May 19, 2014

The Honorable Kevin Brady
United States House of Representatives
Chairman, House Ways & Means Subcommittee on Health
1101 Longworth HOB,
Washington, D.C. 20515

Dear Chairman Brady,

Our coalition appreciates the opportunity to contribute recommendations on ways to improve Medicare oversight. In advance of the health subcommittee's hearing on this topic and in support of our mission to eliminate improper payments, I want to offer insight into the development and ongoing success of the Recovery Audit Contractor (RAC) program, as well as suggestions regarding how to strengthen the program in light of recent challenges.

Evolution of the Most Successful Integrity Initiative in Medicare History

According to the Department of Health and Human Services (HHS) FY2013 Agency Financial Report, Medicare loses more money to waste than any other federal program and, since 2011, the rate of improper payments has risen steadily from 8.6% to 10.1%.[i] In addition, in FY2013, providers overbilled Medicare by $45.6 billion.[ii]

In 2003, Congress mandated the creation of a program to combat Medicare waste. Over the course of a three-year pilot program, over $900 million in overpayments were returned to the Medicare Trust Fund and nearly $38 million in underpayments were returned to health care providers. As a result of the program's overwhelming success, in 2006, Congress mandated that the HHS institute a national Recovery Audit Contractor (RAC) program. In 2009, the Centers for Medicare and Medicaid Services (CMS) implemented the permanent RAC program to identify improper payments and recover misused taxpayer funds. Since then, **RACs have recovered over $8.9 billion**, while reviewing less than 2% of Medicare records from any given provider.

Ongoing Commitment to Provider Cooperation & Transparency

Since their inception, RACs have continually worked with CMS to minimize the administrative impact of auditing on providers. The Medicare provider community played a key role in adjusting elements of the RAC program after the demonstration. These included mandating a medical director to oversee all reviews, setting limits on medical record requests, and requiring auditors to pay back their contingency fee if a determination is overturned at any level of appeal, among several others.[iii] In February 2014, CMS introduced five new changes to the RAC program, effective with the new contractor awards. These changes were also made in support of providers.

CMS uses layered safeguards to ensure high levels of transparency among auditors and providers. From the FY2015 budget justification: "**CMS has several policies in place to oversee and limit Recovery Auditor actions.** Many of these requirements have been in place since the national program began. First, CMS approves all RAC review methodologies prior to allowing RACs to identify improper payments. […] Second, an independent validation contractor then selects a random sample of claims, from each RAC, on a monthly basis. The results of these validation reviews are compiled to create an annual "accuracy" score for each RAC, which is published in the Recovery Audit Programs' Report to Congress."[iv]

According to CMS, the existing RAC pay structure also promotes accuracy. As CMS explains: "If an improper payment determination is overturned at any level of appeal, the Recovery Auditor contingency fee must be returned to CMS. **This process helps ensure the accuracy of the Recovery Auditors' reviews**."[v] Furthermore, RACs invest significant front-end resources to ensure accuracy, including using teams of certified coders, nurses and other clinicians to review hundreds of medical records. As a result, **RACs have an average accuracy rating of 96%**.[vi]

Challenges to Medicare Oversight & Integrity

Today, the RAC program faces several challenges. In Fall 2013, to combat an uptick in hospital "observation" stays that lead to sicker patients and higher costs, CMS released a new rule, requiring patients to stay two midnights before the hospital can classify them as inpatient. CMS suspended the rules enforcement from Oct. 2013 to Oct. 2014. CMS also suspended nearly all RAC audits of inpatient hospitals, which account for 91% of over-billings recovered by RACs. Then, in March 2014, lawmakers included a provision to extend the RAC auditing suspension until March 31, 2015, a cumulative period of 18 months. **This oversight holiday absolves inpatient hospitals of oversight and will force the Medicare Trust Fund to forgo up to $6 billion in potential recoveries.**

In February, this suspension was complicated by CMS's decision to bar RACs from requesting medical records from providers, while the agency transitions to the new RAC program contracts, effectively halting all auditing. CMS anticipates that auditing will resume with the new RAC contracts are awarded. However, the status and start dates for the new contracts are unknown.

Delays in the Medicare appeals process have further compounded these issues. Providers can appeal RAC findings up to five times, with Administrative Law Judges (ALJs) overseeing the third level of appeals. In 2012, an investigation by the OIG found that due to "wide interpretation" of Medicare policy, overturn rates among ALJs ranged from 18-85%.[vii] In 2013, this inconsistency led to a surge in "frequent filers" – providers that appeal every single audit. According to the Office of Medicare Hearings and Appeals, this trend, along with an increase in Medicare beneficiaries and in state Medicaid agency activity resulted in a massive backlog of cases. In December 2013, officials suspended all ALJ assignments until the judges can work through the backlog, which will take approximately two years. Providers and integrity contractors agree that **these delays tie up critical resources, undermine Medicare integrity and threaten long-term access to care.**

In response to the appeals suspension, our coalition released recommendations for ALJ reform. These include opening more effective lines of communication across all levels of appeal, promoting case resolution at the lowest level,

and strictly and consistently enforcing Medicare policy. Taken together, these solutions would provide immediate relief to the appeals backlog and foster transparency among all Medicare stakeholders.

Get RACs Back to Work

CMS and the HHS Office of Inspector General continue to reinforce the effectiveness of RACs, despite the challenges mounted against this program. In its annual RAC report released March 25, 2014, CMS says, "In accordance with the President's initiative to eliminate waste and improper payments across Federal programs, the Medicare FFS **Recovery Audit Program has proven to be a valuable tool to reduce improper payments.**"[viii] In the recent budget justification, CMS explained that the RAC program's consistently low rates of appeal show the agency has been "effective in ensuring that only valid claims are denied by the Recovery Auditors."[ix] And in April 2014, the **OIG named the RAC program the 'most improved' healthcare integrity initiative** with a $1.4 billion increase in recoveries from FY2012 to FY2013.[x]

Improving Medicare integrity requires balance. In its five-year existence, the RAC program has been a critical partner to CMS in bolstering Medicare integrity and promoting program oversight. While our coalition supports ongoing improvements to integrity initiatives, we remain deeply concerned about the financial implications of the recent pause in Medicare oversight. Following this hearing, our coalition urges the committee to relay the importance of the RAC program back to program administrators and to help expedite the contract-awarding process. Furthermore, our coalition supports having an ongoing, open dialogue with all Medicare stakeholders about strategies to improve billing accuracy and Medicare integrity overall.

On behalf of program integrity contractors and the nearly 50 million seniors who rely on Medicare every day, thank you for your consideration and for your efforts to improve oversight of our nation's marquee healthcare program.

Sincerely,

Rebecca Reeves
The American Coalition for Healthcare Claims Integrity

[i] *The Department of Health and Human Services, FY2013 Agency Financial Report, December 2013, Page 15: http://www.hhs.gov/afr/2013-hhs-agency-financial-report.pdf*

[ii] *The Department of Health and Human Services, FY2013 Agency Financial Report, December 2013, Page 161: http://www.hhs.gov/afr/2013-hhs-agency-financial-report.pdf*

[iii] *The Medicare Recovery Audit Contractor (RAC) Program: An Evaluation of the 3-Year Demonstration, June 2008, Page 25:* http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/recovery-audit-program/downloads/RACEvaluationReport.pdf

[iv] *Centers for Medicare & Medicaid Services. Justification of Estimates for Appropriations Committees, March 2014, Page 338: http://www.cms.gov/About-CMS/Agency-Information/PerformanceBudget/Downloads/FY2015-CJ-Final.pdf*

[v] *Centers for Medicare & Medicaid Services, FY2010 RAC Report to Congress, Oct. 2012, Page 11: http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Recovery-Audit-Program/Downloads/FY2010ReportCongress.pdf*

[vi] *Centers for Medicare & Medicaid Services, FY2011 RAC Report to Congress, Oct. 2012, Page 32: http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Recovery-Audit-Program/Downloads/FY2011-Report-To-Congress.pdf*

[vii] *Department of Health and Human Services Office of Inspector General, Improvements are Needed at the Administrative Law Judge Level of Medicare Appeals, November 2012, Page 14. https://oig.hhs.gov/oei/reports/oei-02-10-00340.pdf*

[viii] *Centers for Medicare & Medicaid Services, FY2012 RAC Report to Congress, March 2014, Page 11: http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Recovery-Audit-Program/Downloads/Report-To-Congress-Recovery-Auditing-in-Medicare-and-Medicaid-for-Fiscal-Year-2012_013114.pdf*

[ix] *Centers for Medicare & Medicaid Services. Justification of Estimates for Appropriations Committees, March 2014, Page 219: http://www.cms.gov/About-CMS/Agency-Information/PerformanceBudget/Downloads/FY2015-CJ-Final.pdf*

[x] *Department of Health and Human Services Office of Inspector General, U.S. Department of Health and Human Services Met Many Requirements of the Improper Payments Information Act of 2002 But Did Not Fully Comply for Fiscal Year 2013, April 2014, Page 9: http://oig.hhs.gov/oas/reports/other/171452000.pdf*