

February 3, 2022

The Honorable Steven Lieberman  
Deputy Under Secretary for Health  
Veterans Health Administration  
810 Vermont Avenue, NW  
Washington, DC 20420

Re: Preliminary VA RAC Audit Plan

Dear Deputy Under Secretary Lieberman:

On behalf of the physician and medical student members of the American Medical Association (AMA), I appreciate the opportunity to provide comments on Cotiviti's Preliminary Audit Plan for the Veterans Health Administration's (VHA) Recovery Audit Program. AMA members have extensive experience with Recovery Audit Contracts (RACs) in the Medicare Program and we offer the following comments to help build a program that is less burdensome and more equitable and transparent in its approach and execution.

#### Avoid Perverse Incentive Structure

A long-standing complaint of the Medicare RACs was the perverse incentive structure that only rewarded RACs for finding overpayment. The RACs were not incentivized to educate physicians on proper billing and coding, nor were they rewarded for finding underpayments. The goal should be to prevent improper payments before they happen and that requires education and outreach. We urge VHA to reward the recovery auditor for finding improper underpayments, not just overpayments, and to incentivize education and outreach designed to prevent improper payments in the future. Also, prior to auditing a physician practice, the recovery auditor should make a good faith effort to ascertain whether the practice has already self-identified any billing irregularities that may have resulted in overpayments and reimbursed VHA.

#### Look Back Period

Audits typically require physicians to collect and send a myriad of documents including physician orders and progress notes, diagnostic test results, history, operative reports, and certificates of medical necessity, even when the requested documentation is housed in a multitude of different locations or facilities. The administrative and logistical burden of complying with these requests would be amplified by an unlimited look back period. We urge VHA to limit the look back period to no more than three years. While we support a shorter look back period, physicians are at least accustomed to three years since this is the amount of time allowed under the Medicare program.

#### Medical Record Request Limit

Physicians were unduly burdened by unlimited medical record requests or "fishing expeditions" from the RACs prior to CMS setting limits. Since the focus of the VHA Recovery Audit Program should be to

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conduct targeted audits in good faith for claims that are likely to be erroneous, medical record request limits are appropriate and equitable. We believe that the limit per physician should be no more than three medical record requests within a 45-day period and that VHA should focus such requests on physicians with a history of over-billing. Also, similar to Medicare, VHA should require auditors to reimburse physicians for the costs of complying with medical record requests.

#### Physician Medical Directors

Recovery audits can be overly burdensome, time-consuming, and tremendously disruptive to a physician's practice. To help ensure that an audit is performed in the least disruptive manner, it is crucial that the VHA require its recovery audit contractor to have a physician medical director who oversees the audits and can make fair decisions based on clinical judgement. If the audit results are disputed, we believe that the recovery auditor should be required to retain a peer physician of the same specialty to conduct a review of the medical records to verify the findings of the audit.

#### Establishment of a Robust and Fair Dispute Process

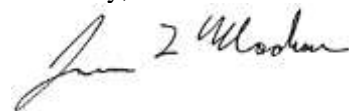
When the Centers for Medicare & Medicaid Services (CMS) first established the RACs, the system was weighted heavily in favor of the auditors. In fact, auditors were rewarded for finding overpayments without the risk of penalties if they were wrong. Physicians, on the other hand, incurred significant costs to comply with the audits and to appeal the results, up to and including a hearing before an Administrative Law Judge. Eventually, CMS made changes to the program that discouraged overzealous audits. If an appeal is successful, VHA should follow CMS' example and require that the contractor reimburse the physician for all documentation, legal, and travel costs plus interest associated with the appeal.

#### Evaluation and Management (E&M) Services Should Be Exempt from VHA Recovery Audits

The AMA devotes significant resources toward educating physicians about correct coding and documentation. However, in the context of E/M coding, physician choices regarding appropriate code designation is an individualized decision based on the complexity of the patient visit. Physicians who provide E/M care apply complex decision-making based on myriad clinical approaches, including research and review of patient medical history, analyses regarding appropriate medication, discussion of home situation and prescription distribution plan, preventive care planning, and many other variables. Because of its complexity, E/M care does not lend itself easily to medical review and we strongly urge VHA to exempt E/M codes from recovery audits.

We appreciate the opportunity to comment and urge the VHA to develop and implement a Recovery Audit Program that is not only minimally burdensome on physicians but utilizes targeted education and outreach to prevent future improper payments. If you have any questions, please contact Margaret Garikes, Vice President for Federal Affairs, at [margaret.garikes@ama-assn.org](mailto:margaret.garikes@ama-assn.org), or by calling her directly at 202-789-7409.

Sincerely,



James L. Madara, MD