

Medicare RAC nightmare

I woke last night, sweating and afraid. I felt my heartbeat pounding in my chest.

I had a nightmare.

I think I cried out because my wife woke, mumbled something and reached out to pat my leg.

In my nightmare, Medicare Recovery Audit Contractors (RAC) were in my PT clinic threatening hefty fines and jail time. Paper lay in piles all over my office. Charts were open and strewn about on desks. Copy machines hummed and glowing lights illuminated stern-faced auditors with green eyeshades.

"You're in a lot of trouble Mr. Richardson, did you know that?"

Of course, it was just a nightmare. I wasn't actually being audited by Medicare RACs.

Some private practice physical therapists may share my anxiety though.

For us, the threat of a RAC audit may loom large as the expected February 2009 nationwide RAC roll-out approaches.

So what, in the bright light of day, are the known risks of a physical therapist RAC audit?

RACs Exposed

Early evidence seems to suggest that the RAC auditors selectively target large, institutional providers and, perhaps, cost outliers.

How do RACs choose their 'victims'?

There is some evidence that the Medicare RAC audit selection process differs from that of the Medicare Administrative Contractors (MACs).

	% denials appealed	% appealed denials in provider's favor
MACs	4.0%	59.0%
RACs	14.0%	33.3%

This chart shows that RACs enjoy a much lower rate of provider favorable appeals than do the MACs.

The Medicare RACs appear to be more selective (eg: by focusing on Inpatient Hospitals) thereby decreasing their percentage of provider favorable appeals).

Selective RACs aren't stupid

Selective RACs, however, wont ignore physical therapists that demonstrate patterns of excessive utilization.

Sophisticated computer programs read and analyze your billed charges, looking for unusual patterns of charges.

If you look different from your peers you may be selected.

Data Drilling

Medicare auditors will look first at billing outliers - those episode charges that exceed some threshold, for instance two standard deviations above the average (mean).

What is the mean and what is one standard deviation?

Data for this table comes from the [Outpatient Therapy Alternative Payment Study 2 \(OTAPS 2\) Task Order - Utilization Report](#) ³¹.

Outpatient Physical Therapy			
	2004	2006	Per cent change
Mean dollars paid per user	\$864	\$788.06	-8.8%
Mean dollars paid per episode	\$748	\$682	-8.9%
Standard deviation paid per episode	\$1,047	\$782	-25.4%

"The Balanced Budget Act of 1997 enacted financial limitations (therapy caps) on outpatient physical therapy (PT) and speech-language pathology (SLP) combined... In 2006 the Automatic Exceptions Process to the caps began, enacted by the Deficit Reduction Act of 2005. ³¹"

The result of the caps has been the observed decrease in per user and per episode dollars paid.

Note that the standard deviation also decreased - substantially.

One of the take home messages from this chart is that the physical therapy caps work for cost savings.

From the OTAPS 2 report...

"... the payment reductions were incurred by providers tapering services for higher cost users that tended to skew mean payments upwards."

Do the caps restrict access to physical therapy services by Medicare beneficiaries?

"The utilization analysis in this report clearly demonstrates that the outpatient therapy caps, as implemented in CY 2006 with the exceptions process had little or no impact on beneficiary access to outpatient therapy services. This is in sharp contrast to CY 1999 when the caps were implemented without an exceptions process. ³¹"

So, the caps decrease costs by decreasing therapy services to 'higher cost users' - that is outliers.

Finally, the exceptions process seems to work to preserve access for those beneficiaries (patients) who need physical therapy the most.

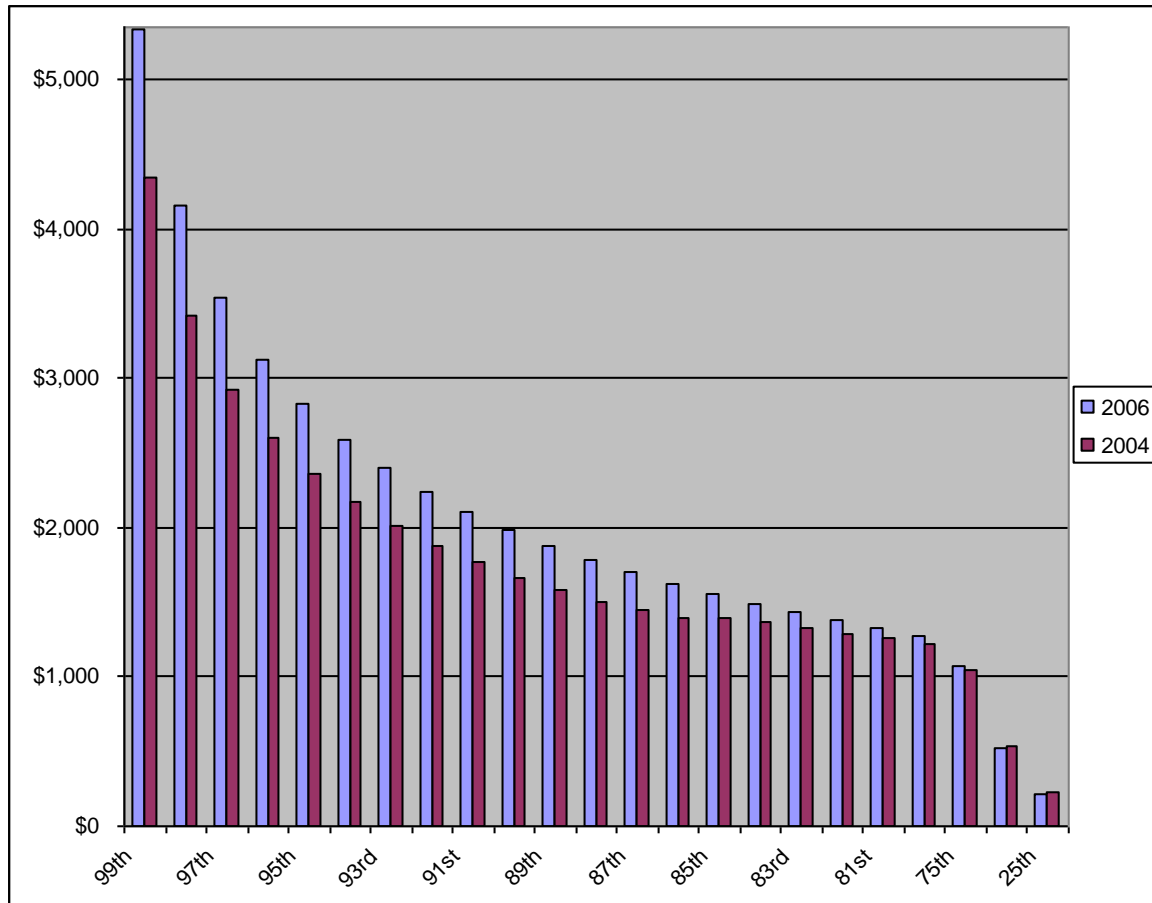
What does an 'outlier' look like?

This first chart shows the 'Annual per Beneficiary Payment Threshold Change per Percentile ³¹', with the 100th percentile removed.

The 100th percentile group is the outlier group.

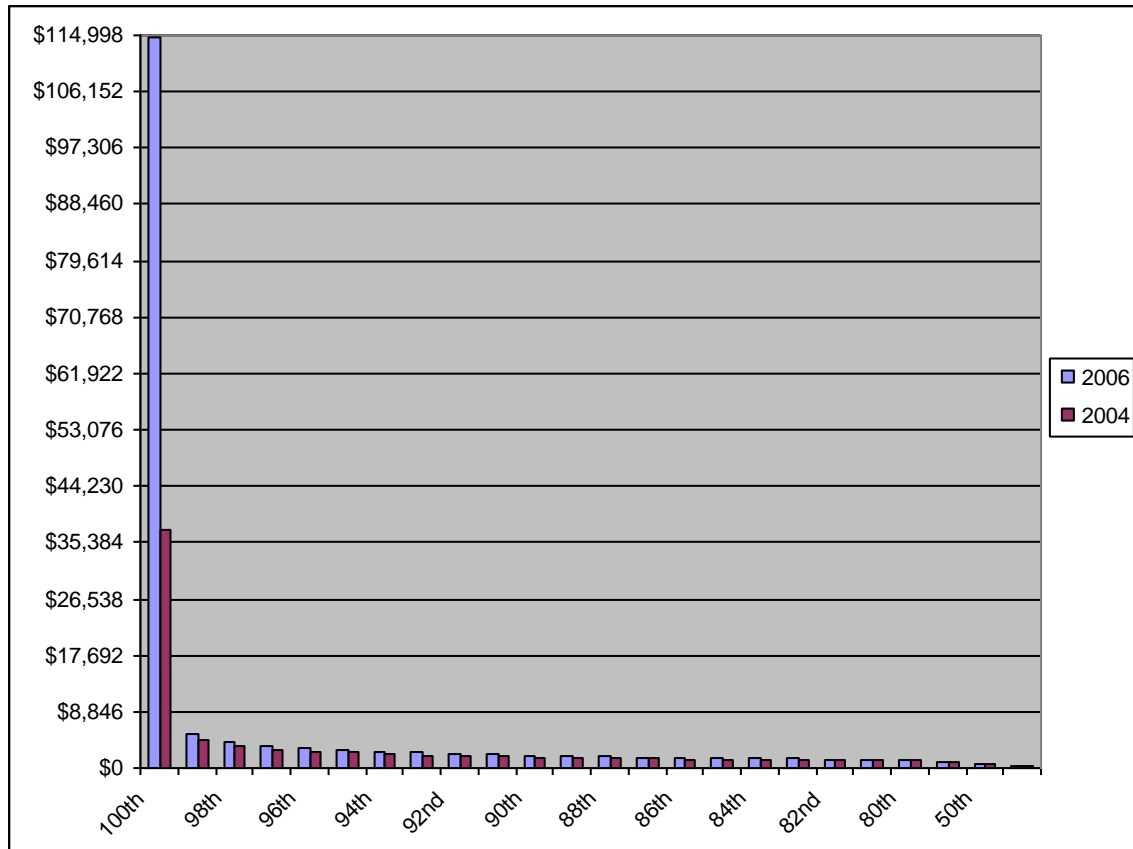
Note the smooth and consistent decrease from Year 2004 to 2006 in dollar costs per beneficiary?

The exceptions are for those beneficiaries below the 50th percentile – their costs grew consistent with the overall growth rate of the Medicare population (~3.5%).



Now, look at the same data with the 100th percentile added back in ³¹.

See how the scale shifts up due to the inclusion of the 100th percentile – the outlier.



You can see why Medicare wants to get rid of the outliers – and how easy it is for them to detect outliers.

What do you do if you are an outlier?

Some physical therapists may be legitimate outliers.

In other words, their patients need physical therapy services more intensively or more frequently than the general population.

Show your work

Remember in high school you could get partial credit on a math test if you showed how you got to the final answer?

Well, Medicare is like that.

You can be an outlier on costs if you show your work.

Show that your patients need physical therapy and that they qualify for the -kx modifier on your charge slip (*medical necessity*).

Show that you are getting your patient better (*expected improvement in a reasonable time frame*).

Show that your services are skilled (*physical therapist decisions and physical therapist assistant judgments*).

Contingency payments align risks faced by the provider and the auditor

‘Bounty hunter’ and ‘conflict of interest’ are terms that are used to describe the Medicare RACs. While ‘bounty hunter’ may be accurate RACs face similar risks as providers.

Right now, if you are audited by a Medicare Administrative Contractor (MAC) your claim is likely read by an employee or a consultant paid a salary or a flat rate.

If you appeal, your appeal is read by that same employee or consultant ⁸⁵.

You must appeal to the third level, the Administrative Law Judge, before your appeal gets read by a fresh face ⁸⁵.

Meanwhile, the salaried auditor bears no risk.

The MAC auditor gets paid even if you prevail in your appeal.

The RAC auditor does not.

"In the RAC permanent program, CMS will require all RACs to refund any contingency fees they received if an overpayment determination is overturned at any level in the appeals process. ⁶⁵"

Why are RAC contingency payments good for private practice physical therapists?

Most of the overpayment determinations were made against inpatient hospitals ⁶⁵.

Of the \$992.7 million in overpayments approximately 85% were recovered from inpatient hospitals.

Overpayments Collected by Provider Type (in millions)		
Skilled Nursing	\$16.3	2%
Inpatient Rehab	\$59.7	6%
Outpatient Hospital	\$44.0	4%
Physician (& PT)	\$19.9	2%
Ambulance/Lab/Other	\$5.4	<1%
Durable Medical Equipment	\$6.3	1%
Inpatient Hospital	\$828.3	85%

"Because the Claim RACs were paid on a contingency fee basis, they establish their claim review strategies to focus on high-dollar improper payments, like inpatient hospital claims, which give them the highest return with regard to the expense of reviewing the claim and/or medical record.

CMS anticipates that the permanent RACs will adopt a similar strategy at first."

What happened to me here in Florida

My experience in Florida seems to be consistent with other providers here and in other states over the four-year 'look back period' of the demonstration RAC project. The permanent RAC is only allowed a three-year 'look back'.

	RECOVERED AMOUNT	NUMBER OF PROVIDERS	TOTAL PHYSICIANS AUDITED BY RACS: 2005-2008
My experience: 2005-2008	~\$80	7	
Average Florida Provider: 2006	\$135	21,927	
Average California Provider: 2006	\$216		
			50,054

Most of the audited physicians were specialists such as urologists, neurologists, and rheumatologists.

My overpayments were due to charging multiple units of Traction or Electrical Stimulation (Supervised Modalities) to the same patient on the same day.

Now I know you can't do that.

Sweet Dreams

Now, my sleepless nights are caused by cash flow, recalcitrant patients, fickle physicians and insubordinate employees.

But not Medicare RACs.

Why not?

RACs are a known risk – one I can manage.

I manage the risk of an adverse Medicare audit with my up-to-date Medicare compliance program.

Tim Richardson, PT writes www.BulletproofPT.com with free resources for do-it-yourself Medicare compliance for private practice physical therapists. He also blogs frequently at www.PhysicalTherapyDiagnosis.com .