The Termination of Government Programs: A Case Study of the Recovery Audit Contracting Program

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THE TERMINATION OF GOVERNMENT PROGRAMS:
A CASE STUDY OF THE RECOVERY AUDIT CONTRACTING PROGRAM

by
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A thesis submitted to the faculty of The University of Mississippi in partial fulfillment of the requirements of the Sally McDonnell Barksdale Honors College.

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ABSTRACT

RYAN HENRY: The Termination of Government Programs: A Case Study of the Recovery Audit Contracting Program
(Under the direction of Jonathan Winburn)

One common view is that a majority of government programs persist beyond their useful lifespans giving the impression that once installed, government programs are ‘immortal’. However, termination of government programs is an essential element in the policy making process. Several factors determine the projected lifespan of a program, and a program may be effectively terminated using several mechanisms. An analysis of the Recovery Audit Contracting program, a program designed to prevent fraud, waste, and abuse in the Medicare and Medicaid systems, shows that watchdog programs are inherently more prone to termination than other types of government programs.
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CHAPTER 1: Longevity Factors

The incremental evolution of the federal government has resulted in a huge number of government programs and agencies. The Constitution of the United States established the main branches of government and their functions. These functions have expanded as Americans have generally been eager to turn to the government to resolve issues that the market did not seem able to. Therefore, each presidential administration and Congress has created agencies, procedures, and programs to address individual issues as they arise (DiIulio, Garvey, & Kettl, 1993, p. 13).

Efficiency is one goal of any government entity. Traditionally, specialization has thought to be the most effective method to achieve it. However, the specialization of agencies and procedures often result in a tangled web of overlapping and conflicting government programs (Dijulio et al., 1993, p.13).

Once enacted, many government programs appear to be ‘immortal’. New programs are consistently proposed and enacted, but the rate of program closure is much slower. Even inefficient or irrelevant programs that would never survive in the private sector market place seem to persist in the bureaucracy. For example, a government program in 1987 established the Office of the Nuclear Waste Negotiator. Its purpose was to negotiate a to build a safe storage facility for nuclear waste. This goal overlaps with multiple other programs such as the Defense Nuclear Facilities Board, the Presidential Commission on Catastrophic Nuclear Disasters, the
Nuclear Waste Technical Review Board, and about six other offices. The Office of Nuclear Waste Negotiator’s responsibilities have been wholly absorbed by other entities. Even though the Office of Nuclear Waste Negotiator is out of date, unnecessary and costs taxpayers approximately $1 million a year, the office has not been eliminated (Jenkins, Mondelli, & Wilson, 2007, p. 12).

There is a straightforward explanation for this phenomenon. Government programs are established to fix a problem or to fill a need in the community that the market place cannot at a certain point in time. Once implemented, citizens begin to rely on government aid and expect to continue receiving those services. Termination of the programs would cause unforeseen difficulties and hardship throughout certain portions of the society. Therefore, the government generally determines that the social cost of terminating programs is too high so inefficient or unnecessary programs persist (Kaufman, 1976, p. 64).

**Seven Factors that Influence the Lifespan of Government Programs**

Herbert Kaufman, a respected researcher and member of the Brookings Institute, takes a more in depth look at the reasons government programs enjoy such security. He identifies seven factors that contribute to the longevity of government programs and help explain why they often appear immortal.

Three of these factors concern the creation method of the program. Kaufman argues that government programs established by entities other than Congress have longer lifespans. The creation of government programs is not limited to Congress. In fact, many programs are established by administrative agencies. Often times after an agency establishes a program, the agency will secure the continued
existence of its pet program through statutes or mentions in an appropriations act. Secure funding and the agency's interest in the program's success provide protection from termination. For these reasons, programs implemented by administrative agencies generally enjoy longer lifespans than those created by Congress.

Even safer than programs created by agencies are the programs totally insulated from departmental or presidential control. Congress is the only governing body that has the power to terminate such programs. They are designed to be virtually indestructible and protected from the whims of the executive branch during political ideology changes. In theory, this stability allows the programs to better do their jobs. Examples of these programs include the United States Postal Service, the Federal Bureau of Investigation, and the Veterans Administration (Kaufman, 1976, p. 8).

Programs with a strong relationship to current member of Congress are also less likely to face termination. Generally, the member of Congress who originally sponsors or helps create a program will fight for that program as long as they are in office as the program may serve their constituency or bolster their chances of re-election. Legislators with seniority may have enough political clout to prevent legislation that endangers their program from reaching the floor (Jenkins et al., 2007, p. 14). Overtime, committees and subcommittees, staff members, and other legislators involved with the program develop protective attitudes toward them. This also helps explain longevity (Kaufman, 1976, p. 5).
Unlike the first three factors, the fourth factor for longevity benefits all
government programs. The sheer size of the government allows inefficient
programs to survive. The annual budget for the operation of the United States
government is nearly $3.8 trillion (Federal Spending, n.d.). The annual budget is so
large that Congress does not rewrite it from the beginning each year. Instead, the
previous year’s budget is used as a base line and legislators decide whether or not to
increase or decrease funding by a certain amount. In this way, the budget has a
certain incremental momentum. Therefore, total elimination of funds for a program
is virtually unheard of (Kaufman, 1976, p. 7).

The vast majority of government programs contribute to their own success
by becoming active participants in the political process and advocating for
themselves. Leaders and employees of a program have a vested interest in its
survival. Both groups rely on the program for job security and develop a sense of
organizational loyalty. When a program has a history of success, its employees and
administration tend to develop a sense of pride in their service to the nation.
Program leaders often exhibit program loyalty. They also have even stronger
incentives to preserve the organization. Often the leaders’ professional reputation
and future are reliant upon the program’s success. Both employees and leaders are
strong advocates during the political process (Kaufman, 1976, p. 9).

Programs also receive support from outside entities. Citizens that benefit
from and clients that work with a particular program are reliable, passionate
supporters. More surprisingly, agencies that a program regulates will also rise to
their defense. Initially one would think that an entity being regulated would resent
the controlling program. However, many regulated entities benefit from the control. For example, government programs may restrict access to a marketplace or prohibit destructive practices, which protect those under their control. Therefore, they have a stake in the continued existence of the controlling program and will advocate on their behalf (Kaufman, 1976, p. 10).

Lastly, professional and trade associations may be allies to government programs in their sector. Some government programs impose professional standards in an occupation or are so involved in the industry they become an interest group. Professional and trade associations have an interest in ensuring that only qualified individuals are allowed to practice in their field. This guarantees that their job market does not become flooded and preserves the integrity of their work. Politically, each trade has particular interests and the involvement in government programs is a way to influence policy. Professional and trade associations can become very effective lobbying groups for the protection of their government program when mobilized (Kaufman, 1976, p. 11).

Government programs, by nature, are designed to be long lasting. Simply by fixing a problem that the marketplace cannot government programs gain the support of the people and become difficult to uninstall. Additionally, Kaufman’s seven factors increase the likelihood that a program will have a long lifespan. Given this framework, one can understand how even outdated or irrelevant government programs continue to receive funding.

Despite the fact that government programs are constructed for durability, program termination is an important part of the policy making process. Just as
Kaufman identifies factors that improve a program’s expected lifespan, there are factors inherent to certain types of programs that put them at higher risk for termination. Watchdog programs, which protect the public interest by fighting fraud and abuse, are much more likely to face closure than other types of programs. This is supported by the following case study of the Recovery Audit Contracting (RAC) program.
CHAPTER 2: Termination Factors

While some believe that government programs are “immortal,” others argue that program termination is an integral part of the policy making process. Termination is defined as “the deliberate conclusion or cessation of specific government functions, programs, policies, or organizations” (Daniels, 1997, p. 5). Among them is Robert P. Biller, a political scientist, who argues that a rational policy making cycle must include termination in order to free up resources for the creation of new policies. Outdated programs’ goals and functions may have changed over time, they may use valuable government resources to address issues that have been corrected or have been surpassed in efficiency by younger programs. In this way of thinking, government programs must be terminated and their resources reallocated to more beneficial programs to ensure the best for society (Daniels, 1997, p. 31-32).

In fact, statistics show that policy termination, though not common, is a viable part of the policy making cycle. For example, a study by Lewis conducted between 1946 and 1997 showed that 62% of government programs created in that period were also eliminated (Lewis, 2002, p. 93). During their first decade of operation, government programs have a 4-5% chance of termination annually. After their initial 10 years of operation, that number drops to a 1% chance of termination each year (Berry, Burden, & Howell, 2010, p. 5). Given these statistics it can be concluded that the most vulnerable time in a program’s lifespan is the first ten years, during which termination is a real threat.
Three Reasons for Termination

Peter DeLeon identified three main reasons for termination. These reasons are financial imperatives, government efficiencies, and political ideology. Financial imperatives and government efficiencies both concern government resources and funding. Political ideology concerns the overall sentiment of the governing body. Each of these aspects plays an important role in the lifespan of a government program (Lewis, 2002, p. 95).

DeLeon’s first potential reason for program termination is the government’s financial imperative. Termination may be financially imperative during budget cuts or shrinking tax revenue where eliminating a program is politically feasible. Hard economic times pressure governments to cut spending and in turn, government programs. Governments will cut unnecessary programs during harsh economic times in order to funnel funding to programs essential to the operation of the nation (Daniel, 1997). These cuts are often made by reorganizing or eliminating existing government programs. This is particularly impactful during wartimes. Agency termination rates are 250% higher during times of war than during times of peace (Lewis, 2002, p. 95). Lewis attributes this to the President’s shuffling of government responsibilities between agencies to prepare to mobilize (Lewis, 2002, p. 97).

Competition between government programs for resources also falls under the financial imperatives umbrella. The federal government has a large, but limited, amount of funds it can allocate for programs to operate. Government program budgets range from miniscule allotments, such as $1,438 for Certain Veterans
Receiving VA Pension in 2003, to multibillion dollar operating budgets for Social Security and Pell Grants. All government programs were created to solve particular social issues at particular points in time. This creates a system where programs have overlapping initiatives, unclear jurisdictions and mutual funding resources. Therefore, programs with similar goals compete with each other for funding. This competition shortens some programs lifespans (Berry et al., 2010, p. 5). For example, in 2013, the Obama Administration terminated funding for the Electric Guaranteed Underwriting program, which provided funds to rural areas to improve telephone services, because it provided the same service as a program run by the Rural Utilities Service (United States, n.d., p. 41). Competition for funding is a financial imperative that limits the lifespan of certain federal programs.

DeLeon’s second reason for government program termination is inefficiency. There are several reasons a program or agency may be deemed inefficient. Bureaucratic leaders may determine that a program’s services are not worth the cost incurred, the program may no longer be relevant, the need for an updated program may arise from a crisis or event, technologies may develop that render the program obsolete or a program’s services may overlap with another program. (Daniel, 1997, p. 35). Changing circumstances are a common cause of these issues. As time elapses, the nation’s needs, economy and technological advances change (Thomas, 189).

For example, the Comprehensive Employment and Training Act (CERTA) and the State Indoor Radon Grant (SIRG) were terminated for efficiency reasons. CERTA was created in 1973 to provide job training and job search assistance for
disadvantaged or unemployed individuals. The program was terminated because the cost of training potential employees was determined to outweigh the benefit of the individuals becoming a part of the workforce (Daniels, 1997, p. 6). In 2013, the Obama administration eliminated funding for SIRG, a program that helped states’ assess radon risk and diminish it, because the program was outdated. At this time, states had developed the technology to assess and diminish radon risk independently (United States, n.d., p. 105).

DeLeon’s third reason for termination, political ideology changes, may be the most influential factor in a government program’s longevity. Political turnover often results in a new political ideology taking hold and reshaping the administration and its programs. As a new majority takes over government, they use their newly found power to get rid of or lessen support of programs they opposed as the minority (Lewis, 2002, p. 92; Daniels, 1997, p. 33). Given these findings, a program instituted under a Republican President and Congress is more likely to be terminated under a solidly Democratic government (Lewis, 2002, p. 94). Presidential turnover is particularly threatening. New presidents often reorganize the bureaucracy and government programs to gain power at the beginning of their terms (Lewis, 2002, p. 95). Lewis found that a President that gains power and is opposed to a program increases its likelihood of mortality by 67% (Lewis, 2002, p. 97).

The termination and reinstallation of the B-1 bomber program is an excellent example of the power of the president to dictate a program’s lifespan. The B-1 strategic bomber was the most technologically advanced aircraft in the 1960s, and
was used to drop the atomic bombs on Hiroshima and Nagasaki. In 1973, the American Friends Service Committee rallied thousands of citizens to oppose taxpayer funding for the aircrafts in an effort to continue the antiwar sentiment felt after the Vietnam War. The B-1 became an issue in the 1976 presidential race. Democrats took a firm stance next to the American Friends Service Committee. When President Jimmy Carter, a Democrat, took office, one of his first moves was to terminate the development of the B-1 bomber. Four years later, Republican Ronald Reagan took office and resurrected the program. Operational B-1 bombers were being flown again by 1982 (Daniels, 1997, p. 3). This example not only demonstrates the power a president has over particular programs, but also shows the impact of changing political ideology. Presidential and party powers have an incredible effect on the longevity of government programs.

The composition of controlling power also influences programs’ lifespans. Program lifespans are generally lengthened when their supporting party gains power and shortened when the opposing party gains power (Berry et al., 2010, p. 1). Unified governments, where the same political party holds the presidency and congress, are the most dangerous for government programs as they terminate roughly twice as many programs as a divided government. Divided governments see much lower rates of termination. When each party controls a part of the government, proponents of a program generally have enough power to block attempts at its removal (Lewis, 2002, p. 97). The power distribution of divided governments improves the lifespan of government programs.
The termination of government programs is an integral part of the policy lifecycle. DeLeon presents financial imperatives, government efficiencies, and political ideology as the main reason for the dissolution of programs. This may be seen in programs such as Electric Guaranteed Underwriting, which was terminated because of financial imperatives. CERTA is an example of government cutting inefficient spending. External factors such as the political environment also result in the termination of government programs.
CHAPTER 3: History of the Recovery Audit Contracting Program

The discovery of blatant and outrageous fraud in the healthcare system in the early 1990s spurred discussions concerning program integrity throughout Washington. In 1990, John Schilling worked as a mid-level accountant for the Columbia Hospital Corporation, a for-profit company that owned and managed a huge network of hospitals across the country. After prompting from a government fiscal intermediary tasked to ensure the company’s accounting actions were legal, Schilling began looking into the company’s financial reports. His superiors made every effort to block his inquiries about inconsistencies he discovered. At that point, Schilling realized the company was involved in unethical, if not illegal, activity. Afraid of being pinned as the scapegoat if fraud was discovered, Schilling filed a *qui tam* or whistleblower’s lawsuit against Columbia Hospital Association. He teamed up with the Justice Department and worked as an FBI informant to bring down several firms involved in defrauding the Medicare Trust Fund. The lawsuit resulted in Columbia Hospital Association returning $1.7 billion of improperly claimed money to the federal government and discussions regarding the need for program integrity efforts in the healthcare system (Schilling, 2010). The issue of fraud, waste and abuse in government programs, particularly healthcare, became a hot topic and prompted the creation of healthcare integrity programs.

In a broad sense, the design of integrity programs are to ensure that government institutions are organizationally, structurally, and ethically sound. In
most cases, they protect the public interest by preventing fraud and abuse in
government organizations that offer a service to the people. For example, welfare
and healthcare are both monitored by integrity programs (Dayton & Duttweiller,
2009). Integrity programs may be government entities, contracted by the
government, or independent agencies.

**History of the Medicare & Medicaid Programs**

Once light was shed on the topic, it did not take long for people to realize that
Medicare is particularly vulnerable to fraud, waste, and abuse. The idea of a
national health insurance system for the United States first emerged as part of
President Teddy Roosevelt’s platform in 1912. However, it was not until President
Lyndon B. Johnson established Medicare and Medicaid in 1965 that it became a
reality. Originally, Medicare was established to ensure that Americans 65 years and
older were guaranteed health insurance. The federally funded program also
covered younger individuals with certain medical issues, such as disabilities.
Medicaid was established to provide health insurance to low income individuals
(Stanton, 2013).

The Medicare and Medicaid programs have expanded since the 1960s, so the
structure of the program has changed to accommodate the increasing number of
beneficiaries. The federal government runs Medicare and everyone that has paid
social security is automatically enrolled at age 65 while the states administer
Medicaid. For the most part, individuals pay premiums and/or a deductible for
coverage in both programs (Stanton, 2013). That means that when an individual
with Medicare or Medicaid goes to the hospital, they pay the deductible and the
hospital bills either Medicare or Medicaid for the services they provided to the patients. This payment structure is called a Fee-for-Service (FFS) program.

Medicaid and Medicare are two of the largest and most important programs in the nation. Millions of Americans rely on their services to keep themselves and their families healthy and financially stable. In 2011, the number of individuals with Medicare or Medicare surpassed the number of individuals employed in the private sector (Jeffrey, 2012). Medicare alone receives upwards of 1.3 billion claims annually, or almost 10,000 claims per minute (Center for Medicare & Medicaid Services, 2008, p. 9). In 2014, Marilyn Tavenner, the administrator of the Centers for Medicare and Medicaid Services states that the programs provide insurance to more than 102 million individuals, or almost 1 out of every 3 Americans (Tavenner, 2014). These programs have become the backbone of the American healthcare system.

Despite its immense size, the Medicare system is in danger. Experts say that funding for Medicare will be exhausted by 2030 (Tavenner, 2014). Additionally, the structure of the Medicare system puts it at risk for abuse. The FFS model is particularly vulnerable to claims that do not meet Medicare’s medical necessity criteria, claims that are incorrectly coded or documented, and claims that should have been made to different health insurance companies (Center for Medicare & Medicaid Services, 2008, p.5). In fact, a 2013 study by PricewaterhouseCoopers found that Medicare loses approximately $1.2 trillion to fraud, waste, and abuse annually (Keating, 2013).
In January of 2015, two doctors were found guilty of defrauding Medicare for $97 million. The doctors owned a healthcare clinic specializing in the treatment of mental illnesses. The doctors wrongfully diagnosed patients with an illness that required an expensive therapy treatment and billed Medicare for the procedure. Upon investigation, it was found that the doctor’s patients were not treated at all - they were coloring and watching movies (Department of Justice, 2015). This is an extreme case of Medicare fraud, but it highlights the necessity of an integrity program within the healthcare system.

Medicare and Medicaid are two of the top three programs with the most improper payments (Health & Human Services, 2008, p. 7). Fraud, waste, and abuse in the healthcare system come in several forms. There is intentional fraud exemplified by the two doctors with the mental health facility. Another form is unintentional coding errors on the part of hospital staff as hospitals bill Medicare and Medicaid using codes that indicate the service they provided to a patient. Unintentional coding errors on the part of hospital staff account for more than $10 billion in wrongful payments (Health & Human Services, 2008, pg. 3). Improper payments also occur when hospital staff bill Medicare or Medicaid for services that are not covered under insurance or lack proper documentation (Health & Human Services, 2008, p. 6).

The Recovery Audit Contracting program (RAC) was designed to find and correct improper payments in order to protect the integrity of the Medicare Trust Fund. The RAC program was designed to calculate improper payment rates and
identify areas in the healthcare system particularly vulnerable to payment errors. The administrators of Medicare and Medicaid were to use this information to prevent further improper payment. The RACs were also charged with auditing a small fraction of hospital claims and correcting improper payments. This means that if a hospital was paid more than they should have been the RAC reclaimed the money for the Medicaid and Medicare trust funds. If a hospital did not receive enough payment, the RAC would ensure that they received correct reimbursement for services (Health & Human Services, 2008, p. 3). See Appendix A for a brief overview of the RAC program.

The Medicare Modernization Act of 2003 implemented the 3-year RAC demonstration program to identify and correct fraud, waste, and abuse in the Medicare program. The Centers for Medicare and Medicaid Services (CMS) implemented the RAC demonstration in 2005. The demonstration took place in California, Florida, and New York because in 2005 these states received almost a quarter of all Medicare dollars paid to providers. Three Recovery Audit Contractors were selected, assigned to review claims from a single state, and given access to four years’ worth of claims. The RAC was paid a percentage of each corrected claim. In 2007, the successful demonstration was expanded to include Massachusetts, South Carolina, and Arizona (Centers for Medicare & Medicaid Services, 2008).

The RACs reviewed claims made by hospitals to Medicare. The RACs’ first job was determining whether a claim met Medicare policies and regulations, and national and local coverage determinations. The process included automated and complex reviews of Medicare claims. Automated reviews occurred when the claim
was in clear violation of the law. For example, an auditor could use a program to search for two of the same surgical procedures for the same patient on the same day. If the search shows duplicate claims for the same surgery when Medicare should only have paid for it once, the auditor has found an obvious improper payment using the automated method. When a claim appeared to be billed in error, but the error was not obvious, an auditor was authorized to conduct a complex review. In a complex review, the RAC requests medical records from the biller to conduct an in depth review.

By 2008, Congress hailed the RAC demonstration as a success. Auditing only 0.3% of the 4 billion claims made in the 3-year period, the RACs corrected more than $1 billion in improper Medicare claims. This is an extremely high success rate for the first three years of a program. However, much more manpower would be needed for the RACs to come close to correcting the estimated claims error rate of almost 4% potentially totally more than $30 billion (Centers for Medicare & Medicaid Services, 2008, p. 6). Approximately 95% of the improper claims found by the demonstration overbilled Medicare, so the RAC recovered the improper payments for the Medicare Trust Fund. The remaining issues were underpayments to health care providers, resulting in more than $38 million being paid to hospitals. After operating costs and refunded underpayments to providers, the RAC demonstration returned $693.6 million to the Medicare Trust Fund in a three-year period (Centers for Medicare & Medicaid Services, 2008, p. 2).

CMS positively reviewed the RAC demonstration in 2008 and presented a nationwide implementation program with several modifications. CMS determined
that permanent RACs be required to have a medical director and coding experts on staff. Permanent RACs would be required to pay back their fee if their corrected claim was disputed by providers and overturned at any level of appeal. RACs must disclose their contingency fee, create a claim status web page and provide the reason for a claim’s review when requesting more documents. These changes were designed to make the RAC program friendlier for providers. Given these changes Congress included Section 302 in The Tax Relief and Healthcare Act of 2006 and required the RAC program be implemented nationwide by 2010 (Centers for Medicare & Medicaid Services, 2008, p. 2).

**Implementation of the RAC Program Nationwide**

In 2009, the Recovery Audit Contracting program was launched nationwide. Initially, the program only audited Medicare Parts A & B. Part A is hospital insurance, which covers hospital stays, nursing home stays, hospice care, and home health care. Part B is medical insurance that includes doctor visits, outpatient care, home health care, certain medical equipment, and certain preventative care (Centers for Medicare and Medicaid Services, 2014, p. 1). However, the passage of the Affordable Care Act of 2010 expanded the RAC program to include Medicare Parts C & D one year after the program went nationwide (Health & Human Services, 2014, p. iv). Medicare Parts D covers prescription drugs, and Part C includes private insurance plans approved by Medicare (Centers for Medicare and Medicaid Services, 2014, p.2). CMS oversees the RACs that audit Medicare FFS programs, which include Parts A, B, C and D. States oversee the Medicaid RAC programs individually.
In 2014, CMS released a report to Congress evaluating the RAC program for the 2012 fiscal year. The report shows the success of the expanded, nationwide RAC program and allows an in-depth look at the traditional RAC program and the addition of a Medicaid RAC in 2010. In FY 2012, RACs corrected more than 1.2 million claims and $2.4 billion of improper payments. This resulted in $1.9 billion returned to the Medicare and Medicaid Trust Funds. In total, the Medicaid RACs have returned an impressive $57 million to the Treasury. Additionally, the percentage of improper payments decreased from 10.8% in 2009 to 8.5% in 2012. Taxpayers and legislators should see the return of wrongly spent tax dollars as a huge success. Appendix B gives an overview of the success of the program.

![Percentage of Improper Payments Made Under the Medicare Fee-for-Service Program](image)

Source: HHS FY 2013 Agency Financial Report *results exceeded target

**Opposition to the RAC Program**

However, the Recovery Audit Contracting program faced opposition from the American Hospital Association (AHA). The American Hospital Association represents hospitals and health systems that join their organization. The AHA takes
issue with several components of the RAC program. They claim that the RAC audits place an administrative burden on hospitals that takes away from the quality of care they can provide to their patients. The AHA also states that the audits increase the overall cost of the nation’s healthcare system.

The AHAs believes that the RACs are improperly incentivized. RACs are paid by contingency fees, so they receive a portion of the funds they return to the federal government. The contingency fee generally ranges from nine to 12%. The AHA reports that the pay structure incentivizes RACs to become ‘bounty hunters’ by denying claims erroneously and focusing on high dollar claims (American Hospital Association, 2014, p. 1).

The AHA states that this improper incentivization results in an unnecessary administrative burden. Since the implementation of the RAC program, hospitals have to respond to requests for medical records when an auditor determines that a complex review of a claim is needed. The AHA reports that the sheer number of records requests has forced hospitals to create a full time position that is responsible to responding solely to RAC audits. AHA reports that more than 65% of hospitals spend at least $40,000 in the RAC process (American Hospital Association, 2015, p.1).

Part of a RAC auditor’s determination of the legality of a claim concerns whether the medical necessity of a treatment or procedure. If the procedure was not, the Medicare trust fund is not obligated to reimburse the hospital. The AHA does not think that recovery auditors should be allowed to decide whether the administered treatment was medically necessary. Many of these denials were the
result of confusion between ‘inpatient’ and ‘outpatient’ status. They take issue with the fact that auditors are making judgments about a physician’s decisions (American Hospital Association, 2014, p. 2).

One of the AHA’s biggest issues is with the RAC denial appeals process. When a recovery auditor identifies an improper payment or claim, they deny it. The hospital can either accept the denial or enter the appeals process. However, the appeals courts have a massive backlog, sometimes a year or two years long. That means if a recovery auditor wrongly denies a claim the hospital may have to wait two years to receive payment for the procedure. This puts undue stress on hospitals (American Hospital Association, 2014, p.4).

In response to these issues, the AHA mounted a large lobbying push against the RAC program beginning in 2011. According to their website, the AHA has filed lawsuits against the RACs, spoken against the RAC program in congressional hearings, published statistics in RACTrac reports, introduced multiple pieces of legislation to modify or dismantle the program, and actively lobbied legislative leaders on Capitol Hill.

**RAC Audit Moratorium**

In August 2013, CMS responded to AHA’s concerns about RAC auditors determining medical necessity. They implemented the Two Midnight Rule to help determine impatient versus outpatient status. The rule states that any patient in the hospital on observation is to be considered an inpatient only if they stay for two nights or longer. In September 2013, CMS suspended RAC audits on short inpatient stays to allow hospitals and doctors time to adjust to the new Two Midnights rule.
The moratorium was scheduled for 90 days, ending on December 31, 2013 (Evans, 2014, p. 8).

However, once the audit moratorium was in place, AHA worked to ensure that it would not be lifted. In 2013, the Congressional Budget Office informed Congress that extending the RAC moratorium would mean that the Medicare trust fund could lose up to $2 billion in fraud, waste, and abuse. Despite the Congressional Budget Office’s warning, Congress responded to AHA lobbying efforts and extended the moratorium to March 31, 2014. During the moratorium, RACs were allowed to do a very small amount of auditing, but even that was stopped while CMS transitioned to new contracts in February 2014 (Evans, 2014, p. 8).

According to the Center for Medicare & Medicaid Services website, only one of four recovery auditing contracts has been awarded and there is no auditing activity as of February 2015.
CHAPTER 4: Termination of the Recovery Audit Contracting Program

As discussed in chapter 2, the termination of government programs is more common than one might think, and is in fact, an integral part of the policy making process. The Recovery Audit Contracting Program is a prime example of this phenomenon. While the program has not been terminated outright, the audit moratorium renders it unable to achieve its objective. The program lacked certain factors for longevity and had several termination factors. As a watchdog organization, the nature of the RAC program may have made it particularly vulnerable to termination.

Recovery Audit Contracting Program – Factors for Longevity

As discussed in Chapter 2, Kaufman found that programs insulated from Congressional actions, have a strong relationship with congress, support from outside entities, and are endorsed by professional and trade associations have a much longer expected life span than programs that do not. The RAC program lacks each of these factors.

One longevity factor, insulation from congressional action, is dependent upon how a program is designed. The Recovery Audit Contracting program was born in a political landscape that encouraged government oversight. First as a demonstration program, it was implemented by congress in 2003. Though a common beginning, this process does not bolster the program’s chance of long-term success. The RAC program is not insulated from congressional or presidential decisions. Neither was
the program created by a particular agency that has a stake in its continued success or ensures that it receives appropriations. These factors leave the program particularly vulnerable to changes in the political landscape.

The RAC program lacks another key for longevity, a personal relationship with congress. In 2003, some of the most influential politicians in the Bush administration worked to have the RAC program installed. These men included Secretary of Health and Human Services Tommy Thompson, Speaker of the House Denny Hastert, Senate Majority Leader Bill Frist, House Majority Leader Tom DeLay, Chairman of the House Ways and Means Committee Bill Thomas, and Senator John Breaux. Since 2003, each of these men have retired from congress and no longer hold substantial enough political clout to block the termination of the RAC program.

Additionally, then Ranking Member of the Finance Committee, Max Baucus, is now the United States Ambassador to China (Centers for Medicaid & Medicare Services, 2003, p. 3). The strength of the program’s relationship with congress diminished with each member whose tenure in Congress came to an end.

However, there are a few of the original RAC supporters left in congress. In 2003, Chuck Grassley was the chair of the Finance Committee. He now serves as the senior United States Senator from Iowa and chair of the Judiciary Committee. Senator Grassley still supports the ideals behind the RAC program stating, “Medical professionals who cheat Medicare by billing for more complex and costly services than they deliver threaten to drain the elderly healthcare program’s already shaky finances” (Schulte, 2012). However, he does not completely support the RAC program as it is. In 2012, Sen. Grassley and two others that helped install the RAC
program, Senators Baucus and Hatch, signed a letter stating their concern that RACs’ responsibilities overlap with another government program known as Zone Program Integrity Contractors (PICs) (Senators, 2012). The members of congress left from the Bush administration may do more harm to the program’s relationship with congress than the members who no longer hold office.

The RAC program lacks support from outside entities, as well as allies within congress. Outside entities include citizen groups and other government programs. The RAC program directly benefits the Medicare and Medicaid trust funds. While citizens benefit from Medicare and Medicaid services, the RAC program does not directly affect them. Therefore, citizens do not fight for the program. CMS is the government program that regulates the RAC program, but they do not benefit monetarily from its existence. Instead, the controversy surrounding the program makes CMS very unlikely to vocally support the RAC program. Therefore, the program does not enjoy the lobbying efforts of citizens or other organizations that could improve its projected lifespan.

Finally, the RAC program does not enjoy the endorsement of healthcare or auditing trade and professional associations. In fact, the trade and professional associations that would likely be the program’s greatest allies have turned against them. The American Hospital Association has mounted incredible efforts to have the program terminated. Therefore, the RAC program faces an almost complete lack of support from outside entities.

According to Kaufman, the Recovery Audit Contracting program lacks four of the seven factors that promote program longevity. The program is subject to the
will of congress and the president. Furthermore, as the majority of legislators that helped install the program have left office, the program lacks a personal relationship with the nation’s current lawmakers. Neither does it enjoy the backing of outside entities or constituencies to support its work. Without any of the key factors that increase the chances of a program’s survival, the program seems to be constructed for a shorter lifespan.

**Recovery Audit Contracting Program – Factors for Termination**

Just as Kaufman identified factors that increase government programs' lifespans, DeLeon presented three main factors that lead to a program’s termination. The factors for termination include financial imperatives, government efficiencies, and political ideology. The Recovery Audit Contracting program is affected by each of them in the following ways.

The push for governmental efficiency negatively influences the Recovery Audit Contracting program. In this case, bureaucratic leaders are debating whether the program’s benefits are worth its costs. The RAC program returns millions of dollars of wrongly dispersed money to the Medicare and Medicaid trust funds in an attempt to protect the program from fraud, waste, and abuse. The cost falls on the hospitals in the form of an administrative burden. The hospitals have to provide the RAC auditors with a substantial amount of medical information.

Another dimension that adds to the inefficiency factor is the program’s mission. The RACs are only one program that seeks program integrity in healthcare. As demonstrated by Appendix C, several other contractors audit hospitals Medicare and Medicaid claims as well. This results in overlapping initiatives. When
programs’ initiatives overlap congress generally decides which is inefficient and moves to alter that program. By DeLeon’s standards, the RAC program may be inefficient on two fronts.

However, the RAC program is fairly insulated from political ideology changes. The program was implemented in 2003 under the Bush administration with bi-partisan support. In 2010, the program was incorporated into the Obama administration’s Affordable Care Act. As an organization that works to promote program integrity and protect public tax dollars it enjoys approval of both political parties. The Recovery Contracting Program cannot be seen as a strictly Republican or Democratic program, so it is fairly insulated from changes in political ideologies.

Unlike the majority of government programs, the Recovery Audit Contracting program is not affected by the government’s financial imperative. The RACs are self-sufficient and do not require government money to operate. RACs are contracted by the federal government and paid a percentage of every claim returned to the Medicare and Medicaid trust funds. The amount of returned claims has covered the program’s operating costs since the second year of operation. Since then, the program has returned nearly $100 million to the government. Therefore, the program is uniquely insulated from budget cuts and economic fluctuation. The RAC is also unaffected by programs vying for government funds. The RAC is unaffected by one of the leading factors for termination.

Only one of Kaufman’s three factors for termination directly applies to the Recovery Audit Contracting program. The RAC program is one of several government initiatives that seek to identify wrongly dispersed Medicare and
Medicaid payments. Because of this, the major opposition to the program is in the name of governmental efficiency. However, the RAC is insulated from political ideology changes and does not depend on the government for funds to operate. Therefore, it is highly unlikely that the program will be terminated for differences in political ideology or lack of government funding.

**How Long Should the RAC Have Lasted?**

The Recovery Audit Contracting Program has a unique combination of factors that determine the lifespan of a government program. According to Kaufman, the RAC program is devoid of most of the factors that promote longevity as it lacks a strong relationship with congress, outside entities, and professional associations. Given this information, it appears the nature of the program itself lends it to termination. However, the same nature also insulates it from almost all of the factors for termination. Inefficiency is the only termination factor that could be used to end the program. Analyzed in this fashion, it appears that though the program lacks longevity factors, it should operate for an extended period because there is only one reason for termination.

**Mechanisms of Termination**

Analyzed using Kaufman’s method, the RAC program should have a long lifespan without much fear of termination. In this case, the phrase ‘termination of a government program’ does not always indicate the program in question is defunded and immediately shut down. Rather, ‘termination’ includes a variety of changes to an organization, such as a change of mission statement, goals, or duties. However, contrary to the results of the analysis by Kaufman’s principles, the Recovery Audit
Contracting moratorium renders the program ‘terminated,’ for all intents and purposes. Several mechanisms of termination including political clout, reform, and commission were utilized against the RAC program (Jenkins, Mondelli, Wilson, 2007).

Political clout is a very effective termination mechanism. Generally, political forces put government programs in place, so it follows that they also play an influential role in their termination. Political clout includes the actions and lack of action by single politicians, groups of politicians, or lobbying institutions. The driving force for elected officials is re-election, so they will fight the termination of programs that benefit their constituents. Elected officials may also use their profile to draw attention to the issues with a program. Political clout plays a large part in determining the lifespan of a government program (Jenkins, Mondelli, Wilson, 2007).

As for the Recovery Audit Contracting program, political clout is the most effective termination mechanism. Influential elected officials and the American Hospital Association opposed the RAC program. The nature of the program itself worked against it. The American people as a whole benefit from program integrity work, but no one group of people sees tangible benefits. This results in a lack of positive lobbying. Simultaneously, members of congress whose states include a large hospital network receive pressure to end a largely beneficial program. In February of 2014, 111 members of congress signed a letter to Health and Human Services Secretary Kathleen Sebelius urging her to consider a total restructuring of
the program (Pittman, 2014). The letter is just one example of the political clout being used to terminate the RAC program.

Reform is also a mechanism for termination, as it alters a program’s original intent. Therefore, members of congress who call for the reform of the RAC program are also calling for its termination. For example, H.R. 1250, the Medicare Audit Improvement Act, proposes changes to the program that alter its responsibilities, scope, and ability to fulfill its purpose to fight fraud. The bill suggests a sizable reduction in the type and number of claims an auditor could examine (Library of Congress, n.d.). The passage of this reform would in effect, terminate the RAC program.

Commissioning is the least threatening termination mechanism for the RAC program. Governments use a termination method called commissioning to identify inefficient programs. Once a program is deemed inefficient, the government has a reason to reduce its funding. Generally, a government agency will evaluate the success of programs in their domain. The agency conducts the assessment as a third party and makes suggestions regarding improvements, issues, and funding. The government may use commissioning as a tool to identify inefficient programs to defund. The RAC program is protected from the commission process because it does not rely directly on government funds. Instead, the program’s operating costs are covered by a percentage of the money it returns to the federal government. However, commission can damage the reputation of the RAC program. If a commissioned report on another program identifies the RAC program to be inefficient it may be more likely to be terminated through another mechanism.
While the commissioning mechanism cannot end the RAC program, it may provide ammunition for those looking to terminate the program through another mechanism.

Political clout, reform and commission are each Mechanisms for Termination that have been used to combat the Recovery Audit Contracting program. The effect of political clout is two fold. First, outside lobbying groups used their political clout to create a negative perception of the program among legislative leaders. Second, as a ‘watch dog’ the RAC program benefits the nation as a whole, but its benefits are not tangible to a particular subset of the American people. Therefore, it lacks the political clout of a constituency to combat the lobbying groups. The mechanisms of reform and commission work in tandem. Legislators use the information from commissioned studies of the RAC program by the Office of the Attorney General and United States Government Accountability Office to present reforms to the program that will alter its goals, scope and missions statement – effectively terminating the program.

**Watchdog Agencies are Inherently More Likely to be Terminated**

Just as John Schiller, the whistleblower who first brought attention to the fraud in the healthcare system, can be called a ‘watch dog’, the Recovery Audit Contracting program is the definition of a watchdog program. “Government watchdogs are those who perform oversight to ensure accountability that reduces fraud, waste, abuse, and corruption in government” (Feldman, Eichenthal 15). These programs hold others accountable and seek a solution that extends to multiple cases. The initiative of the RAC program is to protect the Medicare and
Medicaid trust funds by identifying fraud, waste, and abuse – making it the epitome of a watchdog organization. This fact may help explain the deviation of the RAC program from Kaufman’s lifespan projection.

Through my analysis of the RAC program, I have concluded that the nature of watchdog organizations makes them more susceptible to termination than other programs. Generally, these programs will lack two longevity factors – a strong relationship with congress over time and strong support from outside entities. Watchdog organizations may enjoy favor with congress during the administration in which they are implemented. However, as seen in the RAC study, after those individuals have left office, no one in congress may feel a particular allegiance to the program. This is in part because generally, watchdog organizations protect the interests of society as a whole, but a particular constituency does not feel the benefits of their work. Therefore, members of congress are not likely to be actively engaged in the program’s welfare. In fact, legislators are likely to receive lobbying efforts against watchdog organizations because they create more work for government organizations in an effort to ensure that everything is being done legally. The government organizations that watchdogs monitor are unlikely to be supportive because of administrative burden and the watchdog’s work generally does not impact a particular group of people, so while people may like the idea of the program, outside entities are unlikely to be actively supportive of the watchdog.

The programs will also be more likely to have two termination factors – government inefficiency and the government’s financial imperative. Watchdog organizations create administrative burden on the organizations that they monitor.
This by itself is enough for organizations to say the organization creates inefficiencies in government. As seen in the RAC case study, this affect is compounded when several watchdogs have the same mission.
CHAPTER 5: Conclusion

This case study is a qualitative analysis of the termination of the Recovery Audit Contracting program. As such, it has particular limitations. The RAC program is one instance of a watchdog program, so the presented characteristics of watchdog programs may not apply to every program. Also, the conclusions of this study may not be generalizable to every government program or watchdog program. Another limitation is the lack of impartial, credible evaluations of the RAC program from 2014 and 2015. While all case studies have limitations, the RAC program case study may be used in several ways.

The RAC case study exposes several major issues in our government. First, I argue watchdog programs developed to ensure accountability and protect the public interest are inherently more likely to be terminated than other government programs. In fact, functional watchdog initiatives are likely to have shorter lifespans than inefficient or outdated government programs. Watchdog organizations that successfully achieve their objective should not be subject to termination. This study may be used in the development of future watchdog organizations to increase the factors for longevity and avoid termination factors in an effort to increase the program’s lifespan.
The single most impactful factor in the termination of the RAC program was lack of support from outside entities. This shows the power interest groups have over government programs. The medical industry is one of the nation’s largest industries. When hospitals faced the administrative burden of claim audits and were forced to repay the government excess received funds, the AHA poured millions of dollars into lobbying efforts to stop the program. Despite the RAC’s positive impact on the lifespan of Medicare and Medicaid, the private sector was able to effectively terminate the program. This shows the power of big business to influence not just policy, but the direction of such important programs as Medicare and Medicaid.
APPENDIX A

ISSUE BRIEF:
The Recovery Audit Contractor Program

In 2006, Congress mandated the creation of an oversight program to combat widespread waste in Medicare. Following a highly successful three-year pilot program, in 2009, the Centers for Medicare and Medicaid Services (CMS) launched the national Recovery Audit Contractor (RAC) program to review Medicare claims, identify billing errors and recover misused taxpayer funds. As a condition of the permanent program, Congress required the contractors to be paid by contingency fee, withholding a portion of their recoveries.

MISSION:

- Protect Medicare resources on behalf of seniors and taxpayers
- Strengthen the Medicare Trust Fund
- Improve Medicare integrity

KEY ACCOMPLISHMENTS:

- Over $6 billion in overpayments returned to the Medicare Trust Fund and over $700 million in underpayments returned to providers since 2009, while reviewing less than 2% of Medicare claims
- Average accuracy rate of 96%
- Majority of RAC decisions are upheld by Medicare appeals judges, with only 7% of audits overturned on appeal
- Named ‘Most Improved’ healthcare integrity program in terms of dollars returned to the government by the OIG in May 2014

CURRENT STATUS & FUTURE RECOMMENDATIONS

This disruption in Medicare oversight has put taxpayers, seniors and the Medicare Trust Fund in a highly vulnerable position. Despite these developments, recovery auditors remain committed to their Congressional mandate to combat Medicare waste and have recommended the following solutions:

- Foster an ongoing dialogue among Medicare stakeholders to improve the RAC program, and continue protecting Medicare’s finite resources.
- Maintain robust, consistent oversight to promote billing accuracy.
- Improve provider education and support to bolster Medicare compliance.
- Promptly address delays in the Medicare appeals process to improve program efficiency, including increasing training for appeals judges to ensure they are well-versed in Medicare policy.

Source: Council for Medicare Integrity (www.properpayments.org)
APPENDIX B

The Recovery Audit Contractor (RAC) Program combats the billions lost to Medicare waste every year from improper payments. Despite recovering more than $8.9 billion in five years, the program was recently suspended. This oversight holiday could cost taxpayers $6 billion or more, compromise the quality of care for seniors, and rapidly drain the Medicare Trust Fund.

FACTS ABOUT THE MOST SUCCESSFUL MEDICARE INTEGRITY PROGRAM IN U.S. HISTORY

FACT

RACs work on behalf of taxpayers and seniors to recoup critical program resources and increase Medicare integrity.

✓ RACs have recovered more than $8.9 billion in improper Medicare payments since the program began in 2009, while reviewing less than 2% of Medicare records from any given provider. – CMS, 2014
✓ From FY2012 to FY2013, RACs returned more money to the government than any other healthcare integrity initiative, earning the distinction of “Most improved” program by the OIG. – OIG, 2014

FACT

RACs are highly accurate.

✓ RACs have an average accuracy rating of 95.5%. – CMS, 2014

Cumulative Accuracy Score by Recovery Auditor
Region A 96.3%
Region B 96.3%
Region C 92.5%
Region D 97.2%
AVERAGE ACCURACY SCORE 95.5%

FACT

The RAC program pay structure and penalties promote accuracy above all.

✓ Lawmakers mandated RACs to be paid by contingency fee in the Tax Relief and Health Care Act of 2006.
✓ In addition to absorbing the front-end cost of auditing, “if an improper payment determination is overturned at any level of appeal, the Recovery Auditor contingency fee must be returned to CMS. This process helps ensure the accuracy of the Recovery Auditors’ reviews.” – CMS, 2012

FACT

Of the RAC decisions appealed, the majority are upheld.

✓ In FY2012, only 7 percent of all Recovery Auditor determinations have been challenged and later overturned on appeal. – CMS, 2014
✓ “The receipt of appeals and reversal of a RAC decision does not necessarily mean the auditor was incorrect in his interpretation of Medicare policy.” – CMS, 2014
✓ “Some of these appellants appeal every payment denial.” – OIG, 2012

FACT

Any disruption to Medicare oversight hurts taxpayers, seniors and the Medicare Trust Fund.

✓ In FY2013, Medicare lost $45.6 billion to overbillings by providers, amounting to more waste than any other federal program. – HHS, 2013
✓ Since 2011, the rate of Medicare improper payments has risen steadily from 9.6% to 10.1%. – HHS, 2013
✓ The Medicare Trust Fund will be insolvent by 2026. – CMS, 2013

Source: Council for Medicare Integrity (www.properpayments.org)
Source: 2013 GAO report to Congress entitled *Medicare Program Integrity*


Evans, E. (2014, May). Written Testimony of Ellen R. Evans, MD Corporate Medical Officer HDI. Washington, D.C.


