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## **RAC anxiety: Expansion of audits in reform bill worries hospitals**

By Jennifer Lubell

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Hospitals and others in the healthcare industry are expressing trepidation over a provision in the newly released Senate Finance Committee reform bill to expand a controversial Medicare audit program.

The Recovery Audit Contractor program now audits payments made in Medicare's fee-for-service program. The \$856 billion reform package championed by Finance Committee Chairman Max Baucus (D-Mont.) would extend the RAC program to Medicaid, Medicare Part D and the Medicare Advantage program.

The RAC program has attracted critics because of its reliance on third-party auditors who are paid an incentive fee based on the amount of payments deemed inappropriate. As a result of that structure, some providers have complained about auditing tactics they feel are overly aggressive (Feb. 16, p. 10). The move to expand the RAC program was expected but not necessarily welcome.

The hospital industry has been anticipating such an expansion, said Nancy Hirschl, president of consultancy Hirschl and Associates, Laguna Niguel, Calif.

Todd Halpin, a principal with Premier Consulting Solutions, a division of Premier, said it's not a surprise the CMS would continue to propose expansions to include all plans and services for which it has fiduciary responsibility under the Medicare and Medicaid programs, "particularly based on the overpayments recovered as part of the RAC demonstration project."

The RAC audit program allows third-party auditors hired by the CMS to keep 9% to 12.5% of payments they identify as improper and collect from providers.

During the five-state, three-year RAC demonstration project, contractors recovered more than \$992 million in overpayments to providers. The CMS' goal is to have the RAC program operating in all 50 states by 2010, with four contractors each having jurisdiction for one-quarter of the country.

The expansion in Baucus' bill poses a concern, however, in light of the current contingency fee arrangement that creates incentives for RACs to perform an intense search for overpayments.

"Errors result in both overpayments and underpayments to hospitals, yet the RACs focus almost exclusively on finding overpayments," Halpin said.

Some say further expansion of the RAC program beyond the terms in Baucus' bill is possible. The language in Baucus' bill "gives us an idea of where the federal government is going with this," said Stanley Milavec, a partner with law firm Mitts Milavec. "Lots of hospital associations have been concerned that the RAC audits would be extended-even to private insurers," Milavec said.

"It's a financial model where outside contractors get to eat what they kill, instead of promoting true and correct outcomes," he said.

Assigning RACs to audit Medicaid payments would also be somewhat redundant. The Medicaid program already has Medicaid Integrity Contractors, or MICs, that essentially serve the same function as RACs, but are paid on a flat fee basis, rather than a contingency fee, Halpin said.