By Knicole C. Emanuel Esq. | Original story posted on RACmonitor: June 3, 2020

There is indication that RAC and MAC audits will be ramping up again in the very near future. While COVID-19 is not going anywhere, we are all adapting to a new normal. Recovery Audit Contractor (RAC) and Medicare Administrative Contractor (MAC) audits will soon ramp up again. The courts shut down (at least on the civil side) around March 1, 2020. Now that we are entering June 2020, I predict that RAC and MAC audits will resume this month.

According to Westlaw, there have been 3,370 cases nationwide decided with the word “COVID” present in the decisions. This number, however, is a false positive. When the courts shut down due to COVID in March, there were hundreds of cases already argued, but the judge had not written a decision yet. So many of the cases are results of the bottleneck created during the pandemic.

Many of the cases with the word “COVID” mentioned do so in passing, as an explanation memorializing the past two months’ events. Older decisions with COVID mentioned include the case seen in the above picture. (A company in Arizona is named Covid, Inc.)
There have been 10,000 regulations passed due to COVID-19, and 4,757 administrative decisions and guidance in 50 different jurisdictions have been rendered. COVID has created a situation in which the exceptions define the rule.

Prior to the national shutdown and “stay-at-home” orders being issued, courts were going on as usual. In fact, as late as Feb. 13, 2020, the Supreme Court of Mississippi issued a decision relevant to alleged Medicaid overpayments, indicating that providers do have a property interest in Medicaid reimbursements for services rendered.

There is indication that RAC and MAC audits will be ramping up again in the very near future. If, in fact, you were in the middle of an audit, you will probably be first at bat.

As civil cases begin to trickle in and out of the courts, virtually, the Centers for Medicare & Medicaid Services (CMS) will have the RACs and MACs resume normalcy.

On May 8, 2020, CMS published an interim final rule with comment period in the Federal Register, setting forth additional regulatory waivers and other changes to healthcare regulations and policies in response to COVID-19. At a high level, the interim rule encompasses topics that include what we on RACmonitor have been covering for the past few months, like the expansion of telehealth, support for and expansion of COVID-19 testing, allowing certain licensed professionals to practice at the top of their licenses, Medicare payments for teaching hospitals, changes to the Medicare Shared Savings Program pertaining to financial methodologies, and application and risk assumption deadlines for Accountable Care Organizations (ACOs), among other changes.

One week ago, additional rounds of the Coronavirus Aid, Relief, and Economic Security (CARES) Act provided $4.9 billion in relief to Skilled Nursing Facilities (SNFs).

As we speak, millions upon millions of dollars are
being pumped into the healthcare system. Future RAC and MAC auditors will have a difficult time following the money. Once RAC and MAC audits ramp up again, desk reviews will become more prevalent. At least for a while, on-site reviews will remain paused. In my opinion, desk reviews are less accurate than on-site reviews. Desk reviews usually result in final documentation requests that are vague. There is a benefit to interacting in person. More questions can be answered.

Although no one has explored the opportunity for tele-audits yet, they may be the wave of the future. Regardless of the modality of future audits, there is going to be confusion.

Besides having your healthcare attorney on speed dial, how can you stay abreast of all the COVID exceptions?

CMS published a 40-page list of all the emergency blanket waivers for healthcare providers. These exceptions can be found on CMS’s website under “summary COVID-19 emergency declaration waivers.”

Print this out and read it. Know now that the RAC and MAC audits will resume. Prepare your company by arming yourself with knowledge.