

## Part B Insider (Multispecialty) Coding Alert

### COMPLIANCE: RACs Succeed at Collecting Overpayments, But Could Use Improvement in Identifying Fraud

Take these steps to ensure that you won't face any surprises if and when a RAC calls on your practice.

Make no mistake: Recovery audit contractors (RACs) are doing their jobs in collecting overpayments from medical practices. But the OIG wants the RACs to focus more carefully on identifying fraud.

A new OIG report entitled "Recovery Audit Contractors' Fraud Referrals" reveals that between 2005 and 2008, RACs involved in the demonstration project recovered over \$1.03 billion in Medicare improper payments, but referred only two cases of potential fraud to CMS.

The OIG pointed out that although RACs received a presentation about fraud, "CMS did not provide any formal training to RACs regarding the identification and referral of potential fraud."

As a result of the report findings, CMS recommended that RACs receive mandatory training on identifying and referring fraud, but also noted that "because RACs do not receive their contingency fees for cases they refer that are determined to be fraud, there may be a disincentive for RACs to refer potential cases of fraud."

Keep in mind: "RACs have been trained to identify overpayments and seek their repayment." says **David C. Harlow, Esq.**, with The Harlow Group, LLC in Newton, Mass. "Not all overpayments are made as the result of fraudulent billing."

For instance: Suppose your provider injects six milligrams of Neulasta and your coder reports six units of J2505 (Injection, pegfilgrastim, 6 mg), not realizing that one unit of the code represents all six milligrams. In this case, your MAC may have reimbursed you for six units, even though your coder made an error that the OIG would probably not view as fraudulent.

Take Action to Prevent Issues

The OIG's report "really demonstrates the importance for medical practices to establish an effective corporate compliance program to identify and detect potential areas of fraud and abuse," advises **Mark C. Rogers, Esq.** with The Rogers Law Firm in Braintree, Mass.

"An effective corporate compliance program should include ongoing internal audits of those areas where there is a potential for fraud and abuse," Rogers says. "By conducting such audits, medical practices will be in a better position to improve their organization, and indeed, respond to a RAC Audit."

Be proactive: If you've been dragging your feet on conducting self-audits, now might be the time to get them going.

"From my perspective, it is always better to conduct regular internal reviews as part of robust standing compliance and internal audit programs," Harlow says. "If these compliance reviews and audits are carried out thoroughly, the results may be used in challenging or appealing RAC reviews." When applicable, providers should initiate self-disclosure of fraudulent billing uncovered by internal compliance reviews and audits, in accordance with the OIG's voluntary self-disclosure protocol, Harlow says. "Doing so should eliminate the imposition of a corporate integrity agreement which carries with it significant costs, both in terms of ongoing monitoring and compliance, as well as negative publicity."

To take advantage of this government leniency, the self-disclosure must follow the OIG's protocol, Harlow says, "which requires that the disclosure include several items: a complete description of the fraudulent activity and the internal investigation, an estimate of the total defrauded from the government together with an explanation of the methodology

used to calculate it, and a list of the laws possibly implicated by the fraudulent conduct."

To read the OIG report, visit [www.oig.hhs.gov/oei/reports/oei-03-09-00130.pdf](http://www.oig.hhs.gov/oei/reports/oei-03-09-00130.pdf).