

## **C&D Client Advisory**

### **Compliance Update**

#### **The RACs Are Back on Track**

The Recovery Audit Contractor (RAC) program is back on track. Oklahoma hospitals and healthcare providers should start seeing the first RAC activities in the state in the near future. The Center for Medicare & Medicaid's (CMS) new system of using private contractors to audit Medicare claims and payments was to have gone into action in nineteen states on March 1, with the remaining states being phased in on August 1, 2009, or later. However, CMS' schedule was disrupted when jilted contractors that had not been selected as RAC auditors filed administrative protests, bringing the system to a standstill. Now the protests have been resolved and the first RAC audit letters are expected to go out by late May.

#### **CMS Limits Retroactive Billing for Physicians**

Medicare implemented new supplier enrollment rules April 1, 2009 pursuant to Change Request ("CR") 6310. which provides that the billing effective date for physicians and non-physician practitioners will be the *later of* the filing date of the enrollment application or the first day the physician or practitioner starts practicing. Specifically, 42 C.F. R. § 424.520(d) provides:

*(d) Physicians, nonphysician practitioners, and physician and nonphysician practitioner organizations.* The effective date for billing privileges for physicians, nonphysician practitioners, and physician and nonphysician practitioner organizations is the later of the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor or the date an enrolled physician or nonphysician practitioner first began furnishing services at a new practice location.

The only exception which permits limited retroactive billing is set forth in 42 C.F.R. § 424.521(a) which provides:

*(a) Physicians, nonphysician practitioners and physician and nonphysician practitioner organizations may retrospectively bill for services when a physician or nonphysician practitioner or a physician or a nonphysician organization have met all program requirements, including State licensure requirements, and services were provided at the enrolled practice location for up to—*

(1) 30 days prior to their effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries. . .

CR 6310 includes the following four examples illustrating the application of the new billing requirements:

***Example 1:** Dr. Joe is establishing a new practice location on July 1, 2009, and submits his enrollment application on June 10, 2009. The effective date is July 1, 2009. Obviously, there is no period of retrospective payment, since Dr. Joe submitted his CMS-855 application prior to the start date.*

***Example 2:** Dr. Joe started working at his new practice location on August 15, 2009 and filed his enrollment application on September 1, 2009. While September 1, 2009 is the later of these two dates and is therefore the effective date of filing, the effective date for billing purposes (and for retrospective payment) is August 15, 2009.*

***Example:** Dr. Joe started working on January 2, 2009 and submits his enrollment application on March 1, 2009. Dr. Joe's effective date of filing is March 1, 2009, but his effective date for billing purposes is limited to the 30 days prior to March 1, 2009. In this case, Dr. Joe's effective billing date is January 31, 2009.*

***NOTE:** This calculation includes 28 days for February.*

***Example 4:** Dr. Joe's Medicare billing privileges were deactivated due to 12 consecutive months of non-billing on October 1, 2009. Dr. Joe submits an enrollment application on December 15, 2009 to reactivate his billing privileges. In this case, Dr. Joe's enrollment application indicates that he started seeing patients at this location on January 1, 1998. Dr. Joe's effective date of filing is December 15, 2009, while his effective date of billing is November 16, 2009. Dr. Joe is precluded from receiving payment for services rendered between October 1, 2009 and November 15, 2009.*

What does this mean? It means that if any hospital or physician medical group is planning to hire a new physician or starting a new company, they cannot wait until the physician starts working to begin the enrollment process. Given the length of time to complete the Medicare enrollment process, it is unwise to hire a physician and put off Medicare enrollment until he or she begins work. Under the new rule, Medicare will not pay for services provided while awaiting completion of the enrollment process. Retrospective billing will be allowed only if the provider can demonstrate that "circumstances precluded enrollment in advance."