Congress of the United States
Washington, DC 20515

July 11, 2008

The Honorable Gene Dodaro
Acting Comptroller General of the United States
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Acting General Dodaro:

The Centers for Medicare & Medicaid Services (CMS) spends more than $456 billion (in government funding, beneficiary premiums, and other resources) on the Medicare program, and must account to Congress for the use of these funds. We are writing to request that the Government Accountability Office undertake a study of the private Medicare Recovery Audit Contractor (RAC) program, which employs private companies on a contingent-fee basis to identify and recover improper over or under-payments of Medicare funds.

The RAC initiative was authorized as a three-year, three-state demonstration program in the Medicare Prescription Drug, Improvement and Modernization Act of 2004 (MMA) (P.L. 108-173). In FY 2006, CMS reported that recovery audit contractors identified $303.5 million in improper payments in the three pilot states. In 2006, Congress enacted the Tax Relief and Healthcare Act of 2006 (P.L. 109-432), which made the RAC initiative permanent and mandated its expansion to all 50 states by 2010.

Throughout the duration of the RAC pilot, Members of Congress received numerous reports of problems with the implementation of the program. For example, many inpatient rehabilitation facilities (IRFs) in California that were the subject of RAC reviews reported inconsistent communication, the use of unqualified personnel by the contractor, and review practices inconsistent with Medicare policies. Further, it was reported that the contingency fee structure for the RAC demonstration project was inherently prone to contractor abuse because it allowed the RAC to keep the contingency fee if their recoupment survived the first level of provider appeal, regardless of the final determination.

CMS employed an independent "validation contractor" to review the RAC findings in the pilot states. This validation contractor, AdvanceMed, later found that the California RAC had incorrectly denied 40 percent of the recouped inpatient rehabilitation claims. CMS responded by suspending RAC review of inpatient rehabilitation claims and pursued voluntary changes by the California RAC. These changes included: returning the contingency fee if the appeal was overturned at any level; insuring that incentives are equal for the RAC to collect both underpayments and overpayments; and increasing transparency.

CMS also has responded to provider and Congressional concerns by altering the Scope of Work (SOW) document issued for contractors submitting proposals to be selected as one of four regional contractors for the nationwide rollout of the RAC program. Revisions to that SOW include: a requirement that experienced medical personnel review determinations of "medical necessity;" increased emphasis on provider outreach; and a limitation on the "look-back" period for records review to three years and not before October 1, 2007.

Given the substantial challenges that arose during the pilot program, and notwithstanding the significant changes to the program going forward, we believe it is important that the RAC experience be reviewed. To help Congress ensure that the national RAC program is successful and that needed improvements are implemented as the program is expanded nationwide, we would like GAO to undertake a study of the program and make recommendations for its continued improvement. Specifically, we ask that you examine the changes implemented in response to lessons learned from the pilot and the incorporation of these changes into the nationwide rollout, including:

1) Provider outreach and actions the agency has taken to prevent future improper payments in areas identified by the recovery audit contractors.

2) Coordination and interaction with other Medicare contractors.

3) CMS oversight of auditing efforts.

4) CMS oversight of the interaction between the recovery audit contractors and providers done to quantify and minimize the total burden of compliance.

We ask GAO to work with our staffs to determine a reasonable reporting timeframe for this work.

Sincerely,

John D. Dingell
Chairman
Committee on Energy and Commerce

Charles B. Rangel
Chairman
Committee on Ways and Means

Pete Stark
Chairman
Committee on Ways and Means
Subcommittee on Health

Frank Pallone
Chairman
Committee on Energy and Commerce
Subcommittee on Health

Lois Capps
Member of Congress