

## CMS's Recovery Audit Contractors Appear Poised to Audit Facilities With Ultra High Therapy RUGs

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Recovery Audit Contractors (RACs) in some parts of the U.S. have begun requesting documentation from certain skilled nursing facilities (SNFs), which suggests that the Centers for Medicare and Medicaid Services (CMS) may be ready to unleash the RACs on SNFs with designated levels of High Therapy RUGs utilization. Under the federal Recovery Audit Contractors program, the RACs are permitted to audit providers only on CMS-approved issues. To date, the Ultra High Therapy Resource Utilization Groups (RUGs) issue is not on the CMS-approved list of audit topics.

However, CMS now permits the RACs to also request records and to audit up to 10 "test claims" to determine if CMS, based on the results of the test audit, should add a new audit focus to its approved list. At least one RAC has begun issuing documentation requests to SNFs on this issue. The RAC at issue does not cover North Carolina. However, once an audit focus is on the CMS-approved list, any RAC can audit that issue, so it's important to know what RACs in other parts of the country are doing.

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In its letter to the affected provider, the RAC at issue stated that the Office of Inspector General (OIG) of the U.S. Department of Health & Human Services has found an overwhelming majority of errors in assignments by providers under the RUGs categorization system to Ultra High Therapy RUGs, resulting in overpayments to SNFs. It further stated that “the OIG identified that errors in the sample could be traced to the providers’ therapy minutes recorded on the Minimum Data Set not matching the minutes recorded in the medical record and the patient’s care and resource needs.”

These contentions are based on a 2010 OIG report that generally alleged that SNFs are increasingly billing for higher-paying therapy RUGs, even though the patient characteristics of SNF residents are largely unchanged; for-profit SNFs are more likely than nonprofit SNFs to bill for higher-paying RUGs; and a number of SNFs have questionable billing for therapy services. Anecdotally, we are hearing that SNFs who report between 10% and 15% of their resident census as being in the Ultra High Therapy RUGs category are subject to receiving RAC requests for documentation to support those numbers.

The types of documents a RAC can request in connection with one of these therapy audits often include face sheet, discharge summary, history and physical, emergency room records and ER nursing notes, SNF nursing notes, physician orders, therapy treatment plans, physician progress reports, lab reports, and radiology reports, among others.

Should your facility receive such a request for supporting documentation, be aware that until such time as CMS approves this issue for audit, the RACs are not permitted to recover claims already paid; they can simply report these findings to CMS. Providers

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are required, however, to comply with RAC requests for documentation on these “test issues,” even though the issue is not currently on the CMS-approved audit list. Once CMS approves this issue (and presumably CMS will since the requests for approval are coming from the OIG), claims that are not supported by appropriate documentation can be recouped by the RAC.

In the meantime, providers claiming reimbursement for between 10% and 15% of their residents in the Ultra High Therapy RUGs category should consider self-auditing their internal records to ensure that minutes of therapy recorded on the Minimum Data Set match those recorded in residents’ medical records, and that the medical records of residents support the amount of therapy provided. All providers should consider such an audit, but the focus, at least for now, appears to be on providers providing that level of Ultra High Therapy in their facilities.

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