

OUR PRACTICE

Audits

Under the guise of "program integrity" – eliminating errors and fraud and, more broadly, protecting the Medicare Trust Fund – the federal government has in the past two decades unleashed a small army of auditors, mostly independent contractors, to analyze medical records and search for overpayments, whether the result of human error or intentional deception. Now, more than ever in Medicare's history, it literally pays to follow the rules.

Established in 1996 as part of the Health Information Portability and Accountability Act (HIPAA), and reinforced by legislation such as the Medicare Modernization Act of 2003 (MMA), the Medicare Integrity Program (MIP) has given rise to contractors to conduct medical, utilization and fraud review. Recovery Audit Contractors (RACs), Unified Program Integrity Contractors (UPIC), Comprehensive Error Rate Testing (CERT), Medicare Administrative Contractors (MACs) and the Department of Health and Human Services Office of Inspector General (HHS OIG) all have jurisdiction to review the practices of providers participating in the Medicare program.

While each type of auditor operates somewhat differently and serves a different function, all share a common goal: Recapture payments made to health care providers months and years earlier. And all auditors have an incentive to find problems – especially RACs, who receive a portion of what they recover.

Of greatest concern to health care providers, some auditors use their authority to sample a small number of claims to extrapolate their findings to a wider universe. For example, a contractor could review 30 claims, assess an error rate, and then apply that error rate to a universe of claims encompassing several years of payments to a provider.

For small providers in particular, an audit can mean a potential death sentence.

While some health care providers might think they have no choice but to accept an auditor's findings, the attorneys at Baker Donelson have years of experience vigorously representing and defending the interests of our clients. Our work includes the following:

- Provide ongoing assessments and recommendations regarding a company's processes and paperwork collection
- Assist in responding to any reimbursement audit and/or investigation
- Representation at every stage of the appeals process
 - Seeking a redetermination by the original contractor
 - Filing for reconsideration before a Qualified Independent Contractor, or QIC
 - Filing an appeal to an Administrative Law Judge (ALJ)
 - Filing an appeal to the Medicare Appeals Council of the Departmental Appeals Board
 - Seeking judicial review in federal district court



Representative Matters

- Conducted audits and due diligence reviews for a broad array of clients with regard to compliance with Medicare standards, HIPAA, fraud and abuse, and 340B Drug Pricing Program compliance.

- Represented hospitals, physicians, infusion therapists, physical therapists, cardiac catheterization, independent diagnostic testing facilities (IDTFs) in post pay review audits.
- Represented suppliers and providers in reimbursement, appeals and post pay audits.
- Assisted suppliers and providers in Recovery Audit Contractor (RAC), ZPIC and Medicaid audits including challenging extrapolation matters.
- Successfully challenged the use of an extrapolation based on audit overpayments based on statistical sampling methodologies.
- Argued on behalf of providers and suppliers at Office of Medicare Hearings and Appeals and Departmental Appeals Board on claims denials, including those based on RAC and ZPIC audit findings.
- Argued Provider Reimbursement Review Board (PRRB) cases on behalf of hospitals, skilled nursing facilities (SNFs) and home health agencies (HHAs) on issues such as the offset of interest income on zero coupon bonds, treatment of related party expenses and treatment of FICA and FUTA taxes, as well as Depreciation Recapture on Change of Ownership (CHOW).
- Successfully counseled numerous hospitals and eligible providers in meaningful use or certified electronic health records audits, as well as the implementation of HIEs.
- Represented providers in reimbursement and appeals.
- Represented Medicare suppliers in cases before the Office of Medicare Hearings & Appeals in administrative appeals of Medicare reimbursement denials.
- Represented providers in Recovery Audit Contractor (RAC) audit matters.
- Conducted a compliance audit of physician relationships on behalf of a nationally recognized health system.