

## Eli's Hospice Insider

### **RISK MANAGEMENT: Ramp Up for the RACs: Focus on What Could Be 3 Easy Targets**

Forewarned is forearmed in dealing with these 'bounty-hunter' auditors.

If the RAC program doesn't rank high on your risk-management list, you might consider moving it up -- and sooner rather than later when potentially huge payment recoupments may be at stake.

The RAC reality: The Recovery Audit Contractor program could probably be operational in the fall of 2009, says **Tim Johnson**, executive director of Castle Rock Medical Group in Denver. At press time, the Government Accountability Office had resolved the bidding dispute that had halted the RAC program for a time. And the Centers for Medicare & Medicaid Services and RACs were gearing up for outreach efforts to educate providers about the program before proceeding with the RAC rollout.

While hospices were excluded from the RAC demo, and thus don't have a ready heads up on what might be on the RAC radar screen, it's not hard to read between the headlines. One area that RACs could easily target is the hospice eligibility issue in the recent SouthernCare Hospice settlement (see top cover story), says attorney **Connie Raffa**, partner, Arent Fox in New York, N.Y.

"With SouthernCare, the government claimed that the patients were not terminally ill, so the hospice had to pay back the government more than \$24 million," says Raffa, who points to a similar settlement on the same issue involving Odyssey Healthcare (for details, go to [www.usdoj.gov/opa/pr/2006/July/06\\_civ\\_430.html](http://www.usdoj.gov/opa/pr/2006/July/06_civ_430.html)).

The crux: "For people to be eligible for hospice services, they have to meet the eligibility criteria," emphasizes Raffa. "And RAC auditors will get on the bandwagon on that issue in auditing hospices."

"The hospice documentation really has to support that the patient remains with a six month or less prognosis," advises attorney **Mary Michal** with Reinhart Boerner Van Deuren in Madison, Wis.

"It's imperative that hospices know the local coverage decisions -- and that the entire interdisciplinary team is extremely knowledgeable in 'painting the picture' [with documentation] to support eligibility," she adds. Hospices should also discharge patients who no longer meet the criteria, emphasizes Michal.

#### **Ensure Medical Necessity of Inpatient Hospice Services**

In addition to the eligibility issue, RACs will probably focus on inpatient hospice care, predicts Raffa.

**Already an issue:** Medicare contractors are auditing more hospice claims based on patients' length of stay at the inpatient level of hospice care, warns attorney **Suzie Berregaard**, corporate counsel for Hospice of Central Iowa based in Des Moines. She notes that the inpatient level of hospice care was designed to be short-term (one to three days) to address acute symptom management, including pain control, medication adjustment, observation, or other stabilizing treatment.

"These are situations that can't typically be effectively managed at the less intensive routine level of care," Berregaard adds.

"The daily payment rate at this level of care is significantly higher than the routine level of care since it involves an inpatient stay, and some hospices, if they aren't extremely vigilant in this area, may let the inpatient care level go a day or two or longer than what technically meets the eligibility criteria."

That's not to say there aren't instances where a patient may require inpatient care for a longer period of time. But in such cases, the hospice needs to have "significant documentation" in place to support that the patient's condition necessitates the higher level of care, emphasizes Berregaard. This would include the chart, including physician notes, and documentation of the interdisciplinary group discussions about the situation.

Another problem: Attorney **Rachel Hold-Weiss** has seen instances where a hospice admits patients to the inpatient level of care for symptom management that really should have been respite care.

And "a RAC audit could uncover such a situation," leading to a repayment, cautions Hold-Weiss, also with Arent Fox.

#### Beware Overlapping Hospital or SNF Stays

RACs will have access to huge amounts of claims data, observes attorney **Steve Lokensgard**, and may be able to identify scenarios where a hospice patient received hospital care.

"If the hospice billed for that period of time, RACs could look at the medical records to see if the [hospital] care was related to the terminal illness," cautions Lokensgard, special counsel at Faegre & Benson LLP in Minneapolis.

RACs could also easily identify that same scenario in SNFs, he adds. (For more information on what's related to the hospice patient's terminal illness, which isn't always as black and white as people think, see the next Eli's Hospice Insider.)