

# Dodge the Bullet - Settlement Prior to VA RAC Audit

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## Practices

Health Law

## Industries

Health Care

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For years, my health care reimbursement team has strived to find creative solutions to the destructive force of government Recovery Audit Contractor (RAC) audits. Two years of painstakingly detailed work and the cooperation of the General Counsel for the Department of Veteran Affairs (VA) legal collections team has produced an exceedingly rare opportunity – the chance to self-audit and settle overpayments with the VA without going through a RAC audit!

If your practice has not gone through a government payor audit to understand the magnitude of the disruption, the cost and labor to comply with such an audit, and the potential practice-killing outcome of such an experience, call one of your colleagues who has lived through such a nightmare and the significance of an opportunity to avoid such an onslaught will come into focus.

### Here are the facts:

1. The VA has for many years outsourced care, predominately specialty services, to practices and facilities all over the country when the local VA facility did not have the ability to provide treatment or a veteran could not be treated within a reasonable distance.
2. The VA, which houses the largest integrated health care system in the country, historically adjudicated claims for outsourced care at facilities all over the country. Between 2011 and 2013, the VA centralized all claims processing to Washington, D.C.
3. During the transition of claims processing, there were a number of system errors that caused the VA to improperly overpay on claims for the next six years. Following a 2014 Office of Inspector General (OIG) Hotline tip, the OIG investigated VA overpayments in Florida and in June 2017 reported that the VA had been paying physician-injectable drugs, commonly referred to as “J-codes,” at billed rates, rather than at Medicare rates, since February 2011.
4. In late 2016, the VA had awarded a RAC contract to CGI Federal Inc. (CGI). Utilizing CGI, the VA recovered roughly \$36 million of an

estimated \$800 million dollar overpayment for J-codes injections performed by specialty practices all over the country (e.g. oncology, rheumatology, neurology, nephrology, infusion centers, etc.) prior to ending the audit in 2018.

5. Practices across the country banded together to defend against the CGI audit and were given a reprieve for the past 18 months. During this time period, my firm continued to represent practices that saw the inevitable reality that the VA would contract with a new RAC to at least come back for the known overpayments on J-codes. We worked diligently with the General Counsel for the VA to create from scratch a settlement process that would allow these practices to self-audit the balance of claims that would be audited, negotiate a manageable resolution to the overpayment, and avoid the arduous process of going through a new RAC audit.
6. In April 2019, the VA released a Statement of Work (SOW) for a new RAC contract, which includes highlights such as:
  - An audit of the FY13 – FY14 claims not previously audited by CGI
  - An audit of all claims paid under 38 U.S.C. § 1703 to community care providers from FY15 until FY23, with rare exception
  - An audit of CHAMPVA claims
  - An audit of Spina Bifida Program Claims
  - An audit of emergency care for non-service connected Veterans claims
7. After being notified by the VA General Counsel on February 10, 2020, that a new RAC contract had been awarded and would be public after an objection period, we waited in a myriad of questions on how such a monstrous amount of auditing work would be managed by a new RAC.
8. We soon found that the VA had awarded the RAC contract to HMS Federal (HMS) (<https://hms.com/sector/federal/>).
9. We immediately sent a Freedom of Information Act (FOIA) request for the HMS contract in order to determine the specific scope and timing of RAC tasks to be performed in order to warn providers.

We will continue to provide as much information as is available. However, the only certainties at present are the new RAC is coming and signing an agreement to participate in the settlement process is the only way to avoid it.

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