox, Jr., TMA’s General Counsel, serves as Chair of PAI’s Physicians Advocacy Liaison Committee, which assists the PAI board in developing educational resources on issues of critical importance to PAI, including fair medical audits.

There is growing consensus among all stakeholders that the current RAC audit process is fundamentally flawed. Undergoing a RAC audit is extremely onerous for physician practices, and all too often results in inaccurate audit findings and unnecessary and costly appeals. In many instances, RAC audits threaten the viability of physician practices and the patients who rely upon them for medical care. Based on input from physicians around the country, PAI has identified significant problems with the Medicare RAC program, most notably the following:

- The current contingency payment structure creates a conflict of interest and incents RACs to find overpayments;
- The accuracy of audits could be improved by requiring personnel with the requisite skills to conduct audits, including requiring physicians of the same specialty and subspecialty to conduct medical necessity audits;
- The appeals process offers inadequate due process, allowing provider payments to be recouped before an external review;
- The four-year “look-back” period for RAC audits imposes significant administrative burdens; and
- There is a dearth of information for providers related to the RAC audit and appeal process.

To address these and related issues, PAI has developed a comprehensive set of principles/policy recommendations for RAC reform as well as legislative language (please see the PAI Fair Medical Audits Act, attached) that reflects these principles. When comparing the HIP Discussion Draft with PAI’s fair medical audits principles, we identified several important additional policies that merit consideration by this Subcommittee. Specifically, PAI proposes the following specific recommendations to establish financial incentives to curb over-reaching by the RACs, improve transparency, and help ensure that provider audits are conducted consistently and accurately. These policies address the underlying problems in the RAC process that have deprived physicians and other Medicare providers of due process in the audit and appeals process and contributed to the backlog of appeals.

1. Reform the Current Contingency Payment System

PAI believes the current Medicare statute – which requires payment to the RACs “on a contingent basis” – creates a conflict of interest, incenting RACs to make inflated overpayment determinations. This has resulted in unacceptably high rates of inaccurate audits and appeals that are time-consuming and costly to both providers and the government. These appeals have so overwhelmed the system that the Secretary of HHS has suspended RAC (and other Medicare) appeals to ALJs to address the backlog.

Going forward, these problems could be addressed by amending the law to eliminate the contingency payment system and adopting new provisions to hold RACs financially accountable for high error rates and arbitrary auditing patterns.

PAI therefore urges the Committee to replace the current contingency payment system and consider establishing monetary penalties on RACs to improve contractor accountability and auditing accuracy.

2. Improve transparency by requiring the use of qualified audit professionals,

Audit accuracy could also be improved by requiring the use of qualified audit professionals, including auditors with knowledge and experience with medical coding and the use of physicians of the same specialty and subspecialty to conduct medical necessity review. These measures would help ensure that RACs have the expertise to assess the medical necessity of clinical tests and procedures without the benefit of examining the patient.

3. Require timely and detailed notification to providers after audits.

Detailed post-audit notifications would also improve transparency and potentially enable providers to resolve issues before undergoing the appeals process. To this end, PAI recommends that RACs be required to identify (1) all errors discovered in the audit; (2) the medical and reimbursement policies used in the audit's findings; (3) all underpayments discovered in the audit; and (4) the methodology for calculating overpayment amounts. These requirements would enable providers to better understand audit findings and reduce the risk of repeated errors in future audits.

4. Establish standards to ensure that extrapolation is done in a statistically sound manner.

The current Medicare statute does not allow providers to seek judicial appeal of a RAC's decision to use extrapolation to calculate overpayments and does not set standards for how extrapolation should be conducted. When done correctly, extrapolation can create efficiencies in both the audit and appeals processes. However, standards are needed to ensure that extrapolation is done in a statistically sound manner. In addition, PAI urges the Committee to eliminate the prohibition on appealing a RAC's determination to use extrapolation. These changes would promote audit accuracy and give providers more confidence in overpayment findings calculated through extrapolation.

5. Require RACs to Compensate Providers for Record Duplication

Physicians nationwide report significant challenge in meeting the administrative and financial burdens that RAC audits can impose. In addition to the costly nature of responding to the often-onerous RAC correspondence and production requests, physician offices have difficulty securing adequate additional administrative staff to meet the demands of auditors. To address this, PAI supports the important new limits on documentation requests identified in the current HIP Discussion Draft language, which would provide administrative relief for physicians and other health

care providers facing audits. In addition, PAI supports adding language to address the financial burdens associated with production requests. Specifically, PAI recommends that RACs be required to compensate providers for the cost of duplicating records, which would help ensure that RACs are more targeted with their documentation requests.

6. Reduce Look-back Period for RACs

The current four-year look-back period places unfair recordkeeping burdens on providers. We believe a two-year look-back period would more robustly address the appeals backlog and reduce the significant administrative burden on providers.

PAI appreciates your consideration of these recommendations and looks forward to continuing to work with the Committee to improve the RAC program for physicians, other Medicare providers and Medicare program beneficiaries. If you have any questions relating to these recommendations or the PAI, please do not hesitate to contact Kelly Kenney, PAI's Executive Vice President at k2strategiesllc@gmail.com.

Sincerely,



Robert W. Seligson, MBA, MA
President, Physicians Advocacy Institute
Executive Vice President/CEO, North Carolina Medical Society

Attachment