

Paying for Performance: Why Contingency Fees Promote Success

Performance-based contingency payments are a proven financial best practice and the standard in the recovery auditing industry, employed by every major health payer in the private sector. Recovery Auditors (RAs), who work to return Medicare payments to the Trust Fund, are compensated using this pay-for-performance model. They are paid a small percentage of what they recover. Because RAs are paid directly from the recoveries of improperly billed Medicare claims, **the program is budget neutral.**

Establishing the Contingency Fee Payment Model

1999 House Report: Government Waste Corrections Act of 1999

- Called for way to manage waste in Medicare.
- Modeled the program after the private sector “recovery auditing” practice, in which audits are performed by a specialist under a contingency fee contract arrangement.
- Argued that under a contingency fee arrangement, there is no risk to the entity contracting for a recovery audit because all costs to conduct the audit are borne by the auditor.

2003 Medicare Prescription Drug Improvement and Modernization Act

- Created the Medicare Recovery Audit Demonstration Program.

2006 Tax Relief and Health Care Act

- Based on the success of the Demonstration Program, required CMS to implement a permanent and national Medicare Recovery Audit Contractor (RAC) program.
- Mandated the contingency fee pay structure based on that model’s success in the private sector and the fact that it was budget neutral for the government.

How Does the Contingency Fee Work?

RACs are only paid if an overpayment determination is uncontested or upheld throughout the appeals process.

- Providers can stop CMS from collecting an overpayment at both the first (MAC) and second (QIC) levels of appeal, if they appeal within certain timeframes.
- If a claim is upheld on the second level of appeal, CMS will collect the overpayment even if the provider intends to continue to the third level of appeal.
- If the claim is overturned at the third (ALJ) or fourth (Medicare Appeals Council Review) levels of appeal, the collected overpayment and the contingency fee is returned to the provider; the RA receives nothing for the work to create the claim and defend it through appeal.

Incentivizing RACs to Get It Right

- ✓ **Built-in Checks And Balances.** Pay-for-performance contracts self-regulate because auditors only get paid if they get it right. RAs focus only on areas with historically high levels of improper billing, such as inpatient hospitals claims, which account for 94% of overbillings to Medicare.¹ This allows CMS to best leverage the infrastructure and expertise of its RAs in order to benefit the integrity of the Medicare Trust Fund.
- ✓ **High levels of accuracy.** Independent reviewers hired by CMS have shown that RACs consistently have an average 96% rate of accuracy.²
- ✓ **Proven efficiency.** The Department of Health and Human Services, Department of Education, Defense Logistics Agency and the Department of Treasury have all used contingency fee-structured contracts successfully. In FY2013, the federal government kept \$0.91 of every \$1.00 recovered by contractors using contingency fee-based contracts.

RACs Save Taxpayer Money

The contingency fee payment model has positively incentivized RACs to successfully **recover \$10 billion³ in improper payments, extending the life of the Medicare Trust Fund by two years.** As one of the most successful oversight programs in U.S. history, RACs have maintained an accuracy rate of more than 95%, with RAC-related claims only accounting for 9.5% of all appeals in FY2016.

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1. FY2013 RAC Report to Congress, Page 36: <http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Recovery-Audit-Program/Downloads/FY-2013-Report-To-Congress.pdf>

2. FY2013 RAC Report to Congress, Page 42 (average of the 4 numbers) <http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Recovery-Audit-Program/Downloads/FY-2013-Report-To-Congress.pdf>

3. Accumulation of Medicare FFS Recovery Audit Program Quarterly Reports: http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Recovery-Audit-Program/Recent_Updates.html