

Medicare Program Integrity Manual

Chapter 3 - Verifying Potential Errors and Taking Corrective Actions

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3.1 – Introduction

(Rev. 71, 04-09-04)

Contractors must analyze provider compliance with Medicare coverage and coding rules and take appropriate corrective action when providers are found to be non-compliant. MR staff should not expend resources analyzing provider compliance with other Medicare rules (such as claims processing rules, conditions of participation, etc.). If during a review it is determined that a provider does not comply with conditions of participation, do not deny payment solely for this reason. Refer to the applicable state survey agency. The overall goal of taking administrative action should be to correct the behavior in need of change, to collect overpayments once identified, and deny payment when payment should not be made. For repeated infractions, or infractions showing potential fraud or pattern of abuse, more severe administrative action should be initiated. In every instance, the contractor’s priority is to minimize the potential or actual loss to the Medicare Trust Funds while using resources efficiently and treating providers and beneficiaries fairly.

A variety of interventions may be necessary in order to correct inappropriate behaviors. Contractors should use feedback and/or education as part of their intervention. Contractors should make sure that administrative actions are commensurate with the seriousness of the problem identified, after a limited probe is done to understand the nature and extent of the problem. Serious problems should be dealt with using the most substantial administrative actions available, such as 100 percent prepayment review, payment suspension, and *use of statistical sampling for overpayment estimation* of claims. Small and isolated problems should be dealt with through feedback and reevaluation after education. At any time, evidence of fraud should result in referral to the *BI* for development.

3.1.1 – Provider Tracking System (PTS)

(Rev. 71, 04-09-04)

Carriers must have in place a PTS. The PTS will identify all individual providers and track all contacts made as a result of actions to correct identified problems such as eligibility and medical necessity issues and repeated billing abusers who frequently change the way they code their bills to their financial advantage. *Carriers* should use the PTS to coordinate contacts with providers (e.g., MR education contacts). *Carriers* should ensure that if a provider is to be contacted as a result of more than one problem, multiple contacts are necessary, timely and appropriate, not redundant. *Carriers* should also coordinate this information with the *PSC or Medicare contractor BI* unit to assure contacts are not in conflict with *benefit integrity* related activities. The PTS should contain the date a provider is put on a provider specific edit. The *carrier* should reassess all providers on MR quarterly to determine whether the behavior has changed. The *carrier* must note the results of the quarterly assessment in the PTS. If the behavior has resolved sufficiently and the edit was turned off, note the date the edit was turned off in the PTS. When a provider appeals a medical review determination to an *Administrative Law Judge (ALJ)*, the information in the PTS should be shared with the ALJ to demonstrate corrective actions have been taken by the *carrier*.

3.1.2 – Evaluating Effectiveness of Corrective Actions

(Rev. 71, 04-09-04)

Carriers must evaluate the effectiveness of their corrective actions on targeted problem areas at least every 3 months until there is evidence that the problem is corrected. *Carriers* must use the PTS for anyone in their organization who provides education and other contacts with providers. *Carriers* must use the PTS to coordinate contacts with providers (e.g. MR education contacts). *Carriers* must ensure that, if a provider is to be contacted as a result of more than one problem, multiple contacts are necessary, timely and appropriate, not redundant. *Carriers* must also coordinate this information with their *benefit integrity* unit to assure contacts are not in conflict with fraud related activities.

3.2 – Verifying Potential Error and Setting Priorities

(Rev. 71, 04-09-04)

Understanding the characteristics of the service area of the provider is a key element of claim data analysis. The areas selected for review by the contractor (e.g., providers, services) must be *deemed high priority* and contractors must be able to document the rationale for selection. Using claims data, contractors shall determine the degree to which a potential error is widespread and decide if the potential error meets the deviation indicators established. When services and/or providers appear outside of norms, the contractor must verify that the potential error represents an unacceptable practice. Further investigate the provider(s) identified as causing the potential error.

Some examples of possible legitimate explanations for potential error are listed below. This is not an all-inclusive list.

- The provider may be associated with a medical school, research center, or may be a highly specialized facility; and
- The community may have special characteristics such as economic level or a concentration of a specific age group that leads to the aberrancy;

A – Error Validation Review

If no legitimate explanation exists for the potential error, the contractor should verify the cause of a potential error. The contractor shall not suspend large volumes of claims for review or use 100% prepayment review. Instead, the contractor shall select a sample of cases which is representative of the universe where the problem is occurring. The contractor shall request appropriate medical documentation and review cases for coverage and correct coding. MR staff should not be reviewing claims for compliance with other Medicare rules (i.e., claims processing, conditions of participation, etc.). Error validation reviews may be conducted on a prepayment or postpayment basis.

Where errors are verified, the contractor shall initiate appropriate corrective actions found in PIM Chapter 3, §§5, 6, 8, and 9.

Where no corrective action is taken, the contractor must document findings and explanations for not pursuing the problem. If no problems are found, the contractor shall discontinue the review. Do not wait until the end of the quarterly reporting period to end the review process.

In all situations where errors have been verified, the MR unit must notify the provider (written or verbal) that the particular practice or behavior is inappropriate and should not continue.

Error validation reviews require the examination of the provider's medical documentation but do not require *use of statistical sampling for overpayment estimation* methodologies. It does not allow projection of overpayments to the universe of claims reviewed. In this

type of review, contractors collect overpayments only on claims that are actually reviewed, determined to be non-covered or incorrectly coded, and the provider is liable or at fault for the overpayment.

It may be used to determine:

- The extent of a problem across multiple providers, or
- Whether an individual provider has a problem.

Contractors shall select providers for Error Validation Reviews *in, at a minimum*, the following *instances*:

- The contractor has identified questionable billing practices, (i.e., noncovered or incorrectly coded services) through data analysis.
- Alerts from other intermediaries, carriers, *QIOs*, intermediary payment staff, or other internal components are received that warrant such review;
- Complaints.

Contractors must document their reasons for selecting the provider for the Error validation review. In all cases, they must clearly document the issues cited and the applicable law or their published national coverage policies or local medical review policy.

Contractors *shall* select a minimum of 30 claims for review, and generally limit the review to claims processed within the most recent year.

B – Setting Priorities

Contractors must focus administrative resources to achieve the greatest dollars returned to the Medicare program for resources used. This requires establishing a priority setting process to assure MR focuses on areas with the greatest potential for *fraud and abuse*. *Fraud and abuse* may be demonstrated by high dollar payments, high volume of services, dramatic changes, or significant risk for negative impact on beneficiaries (e.g., low volume but unnecessary surgery).

Efforts to stem errors must be targeted to those areas which pose the greatest financial risk to the Medicare program and which represent the best investment of resources. Contractors should focus where the services billed have significant potential to be noncovered, incorrectly coded, or misrepresented. Target areas may be selected because of:

- High volume;
- High cost;

- Dramatic change;
- Adverse impact on beneficiaries; and/or
- Problems which, if not addressed, may escalate.

Contractors have the authority to review any claim at any time, however, the claims volume of the Medicare program prohibits review of every claim. Resources dictate that in attempting to make only correct payments, contractors make deliberate decisions on the best uses of limited resources to maximize returns. For example, contractors may decide not to review claims for certain services or providers for extended periods of time. Medical review staff may decide to focus review on problem areas that demonstrate significant risk to the Medicare program as a result of inappropriate or potentially inappropriate payments. Contractors must have in *place* a program of innovative, systematic, and ongoing analysis of claims and other relevant data to focus intervention efforts on the most significant errors.

3.2.1 – Determining Whether the Problem is Widespread or Provider Specific

(Rev. 71, 04-09-04)

For each verified priority problem, the contractor must determine whether the problem is widespread or provider specific. If the error is a widespread problem and evenly distributed among providers, contractors should validate the concern by review of 100 potential problems claims from a representative sample of providers--prepay or postpay and deny or collect money as appropriate. Take service-specific corrective actions:

- Contact medical and specialty societies to assist in education; and
- Develop new/revised LMRPs if needed; and/or
- Issue bulletin article clarifying rules; and/or
- Initiate service-specific prepay edits.

If the error is limited to a small number of providers, contractors should validate the concern by review of 20-40 potential problem claims for each provider in question—prepay and postpay and deny or collect money as appropriate.

3.2.2 - Administrative Relief from Medical Review in the Presence of a Disaster

(Rev. 71, 04-09-04)

When a disaster occurs, whether natural or man-made, contractors should anticipate both an increased demand for emergency and other health care services, and a corresponding

disruption to normal health care service delivery systems and networks. In disaster situations, contractors should do whatever they can to assure that all Medicare beneficiaries have access to the emergency or urgent care they need. Contractors should let providers know (via website, responses to provider calls, etc.) that the provider's first responsibility, as in any emergency, is to provide the needed emergency or urgent service or treatment. Contractors should assure providers that they will work with providers to ensure that they receive payment for all covered services. The administrative flexibility available to contractors is discussed below. These actions will prevent most inappropriate denials and subsequent appeals.

A -- Definition of Disaster

"Disaster" is defined as any natural or man-made catastrophe (such as hurricane, tornado, earthquake, volcanic eruption, mudslide, snowstorm, tsunami, terrorist attack, bombing, fire, flood, or explosion) which causes damage of sufficient severity and magnitude to:

- 1) partially or completely destroy medical records and associated documentation that may be requested by the contractor in the course of a Medicare medical review audit,
- 2) interrupt normal mail service (including US Postal delivery, overnight parcel delivery services etc.), or
- 3) otherwise significantly limit the provider's daily operations.

A disaster may be widespread and impact multiple structures (e.g., a regional flood) or isolated and impact a single site only (e.g., water main failure). The fact that a provider is located in an area designated as a disaster by the Federal Emergency Management Act (FEMA) is not sufficient in itself to justify administrative relief, as not all structures in the disaster area may have been subject to the same amount of damage. Damage must be of sufficient severity and extent to compromise retrieval of medical documentation.

B -- Basis for Providing Administrative Relief

In the event of a disaster, contractors may grant temporary administrative relief to any affected providers for up to 6 months or more with good cause. Administrative relief is to be granted to these providers on a case-by-case basis in accord with the following guidelines:

- Contractors must make every effort to be responsive to providers who are victims of the disaster and whose medical record documentation may be partially or completely destroyed.
- Providers must maintain and, upon contractor request, submit verification that (1) a disaster has occurred and (2) medical record loss resulted from this disaster to the point where administrative relief from medical review requirements is

necessary to allow the provider sufficient time to obtain duplicate, lost record, or reconstruct partially destroyed records.

Verification of the disaster and the resultant damage may include but is not limited to: (1) copies of claims filed by the provider with his/her insurance and liability company, (2) copies of police reports filed to report the damage, (3) copies of claims submitted to FEMA for financial assistance, (4) copies of tax reports filed to report the losses, or (5) photographs of damage. Contractors should not routinely request providers to submit verification of damage or loss of medical record documentation.

C -- Types of Relief

Providers Directly Impacted By Disaster

When a provider who has been selected for complex pre or postpay review is directly affected by a disaster, the contractor should consider shifting the time period of the claims being reviewed to a later time period (e.g. 6 months later). *Additional Documentation Requests* (ADRs) should be suspended for providers who have been directly affected for at least 30 days. These claims should not be denied as noncovered and may be tagged for later postpay review. Contractors should consult with their regional office prior to shifting the time period of review or suspend ADRs for certain providers.

Contractors should allow up to an additional 6 months beyond the original due date for the submission of requested records. Requests for extensions beyond this date may be granted with good cause at the discretion of the contractor.

In the case of complete destruction of medical records where backup records exist, contractors must accept reproduced medical record copies from microfiche, microfilmed, or optical disk systems that may be available in larger facilities, in lieu of the original document. In the case of complete destruction of medical records where no backup records exist, contractors must accept an attestation that no medical records exist and consider the services covered and correctly coded. In the case of partial destruction, contractors should instruct providers to reconstruct the records as best they can with whatever original records can be salvaged. Providers should note on the face sheet of the completely or partially reconstructed medical record: "This record was reconstructed because of disaster."

Providers Indirectly Impacted By Disaster

For providers that are indirectly affected by a disaster (e.g., an interruption of mail service caused by a grounding of US commercial air flights), contractors must take the following actions:

- For prepay or postpay documentation requests, extend the parameter that triggers denial for non-receipt of medical records from 45 days to 90 days. ADR letters must reflect that the response is due in 90 days rather than 45 days. This action will prevent most inappropriate denials and unnecessary increases in appeals workload.
- If a contractor receives the requested documentation after a denial has been issued but within a reasonable number of days beyond the denial date, the contractor should REOPEN the claim and make a medical review determination. Many contractors believe that 15 days is a reasonable number of days although contractors should make these decisions on a case-by-case basis. The workload, costs and savings associated with this activity should be allocated to the appropriate MR activity code (e.g., prepay complex or postpay complex review). Contractors should conduct these reopenings retroactively back to the date of the disaster.

D -- Impact on Data Analysis

Contractors' data analysis should take into consideration the expected increase in certain services in disaster areas.

E -- Impact on Contractor Performance Evaluation (CPE)

During CPE reviews, *CMS* will consider a waiver to all contractor MR requirements, as necessary, to allow contractors the flexibility where required to handle issues that arise in the presence of disaster. Examples of such requirements include "anti-bunching" rules, workload targets, and any other MR administrative rules. Contractors must retain documentation of how their MR operations were affected during the disaster and make it available to CPE review teams, CCMO staff, and local regional office staff, upon request.

3.3 – Provider Education

(Rev. 71, 04-09-04)

A – Widespread Provider Education

Issuing a provider bulletin as an educational tool may be helpful if a problem is general or widespread.

B – Focused Provider Education

In addition to the MIP-PET activities identified in Chapter 1, §1.4.1, contractors must initiate focused provider education when a specific error is verified. Focused provider education means direct 1-to-1 contact between the contractors and the provider through a telephone contact, letter, or meeting. When individual providers are contacted, contractors must provide comparative data on how the provider varies significantly from other providers in the same specialty payment area or locality. Graphic presentations

may help to communicate the perceived problem more clearly. Contractors are encouraged to have contact with providers to make them aware that they have noticed unusual patterns and to gather information. Contact may be in the form of telephone calls, written correspondence or an informal in-person meeting. Contractors must deny non-covered and incorrectly coded services even while provider education is occurring. Reviews of applicable LMRPs with providers may be useful to emphasize the contractors' point.

3.3.1 - Articles

(Rev. 71, 04-09-04)

Contractors have an obligation to assist providers in complying with Medicare's coverage, coding and medical review related billing and claim rules.

For the purposes of this manual, the term "article" will be used to describe any bulletin article, Web site article, educational handout or any other non-LMRP document intended for public release that contains coverage/coding statements or medical review related billing or claims considerations. For the purposes of this manual, the term "publish" will be used to describe any form of dissemination including posting on a Web site, distributing at a seminar, including an e-mailing, and printing in a hardcopy bulletin.

Contractors may publish articles communicating certain information to providers.

When National Coverage Determinations (NCD) or other coverage instructions issued by CMS include specific conditions or parameters for which services may be covered, contractors may develop and publish a list of covered codes related to the coverage provision. Contractors may automate denials for codes not included on the list without the development of an LMRP if the NCD indicates or states that no other condition or parameters will be covered.

- Contractors may publish definitions of procedure codes, lists of items that may be billed under a particular code, or minimum requirements that providers must meet in order to bill using a certain code.
- The contractor may publish a product classification list that instructs providers about which specific products meet the definitional requirements of a particular HCPCS code. Developing or revising an LMRP for this article is unnecessary.
- The contractor may explain which off-labeled uses of FDA approved drugs are considered reasonable and necessary with the ICD-9-CM codes that reflect such uses.
- The contractor may explain benefit category decisions and publish a list of drugs/biologicals that are considered usually self-administered.

On a flow basis, contractors shall report those injectable drugs that are excluded when furnished incident to a physician's service on the basis that the drug is usually self-administered by the patient. Contractors must enter their self-administered drug exclusion list into the Medicare Coverage Database. This database can be accessed at www.cms.hhs.gov/mcd.

In order to ensure that the Self-Administered Drug (SAD) Exclusion List report in the Medicare Coverage Database functions correctly, contractors must:

- Ensure that all CPT code information in a SAD exclusion article is listed in field 22.
- Ensure that all SAD exclusion articles are entered with the “SAD article” type. Contractors must not use the “General Detailed,” “General Basic,” or “FAQ” article types for their SAD exclusion articles.
- Ensure that the “End Date” for each drug listed in field 22 is correct. The end date should reflect the date that the drug is no longer excluded as self-administered.
- Review their SAD articles annually to ensure that the following requirements are met:

Drugs that have never been SAD-excluded	Not on the list
Drugs that were once SAD-excluded, but now are not SAD-excluded	Either: <ul style="list-style-type: none"> - On the list with an accurate “End Date,” or - Were deleted from the list with an accurate article “Effective Date”
Drugs that are currently SAD-excluded	On the list

- The contractor may explain which HCPCS code or group of codes properly describes a particular service.
- The contractor may publish State non-physician licensure information that governs services billed by the physician under the "incident to" provision.

Articles may not conflict with NCDs or coverage provisions in interpretive manuals. Although a comment and notice process is not required, contractors are encouraged to consult with stakeholders in the provider community when developing articles. Contractors must monitor comments about articles from clinician providers and respond to their concerns, as needed, by issuing revised or clarifying articles.

NOTE: Nothing in this section precludes the contractors from making individual claim determinations, even in the absence of an article or LMRP.

Beginning in 2003, contractors will be required to enter into the Medicare coverage database those articles that address local coverage, coding or medical review related billing and claims considerations. Instructions for this requirement are in PM AB-02-098. Articles may include any newly developed educational materials, coding instructions or clarification of existing medical review related billing or claims policy. Contractors are encouraged to send articles to specialty societies for inclusions in their publications and Web sites. All newly created articles must be posted on the contractor's Web site where duplicate copies may be obtained by physician/suppliers.

3.4 - Overview of Prepayment and Postpayment Review for MR Purposes

(Rev. 71, 04-09-04)

The instructions listed in this section (Section 3.4) apply only to reviews conducted for MR purposes unless otherwise noted. When MR staff are performing BI-directed prepay or postpay claims review, the MR staff should seek direction from the BI staff. For example, if the provider calls the MR staff and requests feedback on the review results pursuant to the requirements for progressive corrective action, the MR staff should seek guidance from the BI unit.

Prepayment MR of claims requires that a benefit category review, statutory exclusion review, reasonable and necessary review, and/or coding review be made BEFORE claim payment. Prepayment MR of claims always results in an "initial determination." See MCM §12001 for a complete definition of "initial determination."

Postpayment MR of claims requires that a benefit category review, statutory exclusion review, reasonable and necessary review, and/or coding review be made AFTER claim payment. These types of review allow the contractor the opportunity to make a determination to either pay a claim (in full or in part), deny payment or assess an overpayment. Postpayment MR of claims may result in no change to the initial determination or may result in a "revised determination." See 42 CFR 405.841 and 42 CFR 405.750 for a complete definition of "revised determination."

When initiating prepay or postpay review (provider specific or service-specific), contractors must notify providers of the following:

- That the provider has been selected for review and the specific reason for such selection. If the basis for selection is comparative data, contractors must provide comparative data on how the provider varies significantly from other providers in the same specialty payment area or locality. Graphic presentations may help to communicate the perceived problem more clearly;
- Whether the review will occur on a prepayment or postpayment basis; and
- If postpayment, the list of claims that require medical records.

This notice must be in writing and may be issued separately or in the same letter that lists the additional documentation that is being requested. Contractors may (but are not required to) make this notification via certified letter with return receipt requested. In addition, the contractor may include information on its Web site explaining that service-specific review will be occurring and the rationale for conducting such review.

3.4.1 - Determinations Made During Prepayment and Postpayment MR

(Rev. 71, 04-09-04)

When contractors review claims, either on a prepayment or postpayment basis, they may make any or all of the determinations listed below.

Contractors must be able to differentiate the type of determination made to ensure that limitations on liability determinations are made when appropriate.

When MR staff are reviewing a medical record for MR purposes, their focus is on making a coverage and/or coding determination. However, when MR staff are performing BI-directed review, their focus may be different (e.g., looking for possible falsification, etc.)

A -- Coverage Determinations

A claim may be covered, in full or in part, by a contractor if it meets all the conditions listed in PIM Chapter 13, Section *13.4.1*

B -- Limitation of Liability Determinations

In accordance with §1879 of the Act, contractors first consider coverage determinations based on the absence of a benefit category or based on statutory exclusion. If both these conditions are met, the next consideration should be whether the service was reasonable and necessary. Section 1862(a)(1) of the Act is the authority for denial because a service is not reasonable and necessary. When a claim is denied, in full or in part, because an item or service is not reasonable and necessary, contractors make and document §§1879, 1870, and 1842(1) (limitation of liability) determinations as appropriate. Because these determinations can be appealed, it is important that the rationale for the determination be documented both initially and at each level of appeal. Limitation of Liability determinations do not apply to denials based on determinations other than reasonable and necessary. See *PIM Exhibits 14 - 14.3* for further details.

C -- Coding Determinations

See PIM Chapter 13, Section 13.4.2 for a description of a coding determination.

D -- Pricing Determinations for First Time Not Otherwise Classified (NOC) Codes

In addition, contractor MR staff may assist contractor claims processing staff in making pricing determinations on NOC HCPCS codes. The MR staff will provide information needed to the claims processing staff so that they can price the service in accordance with CMS pricing methodologies described in the MCM and MIM. For frequently billed services, to the extent possible, contractors should keep track of these pricing determinations so that for future claims, the claims processing staff can price the claim using established MR pricing guidelines for that service.

3.4.1.1 -- Documentation Specifications for Areas Selected for Prepayment or Postpayment MR

(Rev. 71, 04-09-04)

The contractor may use any information they deem necessary to make a prepayment or postpayment claim review determination. This includes reviewing any documentation submitted with the claim as well as soliciting documentation from the provider or other entity when the contractor deems it necessary and in accordance with PIM Chapter 3, Section 3.4.1.2.

A -- Review of Documentation Submitted with the Claim

If a claim targeted for prepayment or postpayment review (including automated, routine, or complex) contains a modifier indicating that additional documentation is attached or was submitted simultaneously with an electronic claim, the contractor must review the documentation before denying the claim. There are two exceptions to this rule. Contractors may deny without reviewing attached or simultaneously submitted documentation (1) when clear policy serves as the basis for denial, and (2) in instances of medical impossibility (see PIM Chapter 3, §3.5.1).

NOTE: The term "clear policy" means a statute, regulation, NCD, coverage provision in an interpretive manual, or LMRP specifies the circumstances under which a service will always be considered non-covered or incorrectly coded. Clear policy that will be used as the basis for frequency denials must contain utilization guidelines that the contractor considers acceptable for coverage.

B – Signature Requirements

Medicare requires a legible identifier for services provided/ordered. The method used (e.g., hand written, electronic, or signature stamp) to sign an order or other medical record documentation for medical review purposes in determining coverage is not a relevant factor. Rather, an indication of a signature in some form needs to be present. Do not deny a claim on the sole basis of type of signature submitted.

Providers using alternative signature methods (e.g., a signature stamp) should recognize that there is a potential for misuse or abuse with a signature stamp or other alternate signature methods. For example, a rubber stamped signature is must less secure than other modes of signature identification. The individual whose name is on the alternate signature method bears the responsibility for the authenticity of the information being attested to. Physicians should check with their attorneys and malpractice insurers in regard to the use of alternative signature methods.

All State licensure and State practice regulations continue to apply. Where State law is more restrictive than Medicare, the contractor needs to apply the State law standard. The signature requirements described here do not assure compliance with Medicare conditions of participation.

Note that this instruction does not supersede the prohibition for Certificates of Medical Necessity (CMN). CMNs are a term of art specifically describing particular Durable Medical Equipment forms. As stated on CMN forms, "Signature and date stamps are not acceptable" for use on CMNs. No other forms or documents are subject to this exclusion.

C -- Review of Documentation Solicited After Claim Receipt

The process whereby a contractor requests additional documentation after claim receipt is known as "development." Providers selected for review are responsible for submitting medical records requested of them by the contractor within established timeframes. Development requirements are listed below in Section 3.4.2.1.

D -- Requirements That Certain Tests Must Be Ordered By The Treating Physician

Effective November 25, 2002, 42 CFR 410.32(a) requires that when billed to any contractor, all diagnostic x-ray services, diagnostic laboratory services, and other diagnostic services must be ordered by the physician who is treating the beneficiary for a specific medical problem and who uses the results in the management of the beneficiary's specific medical problem.

E -- Diagnosis Requirements

Section 1833(e) of the Act provides that no payment may be made "under this part unless there has been furnished such information as may be necessary in order to determine the amounts due such provider or other person . . ." Contractors may require information, in accordance with the requirements below whenever they deem necessary to make a determination listed in section 3.4.1 and thus to determine appropriate payment.

Some provider types are required to submit diagnosis codes on all claims while other provider types are required to submit diagnosis codes only if such information is required by an LMRP.

- **Claims Submitted by Physicians or §1842(b)(18)(C) of the Act Practitioners Must Contain Diagnosis Codes**

Section 1842 (p)(1) of the Act states that each claim submitted by a physician or §1842(b)(18)(C) of the Act practitioner "shall include the appropriate diagnosis code (or codes)...". For services from physicians and §1842(b)(18)(C) of the Act practitioners submitted with an ICD-9 code that is missing, invalid, or truncated, contractors must return the billed service to the provider as unprocessable in accordance with MCM §3005.4(p) or MIM §3605.3.

- **Claims Submitted By All Other Provider Types Must Contain Diagnosis Codes If Such Codes Are Required By An LMRP (effective 7/1/02)**

In order to address potential abuse or overutilization, contractors can require that ICD-9 diagnosis codes be submitted with each claim for the targeted service. This information is used in determining whether the services are covered and correctly coded. Effective April 1, 2002, contractors may require ICD-9 diagnosis codes to be submitted by all non-physician billers with every claim for a targeted service only if such a requirement appears in an LMRP for that service. Contractors must educate providers about this requirement beginning no later than January 1, 2002. This outreach should occur via website bulletin articles, etc.

For individual non-physician providers who are identified due to unusual billing practices, fraud referrals, etc., contractors may also require ICD-9 diagnosis codes to support the medical necessity of all or some claims submitted by the targeted entities, even if no LMRP exists requiring such codes.

For services submitted with an ICD-9 diagnosis code that is missing, incorrect or truncated as indicated above, contractors must return the billed service to the provider as unprocessable.

F -- Requirements for Lab Claims

The American Medical Association's (AMA) 1998 edition of the Current Procedural Terminology (CPT) established three new and one revised Organ or Disease Oriented laboratory panels. Since these panels are composed of clinically relevant groupings of automated multichannel tests there is a general presumption of medical necessity. If there is data or reason to suspect abuse of the new panel codes, contractors may review these claims. Should contractors determine the need to develop a LMRP for laboratory panel codes, develop these policies at the panel code level. In some instances of perceived abuse of the new panel codes, you may review the panel and deny component tests on a case-by-case basis or evaluate the need for the component level test.

3.4.1.2 - Additional Documentation Requests (ADR) During Prepayment or Postpayment MR

(Rev. 71, 04-09-04)

When contractors cannot make a coverage or coding determination based upon the information on the claim and its attachments, the contractors may solicit additional documentation from the provider by issuing an Additional Documentation Request (ADR). Contractors must ensure that all records requested are from the period under review.

Contractors must specify in the ADR the specific pieces of documentation needed (and ONLY those pieces needed) to make a coverage or coding determination.

A -- Development of Non-Lab Claims for Additional Documentation

If, during pre- or postpay review, a contractor chooses to send an Additional Documentation Request (ADR) regarding a non-lab targeted service, they must solicit the documentation from the **billing provider** and may solicit documentation from other entities (**third parties**) involved in the beneficiary's care. If a contractor chooses to solicit documentation from a third party, they may send the third party ADR simultaneously with the billing provider ADR. Contractors must send ADRs in accordance with the following requirements:

BILLING PROVIDER ADRs

- Contractors who choose to request additional documentation must solicit such information from the billing provider and must notify them that they have 30 days to respond. Contractors have the discretion to grant an extension of the timeframe upon request. The contractor must pend the claim for 45 days. Contractors may cc a third party.
- Contractors have the discretion to issue no more than 2 "reminder" notices via letter or phone call prior to the 45th day;
- If information is automatically requested only from the billing provider and no response is received within 45 days after the date of the request (or extension), the contractor must deny the service as not reasonable and necessary (except for ambulance claims where the denial may be based on §1861(s)(7) or §1862(a)(1)(A) of the Act depending upon the reason for the requested information). This would count as automated review.
- If information is requested **only** from the **billing provider** and the information received fails to support the coverage or coding of the claim, in full or in part, the contractor must deny the claim, in full or in part, using the appropriate denial code (see section 4.2). This would count as a complex review.

THIRD PARTY ADRs

A contractor may NOT solicit documentation from a **third party** unless the contractor first or simultaneously solicits the same information from the **billing provider**. Beneficiaries are not third parties.

When a contractor solicits documentation from a third party:

- The contractor must notify the third party that they have 30 days to respond and copy the billing provider. Contractors have the discretion to grant extensions of the timeframe upon request.
- For prepay review, the contractor must pend the claim for 45 days. This 45 day time period may run concurrent with the 45 day time period for the billing provider ADR letter;
- Contractors have the discretion to issue no more than 2 "reminder" notices via email, letter or phone call prior to the 45th day;
- If information is requested from **both** the billing provider and a third party and no response is received from either within 45 days after the date of the request (or extension), the contractor must deny the claim, in full or in part, as reasonable and necessary. This would count as automated review.
- If information requested from **both** the billing provider and a third party and a response is received from one or both, but the information fails to support the coverage or coding of the claim, the contractor must deny the claim, in full or in part, using appropriate denial code (see Section 3.4.2).

B - Development of Lab Claims for Additional Documentation

Effective November 25, 2002, contractors shall develop lab claims in accordance with the following requirement:

- If, during pre- or postpay review, a contractor chooses to send an ADR regarding a targeted lab service, they must solicit the documentation from the billing provider, and under certain circumstances, must also solicit documentation from the ordering provider.

Contractors must send ADRs in accordance with the following requirements:

Billing Provider ADRs

- Contractors who choose to request additional documentation must solicit such information from the **billing provider** and must notify them that they have 30 days to respond. Contractors have the discretion to grant an extension of the time frame upon request. For prepay review, the contractor must pend the claim for 45 days. **Contractors may solicit billing providers only for the following information:**
 - Documentation of the order for the service billed (including information sufficient to allow the contractor to identify and contact the ordering provider);

- Documentation showing accurate processing for the order and submission of the claim;
 - Diagnostic or other medical information supplied to the billing provider by the ordering provider, including any ICD-9 codes or narratives supplied.
- Contractors have the discretion to issue no more than 2 "reminder" notices via letter, e-mail, or phone call prior to the 45th day;
 - If no response is received from the billing provider within 45 days after the date of the request (or extension), the contractor must deny the service as not reasonable and necessary. This would count as automated review;
 - If a response is received that demonstrates that the service is not covered or correctly coded, the contractor must deny;
 - If the information requested from the **billing provider** is received, does not demonstrate noncoverage or incorrect coding of the claim, but fails to support the coverage or coding of the claim in full or in part, the contractor must:
 - Deny the claim if a benefit category, statutory exclusion, or coding issue is in question, or;
 - Develop to the ordering provider in accordance with the requirements listed below if a reasonable and necessary issue is in question.

Ordering Provider ADRs

A contractor may NOT solicit documentation from the ordering provider unless the contractor:

- 1) Solicits information from the **billing provider**,
- 2) Finds the ADR response from the billing provider insufficient or not provided, and
- 3) The issue in question is one of medical necessity. Contractors may implement these requirements to the extent possible without shared systems changes.

When a contractor solicits documentation from the ordering provider the contractor must provide to the ordering provider information sufficient to identify the claim being reviewed.

- The contractor must solicit from the ordering provider those parts of the medical record that are relevant to the specific claim(s) being reviewed. The contractor must notify the ordering provider that they have 30 days to respond and copy the

billing provider. Contractors have the discretion to grant extensions of the time frame upon request.

- For prepay review, the contractor must pend the claim for 45 days.
- Contractors have the discretion to issue no more than 2 "reminder" notices via email, letter or phone call prior to the 45th day.
- If information is requested from the ordering provider and no response is received within 45 days after the date of the request (or extension), the contractor must deny the claim, in full or in part, as not reasonable and necessary. This would count as automated review.
- If the information requested from the ordering provider is received, but the information fails to support the coverage or coding of the claim, the contractor must deny the claim, in full or in part, using appropriate denial code (see Section 3.4.2). This would count as a complex review.

3.4.1.3 – Completing Complex Reviews *(Rev. 71, 04-09-04)*

A -- Medical Review Timeliness Requirement

For ADR responses that are received within the timeframe (or extended time frame) contractors must complete claims review and notify the provider and beneficiary, if indicated, within 60 days of receiving documentation.

B -- How to Count the 60 Days

- For prepay reviews (e.g., prepay probe, regular prepay review) the contractor should begin counting with the receipt of each medical record. Each new medical record received should start a new 60 day clock.
- For postpay reviews (e.g., quality improvement reviews, OIG CFO, postpay probe, statistical sampling, etc.), contractors have the option of:
 - Beginning the counting with the receipt of each medical record. Each new medical record received would start a new 60 day clock, or
 - Waiting until all requested medical records are received and then start the 60 day clock.

See *PIM Chapter 3 section 3.4.2.C* for description of the notification requirements.

3.4.1.4 - Handling Late Documentation *(Rev. 71, 04-09-04)*

Contractors Who Choose to Reopen -- If a contractor receives the requested information after a denial has been issued but within a reasonable number of days (generally 15 days after the denial date), the contractor may **reopen** the claim. Contractors who choose to reopen must notify the provider of their intent, make a medical review determination, and notify the provider of the determination within 60 days of receipt of late documentation. The workload, costs, and savings associated with this activity should be allocated to the appropriate **MR** activity code in CAFM and PIMR (i.e., postpay complex).

- **Contractors Who Choose NOT to Reopen** -- Contractors who choose not to reopen should not destroy the documentation but instead retain the information (hardcopy or electronic) in a location where it could be accessed by appeals staff and MR staff.

3.4.2 – Denials Notices

(Rev. 79, Issued 07-09-04) (Effective: February 3, 2004/Implementation: August 9, 2004)

Contractors must deny claims, in full or in part, under the circumstances listed below. Contractors do not have the option to "Return To Provider" or reject claims under these circumstances. Contractors must deny the claim in full or in part. See Ruling 95-1 for further information on partials denials (known as "down coding").

A -- Denial Reasons Used for Reviews Conducted for MR or BI Purposes

Contractors must deny payment on claims either partially (e.g., by down coding, or denying one line item on a multi-line claim) or in full and provide the specific reason for the denial whenever there is evidence that a service:

- Does not meet the Benefit Category requirements described in Title XVIII of the Act and national coverage determination, coverage provision in interpretive manual, or LMRP/LCD;
- Is statutorily excluded by other than §1862(a)(1) of the Act;
- Is not reasonable and necessary as defined under §1862(a)(1) of the Act. (Contractors shall use this denial reason for all non-responses to ADRs.); and
- Was not billed in compliance with the national and local coding requirements.

Contractors must give the specific reason for denial. Repeating one of the above bullets is not a specific reason.

B -- Denial Reasons Used for Reviews Conducted for BI Purposes

Contractors must deny payment on claims either partially (e.g., by down coding or denying one line item on a multi-line claim) or in full whenever there is evidence that a service:

- Was not rendered (or was not rendered as billed);
- Was furnished in violation of the self referral prohibition; or
- Was furnished, ordered or prescribed on or after the effective date of exclusion by a provider excluded from the Medicare program and that provider does not meet the exceptions identified below in PIM Chapter 4, §4.21.2.6.

Contractors must deny payment whenever there is evidence that an item or service was not furnished, or not furnished as billed even while developing the case for referral to OIG or if the case has been accepted by the OIG. In cases where there is apparent fraud, but the case has been refused by law enforcement, contractors deny the claim(s) and collect the overpayment where there is fraud- - after notifying law enforcement. It is necessary to document each denial thoroughly to sustain denials in the appeals process. Intermediaries must make adjustments in cost reports, as appropriate.

C -- Denial Notices

If a claim is denied, in full or in part, the contractor must notify the beneficiary and/or the provider. The contractor shall include limitation of liability and appeals information. Notification can occur via Medicare Summary Notice (MSN) and Remittance Advice.

Beneficiary Notices

Contractors are required to give notice to Medicare beneficiaries when claims are denied in part or in whole based on application of an LMRP/LCD. All denials that result from LMRP/LCDs must provide the MSN message 15.19 in addition to the current applicable message. Message 15.19 states (Pub. 100-04, Chapter 21):

“A local medical review policy (LMRP) or local coverage determination (LCD) was used when we made this decision. An LMRP/LCD provides a guide to assist in determining whether a particular item or service is covered by Medicare. A copy of this policy is available from your local intermediary or carrier by calling the number in the customer service information box on page one. You can compare the facts in your case to the guidelines set out in the LMRP/LCD to see whether additional information from your physician would change our decision.”

You shall make these messages available in Spanish where appropriate. The 15.19 portion of the MSN message states:

15.19- Una Política Local de Revisión Médica (LMRP, por sus siglas en inglés) o una Determinación de Cobertura Local (LCD, por sus siglas en inglés) fue utilizada cuando se tomó esta decisión. La Política Local de Revisión Médica y la Determinación de Cobertura Local proveen una guía que ayuda a determinar si un artículo o servicio en particular está cubierto por Medicare. Una copia de esta política está disponible en su intermediario o su empresa de seguros Medicare local al llamar al número que aparece en la sección de Servicios al Cliente en la página uno. Usted puede comparar los datos de su caso con las reglas establecidas en la Política Local de Revisión Médica y en la Determinación de Cobertura Local para ver si obteniendo información adicional de su médico pudiera cambiar nuestra decisión.

Use the above message in every instance of a prepayment denial where an LMRP/LCD was used in reviewing the claim. Use this message, and message 15.20 (now for FISS FT's, and when 15.20 is fully implemented for contractors on the MCS/VMS systems) on both full and partial denials, whether the denial was made following automated, routine, or complex review. Do not use this message on denials not involving LMRP/LCDs. For claims reviewed on a postpayment basis, use the above message if sending the beneficiary a new MSN. If sending a letter, include the language exactly as contained in the MSN message above.

Message 15.20 currently states "The following policies [insert LMRP/LCD ID #(s) and NCD #(s)] were used when we made this decision." (Pub. 100-04, Chapter 21). 15.19 must continue to be used in conjunction with the MSN message 15.20, where 15.19 is applicable. Contractors may combine these messages if necessary, but 15.19 must not be deleted.

3.4.2.1 Role of Conditions of Participation Requirements When Making a Payment Decision **(Rev. 71, 04-09-04)**

The Conditions of Participation (COP) requirements cannot be used as a basis for denying payment. The COPs define specific quality standards that providers must meet to participate in the Medicare program. A provider's compliance with the COPs is determined by the CMS regional office (RO) based on the State survey agency recommendation.

In cases where you believe that the COPs are not being met or when problems have been identified, you should notify your RO and the appropriate State survey agency so that they can initiate appropriate action.

3.4.3 - Documenting That A Claim Should Be Denied **(Rev. 71, 04-09-04)**

For each claim denied, in full or in part, contractor MR or BI staff must carefully document the basis for the denial in the internal claim record. If there are several reasons for denial, effective 1/1/03, the contractor must document each basis in the internal claim record.

In establishing an overpayment, contractors carefully document claims for services not furnished or not furnished as billed so that the denials are more likely to be sustained upon appeal and judicial review.

3.4.4 - Internal MR Guidelines **(Rev. 71, 04-09-04)**

As part of its process of reviewing claims, contractor MR *staff* may develop detailed written review guidelines ("Internal MR Guidelines.") Internal MR Guidelines, in

essence, will allow the contractor to operationalize LMRPs and NCDs. Internal MR Guidelines shall specify what information should be reviewed by routine reviewers and the appropriate resulting determination. Contractor MR staff must make *their* Internal MR Guidelines available to their internal staff (e.g., the appeals unit, phone inquiry unit, etc.), *PSC*, or *BI unit*, as needed. Internal MR Guidelines must not create or change policy.

3.4.5 - Types of Prepayment and Postpayment Review

(Rev. 76, 05-28-04)

Claim review activities are divided into three distinct types of review:

A - Automated Prepayment Review

When prepayment review is automated, decisions are made at the system level, using available electronic information, without the intervention of contractor personnel. See Section 5.1 for further discussion of automated prepayment review.

B - Routine Prepayment/Postpayment Review

Routine prepayment review is limited to rule-based determinations performed by specially trained MR staff. An intervention can occur at any point in the review process. For example, a claim may be suspended for routine review because an MR determination cannot be automated.

Routine review requires hands-on review of the claim, and/or claims history file and/or internal MR guidelines *but does not require the application of clinical judgment by a licensed medical professional.*

C - Complex Prepayment/Postpayment Review

Complex medical review involves *the application of clinical judgment by a licensed medical professional in order to evaluate medical records. Medical records include any medical documentation, other than what is included on the face of the claim that supports the service that is billed. For items of durable medical equipment that require a Certificate of Medical Necessity (CMN), the CMN is considered part of the face of the claim.* Complex medical review determinations require *a licensed medical professional* to make a *clinical* judgment about whether a service is covered, and is reasonable and necessary.

Complex review for the purpose of making coverage determinations must be *performed* by nurses (RN/LPN) or physicians, unless this task is delegated to other licensed health care professionals. Contractors must ensure that services reviewed by other licensed health care professionals are within their scope of practice and that their *MR/LPET Strategy* supports the need for their specialized expertise in the adjudication of particular

claim type (i.e. speech therapy claim, physical therapy claim). Contractors should establish QI processes that verify the accuracy of MR decisions made by licensed health care professionals.

Contractors must maintain a credentials file for each reviewer who performs one or more complex reviews (including consultants, contract staff, subcontractors, and temporary MR staff). The credentials file must contain at least a copy of the reviewer's professional license.

During complex review, nurse and physician reviewers may call upon other health care professionals (e.g., dietitians, and physician specialists) for advice. Any determination must be documented and include the rationale for the decision. While MR staff must follow *National Coverage Determinations* and *Local Coverage Determinations*, they are expected to use their expertise to make clinical judgments when making medical review determinations. They must take into consideration the clinical condition of the beneficiary as indicated by the beneficiary's diagnosis and medical history when making these determinations. For example, if a medical record indicates that a beneficiary is a few days post-op for a total hip replacement and femur plating, even though the medical record does not specifically state that the beneficiary requires the special skills of ambulance transportation, MR nurses and physicians must use their clinical knowledge to conclude that ambulance transportation is appropriate under such circumstances.

Complex medical review performed by medical review staff for purposes other than MR (for example, for benefit integrity investigations or for appeals) should be charged for expenditure reporting purposes to the area requiring medical review services.

D - Examples

The following examples are provided to assist contractors in understanding the definitions of automated, routine, and complex review.

EXAMPLE 1: A contractor sets up the system so that for a particular HCPCS/ICD9 combination, the computer will request documentation, suspend for manual review, and auto-deny in 45 days if no documentation is received. For claims where no documentation is received within 45 days, the computer auto-denies the claim without manual intervention. Even though the contractor intended to perform manual review, because they ACTUALLY performed automated review, this review should be counted a AUTOMATED.

EXAMPLE 2: A contractor sets up the system so that for a particular HCPCS/ICD9 combination, the computer will suspend for routine review. During routine manual review, the reviewer determines that complex review is needed and initiates a request for additional documentation. For claims where no documentation is received within 45 days, the computer denies the claim.

Because the contractor ACTUALLY performed routine manual review, this claim should be counted as ROUTINE review.

EXAMPLE 3: A contractor sets up the system so that for a particular HCPCS/ICD9 combination, the computer will suspend for routine manual review. During routine manual review, the reviewer determines that complex review is needed and initiates a request for additional documentation. For claims where documentation is received, MR nurses (RN/LPN) or physicians will review the documentation and make a decision regarding the services billed. Because the HIGHEST LEVEL of review the contractor performed was complex manual review, this claim should be counted as COMPLEX review.

3.4.6 -Spreading Workload Evenly

(Rev. 71, 04-09-04)

The type and amount of workload a contractor must perform each year is specified in their MR Strategy or Statement of Work (SOW).

Contractors should attempt to avoid "bunching" workload.

3.4.7 -- New Provider/ New Benefit Monitoring

(Rev. 71, 04-09-04)

Contractors must monitor through data analysis the billing patterns of new providers and for new statutory benefits to ensure correct coverage and coding from the beginning. Contractors have the option of performing prepay or postpay review of new providers as needed. Where contractors choose to perform pre or postpay review of a new provider, the contractors should perform only limited review (i.e., 20-40 claims) in order to ensure accurate billing. The sample size should not impose an administrative burden or significantly impact on the provider's cash flow. New benefit edits should be continued until they no longer prove effective or until the contractor determines that resources would best be spent on other types of review.

Note: While program savings are realized through denials for inappropriate provider billing, **the optimal result occurs when providers no longer bill for non-covered or incorrectly coded services.**

3.4.8 - Review That Involves Utilization Parameters

(Rev. 71, 04-09-04)

A -- General

During any type of MR-directed review (prepay or postpay; automated, routine or complex), contractors shall not deny services that exceed utilization parameters unless:

1. **Clear policy** (see PIM Chapter 3, section 3.4.1.1) serves as the basis for the denial;
2. The denial is based on apparent typographical errors (e.g., 10,000 blood cultures for the same beneficiary on the same day);
3. The contractor sent an ADR letter and reviewed the ADR response, but the **ADR response failed to support** the coverage or coding of the claim; or
4. **No timely response** is received in response to an ADR letter.

B -- Automated vs. Complex Review of Non-Lab Claims Involving Utilization Parameters

Contractors should **always** seek to implement prepayment edits that will prevent payment of services to providers billing egregious amounts and/or to providers with a pattern of billing for services that are not covered. When contractors identify egregious overutilization of a non-lab service within the context of their MR Strategy and prioritization of review targets, they must respond timely.

- When overutilization of a non-lab service is identified and clear policy serves as the basis for denial, contractors may establish edits to **automatically** deny the services.
- When overutilization of a non-lab service is identified and there is **not** clear policy to serve as the basis for denial, contractors must establish **complex** review edits and make individual claim determinations. Contractors must develop the claims for additional documentation in these situations.

If the overutilization problem is determined to be widespread, the contractor should follow the requirements in progressive corrective action.

C -- Automated vs. Complex Review of Lab Claims Involving Utilization Parameters

Contractors should **always** seek to implement prepayment edits that will prevent payment of services to providers billing egregious amounts and/or to providers with a pattern of billing for services that are not covered. When contractors identify egregious overutilization of a lab service within the context of their MR Strategy and prioritization of review targets, they must respond timely.

- When overutilization of a lab service is identified and clear policy serves as the basis for denial, contractors may establish edits to **automatically** deny the services.
- When overutilization of a lab service is identified and there is **not** clear policy to serve as the basis for denial, contractors must quickly establish **manual** review edits that do not involve utilization parameters and make individual claim determinations. For example, if the problem is limited to a few laboratory providers, the contractor could develop a provider-specific prepayment edit to suspend all of the lab services in question from the problem providers. If the problem is widespread in nature, the contractor could develop a service-specific edit to suspend all of the lab services in question or all of the services in question for a particular diagnosis code or revenue code. Based on data analysis findings within each contractor's jurisdiction, the contractor should attempt to focus the edit to the greatest extent possible by provider, by diagnosis, by procedure code or in any way OTHER THAN by use of a utilization parameter.

3.5 - Prepayment Review of Claims For MR Purposes (Rev. 71, 04-09-04)

The instructions listed in this section (Section 3.5) apply only to reviews conducted for MR purposes unless otherwise noted.

Contractors may not prohibit providers from submitting electronic claims, even those providers who have been selected for prepayment review. Contractors may encourage providers who are on 100 percent prepayment MR for a particular service to submit paper claims.

3.5.1 - Automated Prepayment Review (Rev. 72, 04-16-04)

When prepayment review is automated, decisions are made at the system level, using available electronic information, without the intervention of contractor personnel. When appropriately implemented, automated review increases efficiency and consistency of decisions. Contractors must implement automated prepayment review whenever appropriate.

Automated review must:

1. Have **clear policy** that serves as the basis for denial; *or*
2. Be based on *a medically unbelievable service(s)*; *or*
3. Occur when **no timely response** is received in response to an ADR letter.

When a clear policy (see PIM Chapter 3, Section 3.4.1.1) exists or in the case of *a medically unbelievable service(s)*, contractors may automatically deny the services without stopping the claim for routine or complex review, **even if documentation is attached**. Reviewers must still make a §1879 of the Act limitation on liability determination, which may require routine review. If additional documentation has been requested for a claim and the information has not been received within 45 days, the denial can be counted as an automated review if there was no human intervention. If human intervention occurs, the denials are counted as routine review.

NOTE: The term "clear policy" means a statute, regulation, NCD, coverage provision in an interpretive manual, or LMRP specifies the circumstances under which a service will always be considered non-covered or incorrectly coded.

3.5.1.1 - Prepayment Edits

(Rev. 79, Issued 07-09-04) (Effective: February 3, 2004/Implementation: August 9, 2004)

Prepayment edits are designed by contractor staff and put in place to prevent payment for non-covered and/or incorrectly coded services and to select targeted claims for review prior to payment. medical review (MR) edit development is the creation of logic (the edit) that is used during claims processing prior to payment that validates and/or compares data elements on the claim.

Contractors may not install edits that result in the automatic denial of services based solely on the diagnosis of a progressively debilitating disease where treatment may be reasonable and necessary. The appearance of a progressively debilitating disease on a claim or history does not permit automated prepay denials that presume a stage of that disease that negates the effectiveness of treatment. Additionally, when a beneficiary with a progressively debilitating disease experiences an illness or injury unrelated to their progressively debilitating disease, the provider should submit a claim with a primary diagnosis that most accurately reflects the need for the provided service. For example, following a hip replacement in a patient with Alzheimer's Disease, a physical therapy provider should submit a claim using ICD-9 Code V43.64 (Hip joint replacement by artificial or mechanical device or prosthesis) as the primary diagnosis, not ICD-9 Code 331.0 (Alzheimer's Disease). Automated denials may only be used when the service, in that circumstance, is never reasonable and necessary. For example, an EMG for Alzheimer's may be auto denied because it will never be reasonable and necessary for that ICD code; but EMG may not be auto denied when the claim shows "focal muscular weakness" -- even though that claim also shows Alzheimer's. Physical therapy may not be auto denied solely because multiple sclerosis appears on the claim, but may be if there is no other justification for the service listed. There are stages of the disease at which, for

example, physical therapy for gait training will not be effective, but MR must look into the claims history or examine records to make that determination.

A -- Ability to Target

Contractors must focus edits to suspend only claims with a high probability of being denied on medical review. Focused edits reduce provider burdens and increases the efficiency of medical review activities. Edits should be specific enough to identify only the services that the contractor determines to be questionable based on data analysis. Prepayment edits must be able to key on a beneficiary's Health Insurance Claim Number (HICN), a provider's identification (e.g., Provider Identification Number (PIN), UPIN) and specialty, service dates, and medical code(s) (i.e., HCPCS and/or ICD-9 diagnoses codes). Intermediary edits must also key on Type Of Bill (TOB), revenue codes, occurrence codes, condition codes, and value codes.

Carrier systems must be able to select claims for prepayment review using different types of comparisons. By January 2001 (unless otherwise specified), FI systems must be able to perform these comparisons as well. At a minimum, those comparisons must include:

- Procedure-to-Procedure – This relationship permits contractor systems to screen multiple services at the claim level and in history. Intermediaries on the FISS system are waived from this requirement until the FI Standard System is updated to include this capability.
- Procedure to Provider – For a given provider, this permits selective screening of services that need review.
- Frequency to Time – This allows contractors to screen for a certain number of services provided within a given time period. Intermediaries on the FISS system are waived from this requirement until the FI Standard System is updated to include this capability.
- Diagnosis to Procedure – This allows contractors to screen for services submitted with a specific diagnosis. For example, the need for a vitamin B12 injection is related to pernicious anemia, absence of the stomach, or distal ileum. Contractors must be able to establish edits where specific diagnosis/procedure relationships are considered in order to qualify the claim for payment.
- Procedure to Specialty Code (Carrier) or TOB (Intermediary) – This permits contractors to screen services provided by a certain specialty or type of bill.
- Procedure to Place of Service – This allows selective screening of claims where the service was provided in a certain setting such as a comprehensive outpatient rehabilitation facility.

Additional intermediary edits include, but are not limited to, the following:

- Diagnoses alone or in combination with related factors, e.g., all ICD-9-CM codes XXX.X-XXX.X with revenue code (REV) XXX and units greater than X;
- Revenue and/or HCPCS codes, e.g., a REV with a selected HCPCS (REV XXX with HCPCS XXXXX);
- Charges related to utilization, e.g., an established dollar limit for specific REV or HCPCS (REV XXX with HCPCS XXXXX with charges over \$500);
- Length of stay or number of visits, e.g., a selected service or a group of services occurring during a designated time period (bill type XXX with covered days/visits exceeding XX); and
- Specific providers alone or in combination with other parameters (provider XX-XXXX with charges for REV XXX).

B -- Evaluation of Prepayment Edits

Development or retention of edits should be based on data analysis, identification, and prioritization of identified problems. The contractor must evaluate all service specific and provider specific prepayment edits as follows:

- Automated edits must be evaluated annually.
- All routine or complex review edits must be evaluated quarterly.

These evaluations are to determine their effectiveness and contribution to workload. Contractors shall consider an edit to be effective when an edit has a reasonable rate of denial relative to suspensions and a reasonable dollar return on cost of operation or potential to avoid significant risk to beneficiaries. Revise or replace edits that are ineffective. Edits may be ineffective when payments or claims denied are very small in proportion to the volume of claims suspended for review. It is appropriate to leave edits in place if sufficient data are not available to evaluate effectiveness, if a measurable impact is expected, or if a quarter is too brief a time to observe a change. Contractors should analyze prepayment edits in conjunction with data analysis to confirm or re-establish priorities. Contractors should replace, if appropriate, existing effective edits to address problems that are potentially more costly.

FACTORS CONTRACTORS MUST CONSIDER IN LOOKING AT EDIT EFFECTIVENESS FOR ESTABLISHED AUTOMATED EDITS:

- Time and staff needed for review, including appeals reviews. Contractors must implement mechanisms (e.g., manual logs, automated tracking systems) to allow the appeals unit to communicate to the MR unit information such as which denial categories are causing the greatest impact on appeals, the outcome of the appeal, etc. Contractors must maintain and make available to RO (for PSCs, the GTL, Co-

GTL, and SME) and CO staff documentation demonstrating that they consider appeals in their edit evaluation process; and

- Specificity of edits in relation to identified problem(s).

Contractors should note that even an automated edit that results in no denials may be effective so long as the presence of the edit is not preventing the installation of other automated edits.

FACTORS CONTRACTORS MUST CONSIDER IN LOOKING AT EDIT EFFECTIVENESS FOR ALL OTHER EDITS:

- Time and staff needed for review, including appeals reviews. Contractors must implement mechanisms (e.g., manual logs, automated tracking systems) to allow the appeals unit to communicate to the MR unit information such as which denial categories are causing the greatest impact on appeals, the outcome of the appeal, etc. Contractors must maintain and make available to RO and CO staff documentation demonstrating that they consider appeals in their edit evaluation process.
- Specificity of edits in relation to identified problem(s);
- Demonstrated change in provider behavior, e.g., the contractor can show the decrease in frequency of services per beneficiary, the decrease in the number of beneficiaries receiving the services, the service is no longer billed, or another valid measure can be used to reflect a change in provider behavior over time;
- Impact of educational or deterrent effect in relation to review costs; and
- The presence of more costly problems identified in data analysis that needs higher priority than existing edits considering the number of claims/days/charges reviewed in comparison to claims/days/charges denied.

Contractors must test each edit before implementation and determine the impact on workload and whether the edit accomplishes the objective of efficiently selecting claims for review.

C –Adding LMRP/*LCD* and NCD ID Numbers to Edits

By January 1, 2004, FISS FIs must ensure that any edit that may result in a denial based on an LMRP/LCD *or NCD* includes the LMRP/LCD *or NCD* ID number(s) associated with the denial.

By April 1, 2004, FISS FIs must ensure that any edit that may result in a denial based on a *lab negotiated* NCD includes the NCD ID number(s) associated with the denial.

By October 4, 2004, VMS carriers and PSCs must ensure the analysis and design is completed for any edit that may result in a denial based on an LMRP/LCD or NCD includes the LMRP/LCD ID number(s) or NCD ID number(s) associated with the denial.

By October 4, 2004, MCS carriers must ensure that the analysis and design is completed for any edit that may result in a denial based on an LMRP/LCD or NCD includes the LMRP/LCD ID number(s) or NCD ID number(s) associated with the denial.

3.5.2– Categories of MR Edits *(Rev. 71, 04-09-04)*

Because it is important to have the flexibility to modify MR edits based on workload demands and changes in provider behavior, contractors are encouraged to ensure that most MR edits are located in the table driven portion of the system and are not hard coded.

For reporting purposes, there are three kinds of prepayment edits:

A -- Service-Specific Edits

These are edits that select claims for specific services for review. They may compare two or more data elements present on the same claim (e.g., diagnosis to procedure code), or they could compare one or more data elements on a claim with data from the beneficiary's history file (e.g., procedure code compared to history file to determine frequency in past 12 months).

B -- Provider-Specific System Edits

These are edits that select claims from specific providers flagged for review. These providers are singled out due to unusual practice patterns, knowledge of service area abuses, and/or utilization complaints received from beneficiaries or others. These edits can suspend all claims from a particular provider or focus on selected services, place of service, etc. (e.g., all claims for holter monitoring from a given provider).

C -- Random Edits

Once contractors have implemented the Comprehensive Error Rate Testing (CERT) program, they may no longer operate any random edits.

3.5.3 – CMS Mandated Edits

(Rev. 71, 04-09-04)

In past years, *CMS* created mandated edits that suspend certain claims for manual coverage and coding review. However, more recently, *CMS* has given the contractors the discretion to prioritize workload to effectively lower the error rate. *CMS* is now in the process of removing such mandated coverage and coding review edits from CWF, pricer, grouper, fee schedules, etc.

Effective January 1, 2003, contractors may override *CMS* mandated edits that suspend for manual coverage and coding review without performing review if one or more of the following conditions apply:

- The contractor does not have MR responsibility for the claim, or
- The contractor's data analysis/priority setting/ MR strategy does not indicate this service is a problem in their jurisdiction, or
- It is not a SNF (excluding swing beds) or HHA demand bill (these demand bills must be reviewed).

3.6 – Postpayment Review of Claims for MR Purposes

(Rev. 71, 04-09-04)

The instructions listed in this section (Section 3.6) apply only to reviews conducted for MR purposes unless otherwise noted.

Postpayment claims review occurs when a contractor makes a coverage or coding determination after a claim has been paid. This section describes the requirements that contractors must follow when conducting postpayment claims review for MR purposes. Contractors who are reviewing claim on a postpayment basis for potential fraud case development purposes are not required to follow these requirements.

A -- Major Steps

There are nine major steps in the postpayment review process:

Step 1: Selecting the Cases for Review (see PIM Chapter 3, Section 3.6.1)

Step 2: Deciding the Location of the Review (See PIM Chapter 3, Section 3.6.2)

Step 3: Re-Adjudicating the Claims (See PIM Chapter 3, Section 3.6.3)

Step 4: Estimating the Over/Underpayment (See PIM Chapter 3, Section 3.6.4)

Step 5: Notification of Review Results (See PIM Chapter 3, Section 3.6.5)

Step 6: Considering/Responding to a Provider's Rebuttal (See PIM Chapter 3, Section 3.6.6)

Step 7: Recovering the Overpayment (See PIM Chapter 3, Section 3.6.7)

Step 8: Evaluating Postpay Review and Next Steps (See PIM Chapter 3, Section 3.6.8)

Step 9: Maintaining Files (See PIM Chapter 3, Section 3.6.9)

If at any point in these steps a contractor detects potential fraud, the contractor should not take any further steps in the process but should follow the instructions in section 3.6.8.

B --Adherence to Reopening Rules

When conducting a postpayment review, contractors must adhere in all cases to reopening rules. (See *Medicare Carrier and Intermediary Manuals: MCM, Part 3, Chapter XII, Section 12100 and MIM, Part 3, Chapter VII, Section 3799, for Reopening Standards*).

3.6.1 - Postpayment Review Case Selection

(Rev. 71, 04-09-04)

Postpayment reviews are usually targeted to providers, whether individuals or groups, who have demonstrated aberrant billing and/or practice patterns. However, some postpay reviews (e.g., widespread probes) may involve multiple providers.

Contractors must use all available relevant information when selecting postpayment review cases. (See PIM Chapter 3, Section 3.2 for Verifying Potential Errors and Setting Priorities.)

There are three types of postpayment reviews:

- Error Validation reviews, also known as "probe" reviews (see PIM Chapter 3, Section 3.2 for more information about probe reviews);
- Statistical Sampling *for Overpayment Estimation* reviews (see PIM, Chapter 3, Sections 3.10.1 through 3.10.5 and 3.10.9 through 3.10.11); and
- Consent Settlement reviews (see PIM, Chapter 3, Section 3.8.3.3).

NOTE: In the process of selecting providers for postpay review, MR staff should review the provider tracking system (PTS) and consult with the BI unit to ensure duplicate efforts are not being undertaken. (See PIM Chapter 3, Section 3.1.2

A -- Identifying Providers for Error Validation Reviews

PIM [Chapter 3, Section 3.2](#) describes the requirements regarding which providers should be selected for error validation (probe) review.

B -- Identifying Providers for Statistical Sampling for Overpayment Estimation Reviews

The first step in conducting a statistical sampling review is the identification of all services under review from the provider or group of providers for the specified time period (this is termed the "universe") followed by selection of a sample of these claims. Contractors work with their statistical staff and follow all statistical sampling guidelines in PIM *Chapter 3, §3.10.1 through 3.10.5 and 3.10.9 through 3.10.11*.

Case selection is based on profiling providers who have generated one or more assigned claims during the period under review. Generally contractors should not perform postpay review of unassigned claims. Intermediaries use provider numbers and carriers use UPINs for physicians and individual PINs for non-physicians. DMERCs should use the NSC issued supplier numbers. As with physician UPINs and PINs, it may be appropriate to analyze suppliers by their six-digit base number and their 10-digit (six-digit base plus four-digit) location ID number. It may be necessary to conduct sub-studies of locality practices for physicians using their PINs because physicians with one UPIN may have different practices with multiple PINs. Their patterns of practice may vary across different locations (e.g., hospital-based, office-based, SNF-based), especially when physicians designate different specialties for their different PINs.

3.6.2 - Location of Postpayment Reviews *(Rev. 71, 04-09-04)*

This section applies to all three types of postpayment reviews (error validation reviews, statistical sampling *for overpayment estimation* reviews, and consent settlement reviews).

Contractors must decide whether to conduct the postpay review at the provider site or at the contractor site. Considerations in determining whether to conduct a provider-site review are:

- The extent of aberrant patterns identified in their focused review program; (See PIM [Chapter 3, Section 3.2](#));
- The past failure of a provider to submit appropriate and timely medical records; and
- Contractor resources.

A -- Contractor Site Reviews

The contractor notifies the provider(s) that they have 30 calendar days from the date of the letter to provide the medical record or other requested documentation. (See PIM Exhibit 7.2 for a sample letter.) Contractors have the discretion to grant an extension of the timeframes upon request.

If the information requested is not received within 45 days, the contractor shall review the claims with the information on hand. Contractors must complete the review and notify the provider in writing of their findings within 60 calendar days from the start of the review, or receipt of medical records, whichever is later. If the contractor needs more than 60 calendar days, they must request an extension from the RO (*for PSCs, the GTL, Co-GTL, and SME*).

B -- Provider Site Reviews

Contractors determine what, if any, advance notification of a scheduled review is given to a provider. The contractor may give advance notice when a provider has satellite offices from which medical records will have to be retrieved. When giving advance notice, the contractor must include an explanation of why the review is being conducted.

The list of claims requiring medical records may be included with the advance notice or at the time of the visit at the discretion of the contractor.

Contractors may conduct team reviews when potential problems exist in multiple areas. The team may consist of MR, audit, *BI*, State surveyors, provider enrollment or Medicaid staff depending on the issues identified. As a minimum, before conducting provider site reviews, consult and share information with other internal and external staff as appropriate to determine if there are issues that the reviewers should be aware of or if a team review is needed.

Annually, contractors must instruct providers (via bulletin article, Web article, etc.) that any Medicare contractor staff person who visits the provider site must show a photo identification indicating their affiliation with the Medicare contractor. Contractors must provide to all reviewers who participate in provider site reviews a photo identification card indicating the reviewer's affiliation with the Medicare contractor. Upon arrival to the provider site, the reviewer must show this photo identification card to the provider staff.

During provider site reviews, reviewers shall photocopy pertinent medical records when services are denied, when a physician or other medical consultation is needed, or when it appears that records have been altered. Contractors shall retain these records for appeals or *BI* purposes.

Reviewers shall hold entrance and exit interviews with appropriate provider staff. A provider representative can also be present while claims are reviewed. Reviewers must answer any questions the provider staff may have.

During entrance interviews, reviewers explain the following:

- Scope and purpose of the review;
- Why postpayment review is being conducted;
- The list of claims that require medical records;
- How recumbent of overpayment is made if claims are denied;
- Answer any questions related to the review; and
- Notify the provider of their rebuttal rights. (See PIM, Chapter 3, Section 3.6.6.)

During exit conferences, the contractor shall discuss the findings of the review. The provider must be allowed an opportunity to discuss or comment on the claims decisions.

3.6.3 - Re-adjudication of Claims

(Rev. 71, 04-09-04)

This section applies to all three types of postpayment reviews (error validation reviews, statistical sampling *for overpayment estimation* reviews, and consent settlement reviews).

For each claim in the sample, contractors re-adjudicate claims by making a coverage, limitation of liability and/or coding determination in accordance with PIM Chapter 3, Section 3.4.1. Contractors must document all items/services incorrectly paid, denied or under coded (e.g., billed using a HCPCS or other code that is lower than what is supported by the medical record). They report services newly denied as a result of re-adjudication as positive values and they report services that were denied but are reinstated as a result of re-adjudication as negative values. Contractors document the amount of the over/underpayment and how it was determined. Intermediaries must do this in conjunction with Audit/Reimbursement staff. (See PIM Chapter 3, Section 3.8.4.) Contractors must assure that their documentation is clear and concise and includes the basis for revisions in each case (this is important for provider appeals). They include copies of the NCD, coverage provision in interpretive manual or LMRP and any applicable references needed to support individual case determinations. Compliance with these requirements facilitates adherence to the provider notification requirements in PIM Chapter 3, Section 3.6.5.

3.6.4 - Calculation of the Correct Payment Amount and Subsequent Over/Underpayment

(Rev. 71, 04-09-04)

This section applies to two types of postpayment reviews (statistical sampling *for overpayment estimation* reviews, and consent settlement reviews).

The results of the re-adjudication within the sampling units are used to determine the total overpayment amount for each provider under review. MR *shall* refer to instructions in PIM *Chapter 3, §3.10 and to Exhibits 9, 10, 11 and 12* for projection methodologies

based on provider types *for claims where PPS was not in effect. For claims paid under PPS rules, contractors should develop projection methodologies in conjunction with their statistician that are consistent with the requirements found in PIM Chapter 3, §3.10.* Contractors must net out the dollar amount of charges underbilled.

Amounts of the following overpayments are to be included in each provider's estimate of overpayments for the sample:

- Initially paid claims which are denied on re-adjudication, and for which the provisions of §1879 of the Act apply and the provider is liable for the overpayment because: (1) the provider knew or could reasonably have been expected to know that items or services were excluded from coverage, and (2) the provider was not without fault for the overpayment under §1870 of the Act.
- Initially paid claims which are denied on re-adjudication, and for which the provisions of §1879 do not apply, but the provider is liable because it is determined to be not without fault for the overpayment under §1870 of the Act.
- Initially denied claims which are found to be payable on readjudication (in whole or in part). Such claims should be included to reduce the amount of the overpayment sample. For appeal purposes, overpayment estimations will be separately identified for denials in which §1879 of the Act is applied, and denials in which §1879 of the Act does not apply. Where both types of denials occur in the sample, contractors calculate and document separate under/overpayments for the two types of denials. For recovery purposes, however, both denial results are combined.

3.6.5 – Notification of Provider(s) and Beneficiaries of the Postpayment Review Results

(Rev. 71, 04-09-04)

This section applies to all three types of postpayment reviews (error validation reviews, statistical sampling *for overpayment estimation* reviews, and consent settlement reviews).

A -- Provider Notification

Contractor MR staff must prepare a letter to notify each provider of the results of the postpayment review. These letters may (but are not required to) contain a demand for repayment of any overpayments they may have made. Some contractors may wish to have another department issue the actual demand letter. Contractors must notify the provider(s) that the postpayment review has been completed even in those instances where no corrective actions or overpayments are involved.

Contractors must send the Notification of Postpayment Review Results to each provider within 60 days of the exit conference (for provider-site reviews) or receipt of medical records (for contractor site reviews). If the contractors need more than 60 days, they are

to contact their RO (*for PSCs, the GTL, Co-GTL, and SME*) for an extension. Each letter must include:

- Identification of the provider(s)--name, address, and provider number;
- The reason for conducting the review;
- A narrative description of the overpayment situation: state the specific issues involved which created the overpayment and any pertinent issues as well as any recommended corrective actions the provider should consider taking;
- The findings for each claim in the sample, including a specific explanation of why any services were determined to be non-covered, or incorrectly coded; A list of all individual claims including the actual amounts determined to be noncovered, the specific reason for noncoverage, the amounts denied, the amounts which will not be recovered from the provider, under/overpayment amounts and the §§1879 and 1870 determinations made for each specific claim;
- For statistical sampling *for overpayment estimation* reviews, any information required by PIM *Chapter 3, §3.10.4.4*;
- Total underpayment amounts;
- Total overpayment amounts for which the provider is responsible;
- Total overpayment amounts for which the provider is not responsible because the provider was found to be without fault;
- Intermediaries must include an explanation that subsequent adjustments may be made at cost settlement to reflect final settled costs;
- An explanation of the provider's right to submit a rebuttal statement prior to recoupment of any overpayment (see PIM Chapter 3, Section 3.6.6);
- An explanation of the procedures for recovery of overpayments including Medicare's right to recover overpayments and charge interest on debts not repaid within 30 days, and the provider's right to request an extended repayment schedule;
- The provider appeal rights; and
- A discussion of any additional corrective actions or follow-up activity the contractor is planning (i.e., prepayment review, re-review in 6 months, etc.).

Contractors may send the final notification letter by certified mail and return receipt requested.

Sample letters are in PIM Exhibit 7.3 with attachment Exhibit 7.3.1 and the Part B sample letter is Exhibit 7.4 with attachment Exhibit 7.4.1. Contractors may adapt the language used under each heading to the particular situation they are addressing.

B -- Beneficiary Notification

Contractors must also notify each beneficiary when re-adjudication of the claim results in a change to the initial determination. This can be done via an MSN or individual letter. In the case where a sample of claims is extrapolated to the universe, only those beneficiaries in the sample need to be notified.

3.6.6 - Provider(s) Rebuttal(s) of Findings

(Rev. 71, 04-09-04)

This section applies to all three types of postpayment reviews (error validation reviews, statistical sampling *for overpayment estimation* reviews, and consent settlement reviews).

A -- Provider(s) Timeframes for Submitting Rebuttal Statements

Within 15 calendar days of notification of the results, each provider may submit a rebuttal statement in accordance with 42 CFR 405.374. The rebuttal statement and any accompanying evidence must be submitted within 15 calendar days from the date of the notification letter described in section 3.6.5 unless MR or Audit/Reimbursement (A/R) staff find cause otherwise to extend or shorten the time afforded for submission of the statement.

B -- Contractor Review of Rebuttal Statement(s)

MR and A/R staff should consider all of the evidence concerning the provider's financial obligation timely submitted to reach a determination regarding whether *the determinations were incorrect and whether* recoupment should be delayed. However, recovery of any overpayment will not be delayed beyond the date indicated in the notification letter in order to review and respond to the rebuttal statement even if the principal of the debt is modified after reviewing the rebuttal statement. (See 42 CFR 405.375(a).)

Prior to recoupment of overpayments, providers and suppliers have a right to submit a rebuttal statement in accordance with 42 CFR 405.370-375. The rebuttal statement and any accompanying evidence must be submitted within 15 days from the date of the CMR notification letter unless MR or Audit/Reimbursement staff find cause otherwise to extend or shorten the time afforded for submission of the statement. The provider's rebuttal statement should address why the recovery should not be put into effect on the date specified in the notification letter. MR and AR staff should consider all of the evidence timely submitted to reach a determination regarding whether the recoupment should be delayed. However, recovery of any overpayment will not be delayed beyond

the date indicated in the CMR notification letter in order to review and respond to the rebuttal statement. (See 42 CFR 405.375(a).)

Substantive evidence that MR claims determinations were incorrect generally should not be considered during the rebuttal process unless such evidence relates to the timing of the recoupment of the overpayment. Substantive evidence on claims determinations is properly heard during a reconsideration under Part A or a review determination or *Hearing Officer (HO)* hearing under Part B. However, in order to avoid unnecessary appeals, if it is clear from the evidence submitted that MR revised determination was in whole, or in part, incorrect, they may consider such evidence. If such evidence warrants changes to any claims determinations made during the reopening, they work with Audit/Reimbursement staff to recalculate the amount of the overpayment, and issue a modified revised determination.

Should MR issue a modified revised determination, they send notice of the results of the modification to any beneficiary whose claims have been affected. In addition, they notify the provider that the applicable time period for filing a request for reconsideration of Part A services or a review determination of Part B services begins on the date of the modified revised determination. **However, recovery of any overpayment, even if the principal of the debt is modified after reviewing the rebuttal statement, will not be delayed beyond the date indicated on the revised determination.** Furthermore, since the provider has previously had an opportunity to submit a rebuttal statement, MR *staff* is not required to offer a provider an opportunity to submit a rebuttal statement in response to the modified revised determination. The provider may challenge the claims determinations and sampling methodology in the administrative appeals process.

C -- Cost Report Issues

Because of the cost report relationship to the overpayment, it is important to note that the projected overpayment recovered from a provider as a result of a postpayment review using statistical sampling *for overpayment estimation* is based on the interim payment rate in effect at the time of the review.

3.6.7 - Referral of Overpayments

(Rev. 71, 04-09-04)

This section applies to all three types of postpayment reviews (error validation reviews, statistical sampling reviews, and consent settlement reviews).

Contractor MR staff shall refer all overpayments to overpayment staff for recoupment. *PSCs shall refer all overpayments to the AC for recoupment.*

3.6.8 – Evaluation of the Effectiveness of Postpayment Review and Next Steps

(Rev. 71, 04-09-04)

This section applies to all three types of postpayment reviews (error validation reviews, statistical sampling *for overpayment estimation* reviews, and consent settlement reviews).

Contractors must determine if any other corrective actions are necessary such as:

- In cases where the MR unit uncovers potential fraud in the course of its postpayment review activities, the MR unit shall refer these cases to the Medicare contractor BI unit or the PSC. If it is believed that the overpayment has been caused by fraud, do not request a refund until the fraud issue is resolved (see PIM Chapter 3, Section 3.8).
- Initiate provider specific edit to focus prepayment review on the problem provider or group of providers (see PIM Chapter 3, Section 3.5.1) if appropriate;
- Work with the RO (*for PSCs, the GTL, Co-GTL, and SME*) to suspend payment to the provider or group of providers (see PIM Chapter 3, Section 3.9);
- Refer provider certification issues to the State survey agency through the RO (*for PSCs, the GTL, Co-GTL, and SME*) staff.
- Refer quality issues involving inpatient hospital services, if any, to the *QIO*;
- Coordinate with the *QIO* and carrier/intermediary on interrelated billing problems;

Contractors perform a follow-up analysis of the provider(s) periodically for as long as necessary to determine if further corrective actions are required. In some cases, it may be feasible and timely to perform the follow-up analysis of the provider after the 3 month time period. Contractors must continue monitoring the provider or group of providers until there is a referral to the Medicare contractor BI unit or the PSC, there is evidence that the utilization problem is corrected, or data analysis indicates resources would be better utilized elsewhere. (See Progressive Corrective Action PM -- transmittal AB-00-72)

3.6.9 - Postpayment Files **(Rev. 71, 04-09-04)**

Contractors must establish an audit trail that identifies:

- Claims and beneficiaries selected;
- The period of review;
- The reason for the review (aberrancy validation, high provider error rate, wide-spread service-specific problem.); and

- Findings to show why the original claim determination was changed. The documentation must be clear and concise, and include the basis for revision.

Contractors must complete a Summary Report for each postpayment review case. Include in the report:

- The reason(s) the provider or group of providers was selected for review;
- A chronological record of all review events and actions;
- The information used to perform the review (e.g., relevant LMRP);
- A record of all decisions made and all actions taken to deal with the provider's MR problem, including who made the decisions and the reasons for taking the actions;
- Documentation of statistical methods used if overpayment is projected;
- Whenever possible, postpayment savings in terms of actual overpayment, settlement based, or statistically extrapolated;
- A record of all contacts with providers or beneficiaries; and
- Documentation of §§1879, 1870, or 1842(1) determinations. (See PIM Exhibit 14.)

Retain the Summary Report and all postpay files for 36 months following the conclusion of a postpay case unless the RO (*for PSCs, the GTL, Co-GTL, and SME*) requires a longer period or unless the case is referred to the *PSC or Medicare contractor BI* unit (and in this case, retain the files for the longer of 36 months or the completion of the investigation). A sample summary report is found in Exhibit 13. Contractors have the option of using an alternate format for the postpay summary report with RO (*for PSCs, the GTL, Co-GTL, and SME*) approval.

3.7 - Appeal of Denials

(Rev. 71, 04-09-04)

A claimant dissatisfied with a contractor's initial determination is entitled by law and regulations to specified appeals. The appeals process allows a provider and/or a beneficiary (or representative) the right to request a review or reconsideration of the determination to deny a service in full or in part. In this process, Hearing Officers (HOs) and ALJs look to the evidence of record and must base their decision upon a preponderance of the evidence. *If the appeal is of a claim reviewed by a PSC, then the PSC forwards its records on the case to the AC so that it can handle the appeal.*

As conclusory statements may be considered of little or questionable value, it is important that reviewers include clearly articulated rationale for their findings. Such

clearly articulated rationale will continue to be of importance if a denial is appealed beyond the ALJ level to the Appeals Council or eventually to federal court. Contractors must include a copy of the policy underlying denial in the case file.

A - Use of Medical Specialist

Reviewers may also use medical specialists to lend more weight and credibility to their rationale or findings. When an adjudicator must weigh the statements and rationale furnished by the appellant provider against the statements and rationale of the reviewer (and any information used by the reviewer), the opinion of a specialist in the same area as the provider may carry greater weight than the opinion of a non-specialist.

Consequently, PSCs are required to have a medical specialist involved in denials that are not based on the application of clearly articulated policy with clearly articulated rationale. A review or reconsideration involving the use of medical judgment should involve consultation with a medical specialist. Additionally, contractors are encouraged to use specialists whenever possible since providers are more likely to accept the opinion (and any resulting overpayment) of a specialist in their own area.

B - Documenting Reopening and Good Cause

Reopening occurs when a PSC conducts a review of claims at any time after the initial/review determination (see 42 CFR 405.841(a), (b), and (c).) If reopening and conducting a postpayment review occurs within 12 months of the initial/review determination, the PSC does not need to establish good cause. However, the PSC should document the date so there is no confusion about whether good cause should have been established. After 12 months, but within 4 years from the date of the initial/review determination, contractors must establish good cause. (See Medicare Carriers Manual §12000, 42 CFR 405.841, and 20 CFR 404.989.) Documenting the date a claim was reopened (regardless of the demand letter issue date) and the rationale for good cause when claims are reopened more than 12 months from the initial/review determination will lend credibility to contractor documentation if the determination is appealed.

3.8 – Overpayment Procedures

(Rev. 71, 04-09-04)

PSCs shall refer all identified overpayments to the AC who shall send the demand letter and recoup the overpayment.

Contractors should initiate recovery of overpayments whenever it is determined that Medicare has erroneously paid. In any case involving an overpayment, even where there is a strong likelihood of fraud, request recovery of the overpayment. *PSCs and Medicare contractor BI units* notify law enforcement of their intention to collect outstanding overpayments in cases in which they are aware of a pending investigation. There may be situations where OIG/OI or other law enforcement agencies might recommend that

overpayments are postponed or not collected; however, this must be made on a case-by-case basis, and only when recovery of the overpayment would undermine the specific law enforcement actions planned or currently taking place. *Medicare contractor BI units* refer such requests to the RO (*for PSCs, such requests are referred to the GTL, Co-GTL, and SME*). If delaying recoupment minimizes eventual recovery, delay may not be appropriate. *Medicare contractor BI units* must forward any correspondence received from law enforcement requesting the overpayment not be recovered to the RO (*PSCs forward this to the GTL, Co-GTL, and SME*). The RO (*for PSCs, the GTL, Co-GTL, and SME*) will decide whether or not to recover.

If a large number of claims are involved, contractors consider using statistical sampling for overpayment estimation to calculate the amount of the overpayment. (See PIM Chapter 3, §3.10)

3.8.1 – Overpayment Assessment Procedures **(Rev. 71, 04-09-04)**

After an overpayment determination is made concluding an incorrect amount of money has been paid, contractors must assess an overpayment. The assessment options vary depending upon the type of sample used when identifying beneficiary claims for inclusion in the postpay review. Whenever possible, *CMS* encourages contractors to report postpayment savings in terms of:

- Actual overpayment;
- Settlement based overpayment, or
- Statistically extrapolated overpayments.

A– Example Format of An Overpayment Worksheet

Provider Name	
Provider UPIN or PIN:	
Reason for Review	
Type of Sample Reviewed: <i>Statistical Sampling for Overpayment Estimation</i>	
Explanation of Sampling Methodology:	
Number of Claims in Sample:	
Number of Claims in Universe:	

Amount of Overpayment (after allowance for deductible and coinsurance)	
Claims Reviewed	
Billed Amount	
Allowed Amount	
Rationale for Denial	
§1879 Determinations	
§1870 Determinations	
Total Actual Overpayment	
Overpayment extrapolated over the universe	

3.8.1.1 – Definition of Overpayment Assessment Terms

(Rev. 71, 04-09-04)

A – Actual Overpayment

An actual overpayment is, for those claims reviewed, the sum of payments (based on the amount paid to the provider and Medicare approved amounts) made to a provider for services which were determined to be medically unnecessary or incorrectly billed.

B – Projected Overpayment

A projected overpayment is the numeric overpayment obtained by projecting an overpayment from *statistical sampling for overpayment estimation* to all similar claims in the universe under review.

C – Limited Projected Overpayment

A limited projected overpayment is the numeric overpayment obtained by projecting an overpayment from a limited sample or limited sub-sample to all similar claims in the universe under review.

3.8.2 – Assessing Overpayment When Review Was Based on *Statistical Sampling for Overpayment Estimation*

(Rev. 71, 04-09-04)

If contractors use *statistical sampling for overpayment estimation* of claims, they follow instructions in Chapter 3, §3.10 to calculate the valid projected overpayment. They document the sampling methodology when review is based on *statistical sampling for overpayment estimation*. They notify the provider of the overpayment and refer the case to overpayment staff to make payment arrangements with the provider to collect the overpayment.

3.8.3 – Assessing Overpayment or Potential Overpayment When Review Was Based on Limited Sample or Limited Sub-sample

(Rev. 71, 04-09-04)

If a limited sample or limited sub-sample of claims is chosen for review, there are three overpayment assessment options for contractors:

- Refer to overpayment staff for recoupment of the actual overpayment for the claims reviewed;
- Conduct an expanded review based on *statistical sampling for overpayment estimation instructions in Chapter 3, §3.10* and recoup the projected overpayment; or
- Offer the provider a consent settlement based on the potential projected overpayment amount.

3.8.3.1 – Contractor Activities to Support Assessing Overpayment

(Rev. 71, 04-09-04)

A – Step 1

The first step in assessing an overpayment is for contractors to document for each claim reviewed the following:

- The amount of the original claim;
- The allowed amount;
- The rationale for denial;
- The §1879 determination for each assigned claim in the sample denied because the service was not medically reasonable and necessary (or the §1842(1) provider refund determination on non-assigned provider claims denied on the basis of §1862 (a)(1)(A)) (see PIM Chapter 3 §3.6.7 and Exhibit 14.1);
- The §1870 determination for the provider for each overpaid assigned claim in the sample (see PIM Chapter 3 §3.6.7 and Exhibit 14.2); and

- The amount of overpayment (after allowance for deductible and coinsurance).

B – Step 2

Notify the provider of the preliminary overpayment findings and preliminary review findings.

C – Step 3

If the provider submits additional documentation, review the material and adjust the preliminary overpayment findings, accordingly.

D – Step 4

Calculate the final overpayment.

E – Step 5

Refer to the overpayment recoupment staff.

3.8.3.2 – Conduct of Expanded Review Based on *Statistical Sampling for Overpayment Estimation* and Recoupment of Projected Overpayment by Contractors

(Rev. 71, 04-09-04)

ACs shall perform the actual recoupment identified by the PSCs.

A - If an expanded review of claims is *conducted*, contractors *shall follow the sampling instructions found in PIM Chapter 3, §3.10*, obtain and review claims and medical records, and document for each claim reviewed:

- o The amount of the original claim;
- o The allowed amount;
- o The rationale for denial;
- o The §1879 determination for each assigned claim in the sample denied because the service was not medically reasonable and necessary (or the §1842(1) provider refund determination on non-assigned provider claims denied on the basis of §1862(a)(1)(A)) (see PIM Chapter 3 §3.6.7 and exhibit 14.1);
- o The §1870 determination for the provider for each overpaid assigned claim in the sample (see PIM Chapter 3 §3.6.7 and exhibit 14.2); and
- o The amount of overpayment (after allowance for deductible and coinsurance).

B - Contractors calculate the projected overpayment by extrapolating from the actual overpayment to the universe that excludes those claims determined that the provider did not have knowledge that the service was not medically necessary;

C - Notify the provider of the preliminary projected overpayment findings and review findings;

D - If the provider submits additional documentation, review the material and adjust the preliminary projected overpayment findings, accordingly;

E - Calculate the final overpayment; and

F - Refer to the overpayment recoupment staff.

3.8.4 - Coordination With Audit and Reimbursement Staff **(Rev. 71, 04-09-04)**

Intermediary MR staff must work closely with their Audit/Reimbursement staff from the beginning of the postpay process to ensure that the universe selected is appropriate and that overpayments and underpayments are accurately determined and reflected on the provider's cost report. They furnish the Audit/Reimbursement staff the following information upon completion of the postpayment review:

- The sample documentation contained in the PIM *Chapter 3, §3.6.3*;
- The identification of incorrectly paid or incorrectly denied services; and
- All other information required by the Cost Report Worksheets *in PIM Chapter 3, §3.6.1 and applicable Exhibits*.

They also furnish the above information if adjustments are made as a result of appeals.

In most instances, the Audit/Reimbursement staff will:

- Determine the overpayment to be recovered based on MR findings and pursue the recovery of the overpayment; and
- Use the information MR provides on their postpayment review findings to ensure an accurate settlement of the cost report and/or any adjustments to interim rates that may be necessary as a result of the MR findings. To preserve the integrity of Provider Statistical and Reimbursement Report (PS&R) data relative to paid claims and shared systems data relative to denied claims, and to ensure proper settlement of costs on provider cost reports, the same data must be used when the projection is made as was used when the sample was selected. **Individual claims will not be adjusted.** In the event that a cost report has been settled, Audit/Reimbursement staff will determine the impact on the settled cost report and the actions to be taken.

Projections on denied services must be made for each discipline and revenue center *when PPS is not the payment method.*

When notifying the provider of the review results for cost reimbursed services, MR must explain that the stated overpayment amount represents an interim payment adjustment. Indicate that subsequent adjustments may be made at cost report settlement to reflect final settled costs.

Information from the completed Worksheets 1 - 7 must be routed to the Audit and Reimbursement staff. In addition to the actual and projected overpayment amounts, the information must provide the number of denied services (actual denied services plus projected denied services) for each discipline and the amounts of denied charges (actual denied amounts plus projected denied amounts) for supplies and drugs.

Upon completion of the review, furnish the Audit and Reimbursement staff with the information listed in the PIM.

3.9 – Suspension of Payment ***(Rev. 71, 04-09-04)***

The process by which the PSC notifies and coordinates with the AC of a CMS-approved suspension of payment shall be documented in the JOA. PSCs shall advise and coordinate with the AC when payment suspension has been approved by CMS. The PSCs shall perform the necessary medical review for suspensions for which they have recommended and received CMS approval.

Medicare authority to withhold payment in whole or in part for claims otherwise determined to be payable is found in federal regulations at 42 CFR 405.370-377, which provides for the suspension of payments.

3.9.1 – When Suspension of Payment May Be Used ***(Rev. 71, 04-09-04)***

Suspension may be used when *there is* reliable information that:

- Fraud or willful misrepresentation exists;
- An overpayment exists but the amount of the overpayment is not yet determined;
- The payments to be made may not be correct; or
- The provider fails to furnish records and other requested information *needed to determine the amounts due the provider or supplier.*

These four reasons for implementing a suspension of payment are described more fully below.

NOTE: For providers that file cost reports, suspension may have little impact. If the provider is receiving periodic interim payments (PIP), interim payments may be suspended. If the provider is not on PIP, suspension will affect the settlement of the cost report. When an overpayment is determined, the amount is not included in any settlement amount on the cost report. For example, if the intermediary has suspended \$100,000, when the cost report is settled, the intermediary would continue to hold the \$100,000. This means if the cost report shows *CMS* owing the provider \$150,000, the provider would only receive \$50,000 until the suspension action has been completed. If the provider owes *CMS* money at settlement, the amount of the suspended payment would increase the amount owed by the provider. In most instances, intermediaries should adjust interim payments to reflect projected cost reductions. Limit the adjustment to the percentage of potential fraud or the total payable amount for any other reasons. For example, if the potential fraud involved 5 percent of the interim rate, the reduction in payment is not to exceed 5 percent. Occasionally, suspension of all interim payments may be appropriate.

3.9.1.1 – Fraud or Willful Misrepresentation Exists - Fraud Suspensions (Rev. 71, 04-09-04)

Suspension of payment may be used when the contractor *or CMS* possesses reliable information that fraud or willful misrepresentation exists. For the purposes of this section, these types of suspensions will be called “fraud suspensions.”

Fraud suspensions may *also* be imposed for reasons not typically viewed within the context of false claims. An intermediary example is that the *QIO* has reviewed inpatient claims and determined that the Diagnosis Related Groups (DRGs) have been upcoded. An example carriers may find is that suspected violation of the physician self referral ban is cause for suspension since claims submitted in violation of this statutory provision must be denied and any payment made would constitute an overpayment. Forged signatures on *Certificates of Medical Necessity* (CMN), treatment plans, and other misrepresentations on Medicare claims and claim forms to obtain payment result in overpayments. Credible allegations of such practices are cause for suspension pending further development.

Whether or not *the contractor or PSC* recommends suspension action *to CMS* is a case-by-case decision requiring review and analysis of the allegation and/or facts. The following information is provided to assist the contractor *and PSC* in deciding *when* to recommend suspension action.

A – Complaints

There is considerable latitude with regard to complaints alleging fraud and abuse. The history, or newness of the provider, the volume and frequency of complaints concerning the provider, and the nature of the complaints all contribute to whether suspension of payment should be recommended. If there is a credible allegation(s) that a provider is submitting or may have submitted false claims, *the contractor shall* recommend

suspension of payment to the RO *and PSCs shall recommend suspension of payment to the GTL, Co-GTL, and SME.*

B – Provider Identified in CMS Fraud Alert

Contractors *shall recommend suspension to the RO and PSCs shall recommend suspension to the GTL, Co-GTL, SME* if a provider in their jurisdiction is the subject of a CMS national fraud alert and the provider is billing the identical items/services cited in the alert or if payment for other claims must be suspended to protect the interests of the government.

C – Requests from Outside Agencies

Contractors *and PSCs shall follow the suspension of payment actions for each agency request indicated below.*

- *CMS -- Initiate suspension as requested.*
- *OIG/FBI – Contractors shall forward the written request to the CMS RO and PSCs shall forward the request to the GTL, Co-GTL, and SME for its review and determination. The RO or for PSCs, the GTL, Co-GTL, and SME will decide.*
- *AUSA/DOJ – Contractors shall forward the written request to the CMS RO and for PSCs, the GTL, Co-GTL, and SME for review and determination.*
- *Other – Other situations the contractor or PSC may consider recommending suspension of payment to the RO or for PSCs, the GTL, Co-GTL, and SME are:*
 - *Provider has pled guilty to, or been convicted of, Medicare, Medicaid, CHAMPUS, or private health care fraud and is still billing Medicare for services;*
 - *Federal/State law enforcement has subpoenaed the records of, or executed a search warrant at, a health care provider billing Medicare;*
 - *Provider has been indicted by a Federal Grand Jury for fraud, theft, embezzlement, breach of fiduciary responsibility, or other misconduct related to a health care program;*
 - *Provider presents a pattern of evidence of known false documentation or statements sent to the contractor; e.g., false treatment plans, false statements on provider application forms.*

3.9.1.2 – Overpayment Exists But the Amount is Not Determined - General Suspensions

(Rev. 71, 04-09-04)

Suspension of payment may be used when the contractor *or CMS* possesses reliable information that an overpayment exists but has not yet determined the amount of the overpayment. *In this situation, the contractor shall recommend suspension to the RO and the PSC shall recommend suspension to the GTL, Co-GTL, and SME.* For the purposes of this section, these types of suspensions will be called “general suspensions.”

EXAMPLE: Several claims identified on post-pay review were determined to be non-covered or miscoded. The provider has billed this service many times before and it is suspected that there may be a number of additional non-covered or miscoded claims that have been paid.

3.9.1.3 – Payments to be Made May Not be Correct - General Suspensions

(Rev. 71, 04-09-04)

Suspension of payment may be used when the contractor *or CMS* possesses reliable information that the payments to be made may not be correct. *In this situation, the contractor shall recommend suspension to the RO and the PSC shall recommend suspension to the GTL, Co-GTL, and SME.* For the purposes of this section, these types of suspensions will be called “general suspensions”.

3.9.1.4 – Provider Fails to Furnish Records and Other Requested Information - General Suspensions

(Rev. 71, 04-09-04)

Suspension of payment may be used when the contractor *or CMS* possesses reliable information that the provider has failed to furnish records and other information requested or *that is due, and which is needed to determine the amounts due the provider.* *In this situation, the contractor shall recommend suspension to the RO and the PSC shall recommend suspension to the GTL, Co-GTL, and SME.* For the purposes of this section, these types of suspensions will be called “general suspensions”.

EXAMPLE: During a postpayment review, medical records and other supporting documentation are solicited from the provider to support payment. The provider fails to submit the requested records. The contractor determines that the provider is continuing to submit claims for services in question.

3.9.2 – Procedures for Implementing Suspension of Payment

(Rev. 71, 04-09-04)

3.9.2.1 – CMS Approval

(Rev. 71, 04-09-04)

The initiation (including whether or not to give advance notice), modification, or removal of any type of suspension requires the explicit prior approval of the *CMS RO or for PSCs, the GTL, Co-GTL, and SME*. The designated approving authority in the *RO or for PSCs, the GTL, Co-GTL, and SME* will seek the advice of the Regional Chief Counsel's Office (RCCO) and coordinate suspension action with its law enforcement partners as it deems appropriate.

The contractor *or PSC shall* forward a draft of the proposed notice of suspension and a brief summary of the evidence upon which the recommendation is based to the *RO or for PSCs, the GTL, Co-GTL, and SME*. *The contractor shall* not take suspension action without the explicit approval of the resident *RO or for PSCs, the GTL, Co-GTL, and SME*. In most cases, the *RO or if a PSC, the GTL, Co-GTL, and SME* will notify OIG and other law enforcement partners of its decision and will keep law enforcement apprised of any future decisions to modify the suspension. However, if a contractor, *a PSC, or CMS* has been working with law enforcement on the case, immediately notify them of the recommendation to the *RO or for PSCs, the GTL, Co-GTL, and SME*. Notice may consist of a telephone call or a fax if there is a need to expedite suspension. If law enforcement wants more time to study or discuss the suspension, *contractors shall* discuss their request with the *RO or for PSCs, the GTL, Co-GTL, and SME*. If law enforcement requests that suspension action should, or should not, be taken, *contractors shall* contact the *RO or for PSCs, the GTL, Co-GTL, and SME*. *Contractors and PSCs shall also advise law enforcement* that the request must be in writing and must provide a detailed rationale justifying why payment should, or should not, be suspended.

3.9.2.2 – The Notice of Intent to Suspend

(Rev. 71, 04-09-04)

3.9.2.2.1 – Prior Notice Versus Concurrent Notice

(Rev. 71, 04-09-04)

Contractors and PSCs shall inform the provider of the suspension action being taken. *When prior notice is appropriate*, give at least 15 calendar days prior notice. Day one begins the day after the notice is mailed.

A - Medicare Trust Fund would be harmed by giving prior notice: *Contractors and PSCs shall* recommend to the *RO or for PSCs, the GTL, Co-GTL, and SME*, *not to give prior notice if* in the contractor's *or PSC's* opinion, any of the following apply:

1. Delay in suspension will cause the overpayment to rise at an accelerated rate (i.e., dumping of claims);

2. There is reason to believe that the provider may flee the contractor's jurisdiction before the overpayment can be recovered; *or*

3. The contractor *or* PSC has first hand knowledge of a risk that the provider will cease or severely curtail operations or otherwise seriously jeopardize its ability to repay its debts.

If the RO *or* for PSCs, the GTL, Co-GTL, and SME waives the advance notice requirement, contractors *and* PSCs send the provider notice concurrent with implementation of the suspension, but no later than 15 days, after suspension is imposed.

B – Suspension imposed for failure to furnish requested information: Contractors and PSCs shall recommend that the RO or for PSCs, the GTL, Co-GTL, and SME waive prior notice requirements for failure to furnish information requested by the contractor or PSC that is needed to determine the amounts due the provider.

If the RO or for PSCs, the GTL, Co-GTL, and SME waives the prior notice requirement, contractors and PSCs shall send the provider notice concurrent with implementation of the suspension, but no later than 15 days after the suspension is imposed.

C – Fraud suspension: With respect to fraud suspensions, contractors and PSCs shall recommend to the RO or for PSCs, the GTL, Co-GTL, and SME that prior notice not be given. The RO or for PSCs, the GTL, Co-GTL, and SME will decide whether to waive the notice. The RO or for PSCs, the GTL, Co-GTL, and SME will also direct the content of the notice.

If the RO *or* for PSCs, the GTL, Co-GTL, and SME waives the advance notice requirement, *the contractor or PSC shall* send the provider notice concurrent with implementation of the suspension, but no later than 15 days, after suspension is imposed.

3.9.2.2.2 – Content of Notice

(Rev. 71, 04-09-04)

Contractors *and* PSCs shall prepare a “draft notice” and send it, along with the recommendation, to the RO *or* for PSCs, the GTL, Co-GTL, and SME for approval. The draft notice shall include, at a minimum:

- That suspension action will be imposed;
- *The extent of the suspension (i.e., all claims, certain types of claims, 100% suspension or partial suspension);*
- That suspension action is not appealable;
- *That CMS has approved implementation of the suspension;*
- When suspension will begin;

- The items or services affected;
- How long the suspension is expected to be in effect;
- The reason for suspending payment;
- That the provider has the opportunity to submit a rebuttal statement within 15 days of notification; *and*
- *Where to mail the rebuttal.*

In the notice, contractors *and PSCs shall also state* why the suspension action is being taken.

For fraud suspensions, the contractor *or PSC shall* do so in a way that does not disclose information that would undermine a potential fraud case. The rationale must be specific enough to justify the action being taken and allow the provider an opportunity to identify the problem. *The RO or for PSCs, the GTL, Co-GTL, and SME will direct the content of the notice. The notice does not need to specify that the provider is suspected of fraud or willful misrepresentation. It can identify the claims involved and state, for example, that the claims paid or to be paid should not have been.*

3.9.2.2.3 – Shortening the Notice Period for Cause

(Rev.)

At any time, the contractor *or PSC* may recommend to the RO *or for PSCs, the GTL, Co-GTL, and SME* that the advance notice be shortened **during** the notice period. Such a recommendation would be appropriate if the contractor *or PSC* believes that the provider is intentionally submitting additional claims in anticipation of the effective date of the suspension. If suspension is imposed earlier than indicated in the notice, *the contractor or PSC shall* notify the provider in writing of the change and the reason.

3.9.2.2.4 – Mailing the Notice to the Provider

(Rev.)

After consultation with and approval from the RO *or for PSCs, the GTL, Co-GTL, and SME*, contractors *and PSCs shall* send the notice of suspension to the provider. In the case of fraud suspensions, they send a copy to the OIG, FBI, or AUSA if they have been previously involved.

3.9.2.2.5 – Opportunity for Rebuttal

(Rev.)

The suspension notice gives the provider an opportunity to submit to the contractor *or PSC* a statement *within 15 days* indicating why suspension action should not be, or should not have been, imposed. *However, this may be shortened or lengthened for cause*

(see 42 CFR 405.374(b)). A provider's reaction to suspension may include threats of court action to restore payment or to stop the proposed action. The RO *or for PSCs, the GTL, Co-GTL, and SME* will consult with OGC and will advise the contractor *or PSC* before the contractor *or PSC* responds to any rebuttal statements.

Contractors *and PSCs shall* ensure the following:

- *CMS Review* – Contractors *and PSCs shall immediately* forward provider responses to the *CMS RO or for PSCs, the GTL, Co-GTL, and SME*.
- *Timing* – Implementation of suspension actions is not delayed by the receipt and/or review of the rebuttal statement. The suspension goes into effect as indicated in the notice.
- *Review of Rebuttal* – Because suspension actions are not appealable, the rebuttal is the provider's only opportunity to present information as to why suspension action should be non-initiated or terminated. Contractors *and PSCs shall also* carefully review the provider's rebuttal statement and consider all facts and issues raised by the provider. If the contractor *or PSC* is convinced that the suspension action should be non-initiated or terminated, *they shall* consult immediately with the RO *or for PSCs, the GTL, Co-GTL, and SME*.
- *Response* – Respond to the provider's rebuttal within 15 days from the date the statement is received, following consultation with the RO *or for PSCs, the GTL, Co-GTL, and SME*.

3.9.2.3 – Claims Review During the Suspension Period

(Rev. 71, 04-09-04)

3.9.2.3.1 – Claims Review

(Rev. 71, 04-09-04)

A – Claims Review of Suspended Claims:

Once suspension has been imposed, contractors *and PSCs shall* follow normal claims processing and MR procedures. Contractors *shall* make every attempt within the MR budget to determine if suspended claims are payable. *Contractors and PSCs shall* ensure that the provider is not substituting a new category of improper billing to counteract the effect of the payment suspension. If the claim is determined to be not payable, it *shall* be denied. For claims that are not denied, *the contractor shall* send a remittance advice to the provider showing that payment was approved but not sent. *Contractors and PSCs are not required to perform 100% pre-pay medical review of suspended claims. Contractors and PSCs shall consult with their RO or for PSCs, with their GTL, Co-GTL, and SME when resources would be better utilized by determining what percentage of claims in a universe of suspended claims are payable through use of statistical sampling procedures.*

Contractors and PSCs shall use the principles of statistical sampling found in the PIM, Chapter 3, §3.10, to determine what percentage of claims in a given universe of suspended claims are payable.

B – Review of Suspected Fraudulent or Overpaid Claims:

Contractors *and PSCs shall* follow procedures in the PIM Chapter 3, §3.8 in establishing an overpayment. The overpayment consists of all claims in a specific time period determined to have been paid incorrectly. Contractors *and PSCs shall* make all reasonable efforts to expedite the determination of the overpayment amount.

NOTE: Claims selected for postpayment review may be reopened within 1 year for any reason or within 4 years for good cause. Cost report determinations may be reopened within 3 years after the Notice of Program Reimbursement has been issued. Good cause is defined as new and material evidence, error on the face of the record, or clerical error. The regulations have open-ended potential for fraud or similar fault. The exception to the 1-year rule is for adjustments to DRG claims. A provider has 60 days to request a change in an assignment of a DRG. (See 42 CFR 412.60(d).)

3.9.2.3.2 – Case Development – *Benefit Integrity*
(Rev. 71, 04-09-04)

Even though suspension action was recommended and/or implemented, *PSCs and Medicare contractor BI units shall* discuss the case with the OIG to ascertain their interest in working the case. If OIG declines the case, they *shall* discuss whether OIG referral to another law enforcement agency is appropriate. If law enforcement is not interested in the case, *PSCs and Medicare contractor BI units shall* consider preparing the case for CMP or permissive exclusion. See PIM Chapter 4 §4.22. Whether the case is accepted by law enforcement or not, *PSCs and Medicare contractor BI units shall* develop the overpayment as expeditiously as administratively feasible and *shall* keep law enforcement apprised of the dollars being withheld as well as any potential recoupment action if they are investigating the provider under suspension.

The *PSC and Medicare contractor BI unit shall* enter the suspension into the FID, no later than the effective date of suspension. See *PIM Chapter 4, §4.11 for FID entry and update requirements. In the Suspension Narrative field, the contractor or PSC shall enter the items/services affected (i.e., type of item/service and applicable HCPCS/CPT codes).*

3.9.2.4 – Duration of Suspension of Payment
(Rev. 71, 04-09-04)

A – Time Limits

The RO *or for PSCs, the GTL, Co-GTL, and SME* will initially approve suspension for a period up to 180 days. The RO *or for PSCs, the GTL, Co-GTL, and SME* may extend the period of suspension for up to an additional 180 days upon the written request of the *contractor or PSC, OIG, or other law enforcement agency*. The request *shall* provide:

- Name and address of the provider under suspension;
- Amount of additional time needed (not to exceed the 180 days); and
- Rationale explaining why the additional time is necessary.

B – Exceptions to Time Limits

The following exceptions may apply:

- Department of Justice (including U.S. Attorneys). The RO *or for PSCs, the GTL, Co-GTL, and SME* may grant an additional extension to the Department of Justice if it submits a written request. Requests must include: 1) the identity of the person or entity under suspension, 2) the amount of time needed for continued suspension in order to implement an ongoing or anticipated criminal and/or civil proceeding, and 3) a statement of why and/or how criminal and/or civil actions may be affected if the suspension is not extended. This extension may be granted based on a request received by the RO *or for PSCs, the GTL, Co-GTL, and SME* at any time before or during the period of suspension.
- OIG. The time limits in *subsection A* above do not apply if the case has been referred to and is being considered by OIG for administrative sanctions (*e.g.*, CMPs). However, this exception does not apply to pending criminal investigations by OIG.

C – Provider Notice of the Extension

The contractor or PSC shall notify the provider of the requested extension.

The contractor or PSC shall obtain the RO or if a PSC, GTL, Co-GTL, and SME decision about the extension request, and shall notify the provider if the suspension action has been extended.

3.9.2.5 – Removing the Suspension

(Rev. 71, 04-09-04)

Contractors *shall* recommend to the RO and PSCs *shall* recommend to the GTL, Co-GTL, and SME that suspension of payments be terminated at such time as the time limit expires.

The contractor or PSC may recommend on a case by case basis to the RO or for the PSC, the GTL, Co-GTL, and SME that it be terminated earlier if any of the following apply:

A – If the basis for the suspension action was that an overpayment existed but the amount of the suspected overpayment is not yet determined, *and*:

- No overpayment was identified;
- The amount of suspected overpayment has been determined and it is no longer accruing; or
- The amount of the suspended monies exceeds the estimated amount of the suspected overpayment.

B – If the basis for the suspension action was that fraud or willful misrepresentation existed, there is satisfactory evidence that the fraud activity has ceased, *and the amount of suspended monies exceeds the estimated amount of the suspected overpayment.*

C – If the basis for the suspension action was that payments to be made may not be correct, *and the contractor or PSC has determined* that payments to be made are correct.

D – If the basis for the suspension action was that the provider failed to furnish records, the provider has submitted all previously requested records, and the contractor *or PSC* believes the provider will comply with future requests for records.

When the suspension expires or is lifted early, the disposition of the suspension shall be achieved within a reasonable time period.

3.9.2.6 – Disposition of the Suspension ***(Rev. 71, 04-09-04)***

Payments for appropriate Medicare claims that are withheld during a suspension should not exceed the suspected amount of overpayment. Contractors *and PSCs shall* maintain an accurate, up-to-date record of the amount withheld and the claims that comprise the suspended amount. Contractors *and PSCs shall* keep a separate accounting of payment on all claims affected by the suspension. They *shall* keep track of how much money is uncontested and due the provider. The amount needs to be known as it represents assets that may be used to recoup any overpayment. (See PIM Chapter 3, §3.8.) Contractors *and PSCs shall* be able to provide, upon request, copies of the claims affected by the suspension. After the suspension has been removed, they *shall* apply the amount withheld first to the overpayment. Contractors *shall* remit to the provider all monies held in excess of the amount the provider owes. If the provider owes more money than was held in suspension, *the contractor shall* initiate recoupment action.

3.9.2.7 – Contractor Suspects Additional Improper Claims ***(Rev. 71, 04-09-04)***

A – Present Time

If the contractor *or* PSC believes that the provider will continue to submit non-covered, misrepresented, or potentially fraudulent claims, it *shall* consider implementing *or* recommending other actions as appropriate (e.g., prepayment review, a new suspension of payment.)

B – Past Period of Time

If the contractor *or* PSC believes there are past periods of time that may contain possible overpayments, contractors *and* PSCs *shall* consider *recommending* a new suspension of payment covering those dates.

C – Additional Services

During the time that a provider is under suspension of payment for a particular service(s), if it is determined there is reason to initiate suspension action for a different service, a new suspension of payment *shall* be initiated.

Anytime a new suspension action is initiated on a provider who is already under one or more suspension actions, contractors *shall* obtain separate CMS approval, *shall* issue an additional notice to the provider, *shall* offer a new rebuttal period, etc.

3.9.3 – Suspension Process for Multi-Region Issues

(Rev. 71, 04-09-04)

3.9.3.1 – DMERCs and DMERC PSCs

(Rev. 71, 04-09-04)

The DMERCs *and* DMERC PSCs *shall* initiate suspension action when one of the criteria listed above is identified. (See PIM Chapter 3 §3.9.1, When Suspension of Payment May Be Used.) The following details the process that *shall* be followed when one DMERC *or* DMERC PSC suspends payments.

A – The initiating DMERC *or* DMERC PSC *shall* get the approval of its lead RO *or* for PSCs, the GTL, Co-GTL and SME. CMS's ROs have agreed to support the decision of another RO.

B – The initiating DMERC *or* DMERC PSC *shall* share the suspension of payment information with all of the other DMERCs *and* DMERC PSCs. Reliable information that payments should be suspended in one region is sufficient reason for suspension decisions to apply to the other regions.

C – The lead RO *or* for PSCs, the GTL, Co-GTL, and SME *shall* issue one suspension letter on CMS letterhead advising that payments will be held by all DMERCs *and*

DMERC PSCs. This letter shall advise the supplier to contact the initiating DMERC or DMERC PSC should the supplier have any questions.

D – Should the suspension action require an extension of time, the lead RO *or for PSCs, the GTL, Co-GTL, and SME* will send an extension letter to the supplier.

3.9.3.2 – Other Multi-Regional Contractors ***(Rev. 71, 04-09-04)***

In some situations, more than one CMS RO may be involved. For example, both the Seattle (resident RO) and Kansas City (RHHI RO) have jurisdiction in Idaho. Where there are multiple ROs, it is incumbent on the ROs (not the contractors *or PSCs*) to reach consensus on suspension action and to provide a single point of contact at the resident RO for the contractor *or PSCs*. In other words, it is usually the RO that services the geographic State or area where the beneficiary and providers are located that would be responsible for coordinating CMS's decision and contacts with interested law enforcement agencies. *The PSC shall contact their GTL, Co-GTL, and SME for the correct RO contact on payment suspensions.*

Model Suspension of Payment Letters can be found in Exhibit 16.

3.10 - Use of Statistical Sampling for Overpayment Estimation

(Rev. 71, 04-09-04)

3.10.1 – Introduction

(Rev. 71, 04-09-04)

3.10.1.1 – General Purpose

(Rev. 71, 04-09-04)

The purpose of this section is to provide the guidance necessary to use statistical sampling to calculate and project overpayments identified following administrative review of claims. These instructions are provided to ensure that a statistically valid sample is drawn and that statistically valid methods are used to project an overpayment where the results of the review indicate that overpayments have been made. These guidelines are for administrative reviews performed by the PSC or Medicare contractor BI unit. Reviews using statistical sampling that are conducted by the PSC or Medicare contractor BI unit to assist with the identification, case development and/or investigation of suspected fraud or other unlawful activities may use procedures that differ from those prescribed herein.

These instructions are provided so that a sufficient administrative process is followed when conducting statistical sampling to project overpayments. Failure by the PSC or Medicare contractor BI unit to follow one or more of the requirements contained herein does not necessarily affect the validity of the statistical sample. An appeal challenging the validity of the sampling methodology must be predicated on the actual statistical validity of the sample as drawn and conducted. Failure by the PSC or Medicare contractor BI unit to follow one or more requirements may result in review by CMS of

their performance, but should not be construed as necessarily affecting the validity of the statistical sampling.

3.10.1.2 - Use of Statistical Sampling

(Rev. 71, 04-09-04)

Statistical sampling is used to calculate and project the amount of overpayments made on claims. HCFA Ruling 86-1 (HCFAR 86-1) explains CMS's authority to use statistical sampling to estimate overpayments made to Medicare providers and suppliers. The PSC or Medicare contractor BI unit shall use statistical sampling to project overpayments to providers and suppliers when claims are voluminous and reflect a pattern of erroneous billing or overutilization and when a case-by-case review is not administratively feasible. The ruling recognizes that statistical sampling conserves the resources of the Medicare program when reviews are performed on a large universe of claims. The ruling states that in most cases it would not be administratively feasible, given the volume of records involved and the cost of retrieving and reviewing all the beneficiary records, for an examination of all individual claims for the period in question.

3.10.1.3 - Steps for Conducting Statistical Sampling

(Rev. 71, 04-09-04)

The major steps in conducting statistical sampling are: (1) Selecting the provider or supplier; (2) Selecting the period to be reviewed; (3) Defining the universe, the sampling unit, and the sampling frame; (4) Designing the sampling plan and selecting the sample; (5) Reviewing each of the claims or line(s) on the claim and determining if there was an overpayment, or, for administrative reviews, an underpayment; and, as applicable, (6) Estimating the overpayment. Where an overpayment has been determined to exist, follow applicable instructions for notification and collection of the overpayment.

3.10.1.4 - When Statistical Sampling May Be Used

(Rev. 71, 04-09-04)

The PSC or Medicare contractor BI unit shall use statistical sampling to project overpayments to providers and suppliers when erroneous billing or reimbursement, or overutilization is suspected, and when a case-by-case review is not administratively feasible or practical.

Use of statistical sampling to determine overpayments may be used in conjunction with other corrective actions. Reviews that involve the use of statistical sampling may be utilized when there is a "major level of concern" regarding the provider or supplier's billing, reimbursement, and/or utilization (see Progressive Corrective Action (PCA) instructions).

Factors also to be considered for determining when to undertake statistical sampling include, but are not limited to: the number of claims in the universe and the dollar values associated with those claims; available resources; and the cost effectiveness of the expected sampling results.

3.10.1.5 - Consultation With a Statistical Expert

(Rev. 71, 04-09-04)

The sampling methodology used to project overpayments must be reviewed by a statistician, or by a person with equivalent expertise in probability sampling and estimation methods. This is done to ensure that a statistically valid sample is drawn and that statistically valid methods for projecting overpayments are followed. The PSC or Medicare contractor BI unit shall obtain from the statistical expert a written approval of the methodology for the type of statistical sampling to be performed. If this sampling methodology is applied routinely and repeatedly, the original written approval is adequate for conducting subsequent reviews utilizing the same methodology. The PSC or Medicare contractor BI unit shall have the statistical expert review the results of the sampling prior to releasing the overpayment demand letter. If questions or issues arise during the on-going review, the PSC or Medicare contractor BI unit shall also involve the statistical expert.

At a minimum, the statistical expert (either on-staff or consultant) shall possess a master's degree in statistics or have equivalent experience. See Section 3.10.10 for a list, not exhaustive, of texts that represent the minimum level of understanding that the statistical expert should have. If the PSC or Medicare contractor BI unit does not have staff with sufficient statistical experience as outlined here, it shall obtain such expert assistance prior to conducting statistical sampling.

3.10.1.6 - Use of Other Sampling Methodologies

(Rev. 71, 04-09-04)

Nothing in these instructions precludes the Centers for Medicare and Medicaid Services (CMS) or the PSC or Medicare contractor BI unit from relying on statistically valid audit sampling methodologies employed by other audit organizations, including but not limited to the OIG, the GAO, and other authoritative sources. Where it is foreseen that the results of a review may be referred to law enforcement or another agency for litigation and/or other enforcement actions, the PSC or Medicare contractor BI unit shall discuss specific litigation and/or other requirements as they relate to statistical sampling with its statistical expert prior to undertaking the review. In addition, discuss sampling requirements with law enforcement or other authorities before initiating the review (to ensure that the review will meet their requirements and that such work will be funded accordingly).

3.10.2 - Probability Sampling

(Rev. 71, 04-09-04)

Regardless of the method of sample selection used, the PSC or Medicare contractor BI unit shall follow a procedure that results in a probability sample. For a procedure to be classified as probability sampling the following two features must apply:

- It must be possible, in principle, to enumerate a set of distinct samples that the procedure is capable of selecting if applied to the target universe. Although only one sample will be selected, each distinct sample of the set has a known probability of selection. It is not necessary to actually carry out the enumeration or calculate the probabilities, especially if the number of possible distinct samples is large - possibly billions. It is merely meant that one could, in theory, write down the samples, the sampling units contained therein, and the probabilities if one had unlimited time.*

and

- Each sampling unit in each distinct possible sample must have a known probability of selection. For statistical sampling for overpayment estimation, one of the possible samples is selected by a random process according to which each sampling unit receives its appropriate chance of selection. The selection probabilities do not have to be equal but they should all be greater than zero. In fact, some designs bring gains in efficiency by not assigning equal probabilities to all of the distinct sampling units.

For a procedure that satisfies these bulleted properties it is possible to develop a mathematical theory for various methods of estimation based on probability sampling and to study the features of the estimation method (i.e., bias, precision, cost, etc.) although the details of the theory may be complex. If a particular probability sample design is properly executed, i.e., defining the universe, the frame, the sampling units, using proper randomization, accurately measuring the variables of interest, and using the correct formulas for estimation, then assertions that the sample and its resulting estimates are “not statistically valid” cannot legitimately be made. In other words, a probability sample and its results are always “valid.” Because of differences in the choice of a design, the level of available resources, and the method of estimation, however, some procedures lead to higher precision (smaller confidence intervals) than other methods. A feature of probability sampling is that the level of uncertainty can be incorporated into the estimate of overpayment as is discussed below.

3.10.3 - Selection of Period to be Reviewed and Composition of Universe

(Rev. 71, 04-09-04)

3.10.3.1 - Selection of Period for Review

(Rev. 71, 04-09-04)

Following selection of the provider or supplier, determine the period of time to be reviewed. That is, determine the number of days, weeks, months, or years, for which sampling units will be reviewed. The universe shall be selected from this period. The period of review is determined by considering several factors, including (but not limited to):

- How long the pattern of erroneous billing or overutilization is believed to have existed;
- The volume of claims that are involved;
- The length of time that a national coverage decision or regional or local coverage policy has been in effect (i.e., should the provider or supplier have succeeded in adjusting their billing/utilization practices by now);
- The extent of prepayment review already conducted or currently being conducted;
- The dollar value of the claims that are involved relative to the cost effectiveness of the sample; and/or,
- The applicable time periods for reopening claims (see the Medicare Carrier and Intermediary Manuals: MCM, Part 3, Chapter XII, Section

12100 and MIM, Part 3, Chapter VIII, Section 3799, for Reopening Standards).

NOTE: When sampling claims that are paid through cost report (as opposed to claims paid under a PPS reimbursement methodology), all claims reviewed must be drawn from within a provider's defined cost reporting year. If the period under review is greater than one year, select a separate sample for each cost-reporting year.

3.10.3.2 - Defining the Universe, the Sampling Unit, and the Sampling Frame

(Rev. 71, 04-09-04)

The universe and sampling frame will usually be all relevant claims or line items for the period under review. The discussion that follows assumes that the sampling unit is the claim, although this is not required. The sampling unit may also be, for example, the patient, a treatment "day", or any other sampling unit appropriate for the issue under review.

3.10.3.2.1 - Composition of the Universe

(Rev. 71, 04-09-04)

A. Part A Claims: For providers reimbursed through cost report, the universe of claims from which the sample is selected shall consist of fully and partially adjudicated claims obtained from the shared systems. For such claims, use the service date to match findings to the cost report.

For providers reimbursed under PPS, the universe of claims from which the sample is selected will consist of all fully and partially paid claims submitted by the provider for the period under review.

B. Part B Claims: The universe shall be all fully and partially paid claims submitted by the supplier for the period selected for review and for the sampling units to be reviewed. For example, if the review is of Physician X for the period January 1, 2002 through March 31, 2002, and laboratory and other diagnostic tests have been selected for review, the universe would include all fully and partially paid claims for laboratory and diagnostic tests billed by that physician for the selected time period. For some reviews, the period of review may best be defined in terms of the date(s) of service because changes in coverage policy may have occurred.

3.10.3.2.2 - The Sampling Unit

(Rev. 71, 04-09-04)

Sampling units are the elements that are selected according to the chosen method of statistical sampling. They may be an individual line(s) within claims, individual claims, or clusters of claims (e.g., a beneficiary). For example, possible sampling units may include specific beneficiaries seen by a physician during the time period under review; or, claims for a specific item or service. In certain circumstances, e.g., multi-stage sample designs, other types of clusters of payments may be used. In principle, any type of

sampling unit is permissible as long as the total aggregate of such units covers the population of potential mis-paid amounts.

Unlike procedures for suppliers, overpayment projection and recovery procedures for providers and non-physician practitioners who bill intermediaries, in a non-PPS environment, must be designed so that overpayment amounts can be accurately reflected on the provider's cost report. Therefore, sampling units must coincide with a projection methodology designed specifically for that type of provider to ensure that the results can be placed at the appropriate points on the provider's cost report. The sample may be either claim-based or composed of specific line items. For example, home health cost reports are determined in units of "visits" for disciplines 1 through 6 and "lower of costs or charges" for drugs, supplies, etc. If claims are paid under cost report, the services reviewed and how those units link to the provider's cost report must be known. Follow the instructions contained in Section 3.10, but use the projection methodologies provided in PIM Exhibits 9 through 12 for the appropriate provider type. PIM Exhibits 9 through 12 are to be used only for claims not paid under PPS.

3.10.3.2.3 - The Sampling Frame

(Rev. 71, 04-09-04)

The sampling frame is the "listing" of all the possible sampling units from which the sample is selected. The frame may be, for example, a list of all beneficiaries receiving items from a selected supplier, a list of all claims for which fully or partially favorable determinations have been issued, or a list of all the line items for specific items or services for which fully or partially favorable determinations have been issued.

The ideal frame is a list that covers the target universe completely. In some cases the frame must be constructed by combining lists from several sources and duplication of sampling units may result. Although duplicate listings can be handled in various ways that do not invalidate the sample, it is recommended that duplicates be eliminated before selecting the sample.

3.10.4 - Sample Selection

(Rev. 71, 04-09-04)

3.10.4.1 - Sample Design

(Rev. 71, 04-09-04)

Identify the sample design to be followed. The most common designs used are simple random sampling, systematic sampling, stratified sampling, and cluster sampling, or a combination of these.

3.10.4.1.1 - Simple Random Sampling

(Rev. 71, 04-09-04)

Simple random sampling involves using a random selection method to draw a fixed number of sampling units from the frame without replacement, i.e., not allowing the same

sampling unit to be selected more than once. The random selection method must ensure that, given the desired sample size, each distinguishable set of sampling units has the same probability of selection as any other set - thus the method is a case of "equal probability sampling." An example of simple random sampling is that of shuffling a deck of playing cards and dealing out a certain number of cards (although for such a design to qualify as probability sampling a randomization method that is more precise than hand shuffling and dealing would be required.)

3.10.4.1.2 - Systematic Sampling

(Rev. 71, 04-09-04)

Systematic sampling requires that the frame of sampling units be numbered, in order, starting with the number one (1) and ending with a number equal to the size of the frame. Using a random start, the first sampling unit is selected according to that random number, and the remaining sampling units that comprise the sample are selected using a fixed interval thereafter. For example, if a systematic sample with size one-tenth of the frame size is desired, select a random number between one and ten, say that it is "6", and then select every tenth unit thereafter, i.e., "16, 26, 36, ...etc." until the maximum unit number in the frame has been exceeded.

3.10.4.1.3 - Stratified Sampling

(Rev. 71, 04-09-04)

Stratified sampling involves classifying the sampling units in the frame into non-overlapping groups, or strata. One useful stratification results in a sampling unit from one stratum more likely being similar in overpayment amount to others in its stratum than to sampling units in other strata. Although the amount of an overpayment cannot be known prior to review, it may be possible to stratify on an observable variable that is correlated with the overpayment amount of the sampling unit. Given a sample in which the total frame is covered by non-overlapping strata, if independent probability samples are selected from each of the strata, the design is called stratified sampling. The independent random samples from the strata need not have the same selection rates. A common situation is where the overpayment amount in a frame of claims is thought to be significantly correlated with the amount of the original payment to the provider or supplier. The frame may then be stratified into a number of distinct groups by the level of the original payment and separate simple random samples are drawn from each stratum. Separate estimates of overpayment are made for each stratum and the results combined to yield an overall projected overpayment.

The main object of stratification is to define the strata in a way that will reduce the margin of error in the estimate below that which would be obtained by other sampling methods, as well as to obtain an unbiased estimate or an estimate with an acceptable bias. The standard literature, including that referenced in Section 3.10.10, contains a number of different plans; the suitability of a particular method of stratification depends on the particular problem being reviewed, and the resources allotted to reviewing the problem. Additional discussion of stratified sampling is provided in Section 3.10.11.1.

3.10.4.1.4 - Cluster Sampling

(Rev. 71, 04-09-04)

Cluster sampling involves drawing a random sample of clusters and reviewing everything or a sample of units in the sampled clusters. Unlike strata, clusters are groups of units that do not necessarily have strong similarities, but can be efficiently accessed for review purposes. For example, if the sampling unit is a beneficiary and the plan is to review each of the set of payments for each selected beneficiary, then the design is an example of cluster sampling with each beneficiary constituting a cluster of payments. The main point to remember (when sampling all the units in the cluster) is that the sample size for purposes of estimating the sampling error of the estimate is the number of clusters, not the total number of individual payments that are reviewed.

A challenge to the validity of a cluster sample that is sometimes made is that the number of sampling units in a cluster is too small. (A similar challenge to stratified sampling is also raised – i.e., that the number of sampling units in a stratum is too small). Such a challenge is usually misguided since the estimate of the total overpayment is a combination of the individual cluster (or, in the case of stratified sampling, stratum) estimates; therefore the overall sample size is important, but the individual cluster (or stratum) sample sizes are usually not critical. Additional discussion of cluster sampling is provided in Section 3.10.11.2.

Both stratification and cluster sampling are methods of grouping units. The former is frequently recommended when there is sufficient knowledge to group units that are similar in some aspect and potentially different from other units. The latter is frequently recommended when there are natural groupings that make a study more cost effective. When carried out according to the rules of probability sampling both of the methods, or a combination, are valid. The use of any of the methods described in this section will produce valid results when done properly.

3.10.4.1.5 - Design Combinations

(Rev. 71, 04-09-04)

A sample design may combine two or more of the methods discussed above. For example, clusters may be stratified before selection; systematic selection rather than simple random sampling may be used for selecting units within strata; or clusters may be subsampled using either simple random sampling or systematic sampling, to cite some of the possible combinations of techniques.

The benefits of stratification by claim amount may be achieved without actually stratifying if the frame is arranged in ascending order by the original payment amount and systematic sampling applied with a random start. That is because the systematic selection “balances out” the sample over the different levels of original payment in a manner similar to the effect of formal stratification. Thus systematic selection is often used in the hope that it will result in increased precision through “implicit stratification.”

3.10.4.2 - Random Number Selection

(Rev. 71, 04-09-04)

The PSC or Medicare contractor BI unit shall identify the source of the random numbers used to select the individual sampling units. The PSC or Medicare contractor BI unit shall also document the program and its algorithm or table that is used; this documentation becomes part of the record of the sampling and must be available for

review. The PSC or Medicare contractor BI unit shall document any starting point if using a random number table or drawing a systematic sample. In addition, the PSC or Medicare contractor BI unit shall document the known seed value if a computer algorithm is used. The PSC or Medicare contractor BI unit shall document all steps taken in the random selection process exactly as done to ensure that the necessary information is available for anyone attempting to replicate the sample selection.

There are a number of well-known, reputable software statistical packages (SPSS, SAS, etc.) and tables that may be used for generating a sample. One such package is RAT-STATS, available (at time of release of these instructions) through the Department of Health and Human Services, Office of Inspector General Web Site. It is emphasized that the different packages offer a variety of programs for sample generation and do not all contain the same program services or the same ease in operation. For any particular problem, the PSCs or Medicare contractor BI unit's statistician or systems programmer shall determine which package is best suited to the problem being reviewed.

3.10.4.3 - Determining Sample Size

(Rev. 71, 04-09-04)

The size of the sample (i.e., the number of sampling units) will have a direct bearing on the precision of the estimated overpayment, but it is not the only factor that influences precision. The standard error of the estimator also depends on (1) the underlying variation in the target population, (2) the particular sampling method that is employed (such as simple random, stratified, or cluster sampling), and (3) the particular form of the estimator that is used (e.g., simple expansion of the sample total by dividing by the selection rate, or more complicated methods such as ratio estimation). It is neither possible nor desirable to specify a minimum sample size that applies to all situations. A determination of sample size may take into account many things, including the method of sample selection, the estimator of overpayment, and prior knowledge (based on experience) of the variability of the possible overpayments that may be contained in the total population of sampling units.

In addition to the above considerations, real-world economic constraints shall be taken into account. As stated earlier, sampling is used when it is not administratively feasible to review every sampling unit in the target population. In determining the sample size to be used, the PSC or Medicare contractor BI unit shall also consider their available resources. That does not mean, however, that the resulting estimate of overpayment is not valid, so long as proper procedures for the execution of probability sampling have been followed. A challenge to the validity of the sample that is sometimes made is that the particular sample size is too small to yield meaningful results. Such a challenge is without merit as it fails to take into account all of the other factors that are involved in the sample design.

3.10.4.4 - Documentation of Sampling Methodology

(Rev. 71, 04-09-04)

The PSC or Medicare contractor BI unit shall maintain complete documentation of the sampling methodology that was followed.

3.10.4.4.1 - Documentation of Universe and Frame

(Rev. 71, 04-09-04)

An explicit statement of how the universe is defined and elements included shall be made and maintained in writing. Further, the form of the frame and specific details as to the period covered, definition of the sampling unit(s), identifiers for the sampling units (e.g., claim numbers, carrier control numbers, etc.), and dates of service and source shall be specified and recorded in your record of how the sampling was done. A record shall be kept of the random numbers actually used in the sample and how they were selected. Sufficient documentation shall be kept so that the sampling frame can be re-created, should the methodology be challenged. The PSC or Medicare contractor BI unit shall keep a copy of the frame.

3.10.4.4.2 - Arrangement and Control Totals

(Rev. 71, 04-09-04)

It is often convenient in frame preparation to array the universe elements by payment amount, e.g., low to high values, especially when stratification is used. At the same time, tabulate control totals for the numbers of elements and payment amounts.

3.10.4.4.3 - Worksheets

(Rev. 71, 04-09-04)

The PSC or Medicare contractor BI unit shall maintain documentation of the review and sampling process. All worksheets used by reviewers shall contain sufficient information that allows for identification of the claim or item reviewed. Such information may include, for example:

- *Name and identification number of the provider or supplier;*
- *Name and title of reviewer;*
- *The Health Insurance Claim Number (HICN), the unique claim identifier (e.g., the claim control number), and the line item identifier;*
- *Identification of each sampling unit and its components (e.g., UB92 or attached medical information)*
- *Stratum and cluster identifiers, if applicable;*
- *The amount of the original submitted charges (in column format);*
- *Any other information required by the cost report worksheets in PIM Exhibits 9 through 12;*
- *The amount paid;*
- *The amount that should have been paid (either over or underpaid amount); and,*
- *The date(s) of service.*

3.10.4.4.4 - Overpayment/Underpayment Worksheets

(Rev. 71, 04-09-04)

Worksheets shall be used in calculating the net overpayment. The worksheet shall include data on the claim number, line item, amount paid, audited value, amount overpaid, reason for disallowance, etc., so that each step in the overpayment calculation is clearly shown. Underpayments identified during reviews shall be similarly documented.

3.10.4.5 - Informational Copies to GTL, Co-GTL, SME or CMS RO

(Rev. 71, 04-09-04)

The PSC or Medicare contractor BI unit shall send informational copies of the statistician-approved sampling methodology to their GTL, Co-GTL, SME or CMS RO. The GTL, Co-GTL, SME or CMS RO will keep the methodology on file and will forward to CO upon request. If this sampling methodology is applied routinely and repeatedly, the PSC or Medicare contractor BI unit shall not repeatedly send the methodology to the GTL, Co-GTL, SME or CMS RO.

3.10.5 - Calculating the Estimated Overpayment

(Rev. 71, 04-09-04)

3.10.5.1 - The Point Estimate

(Rev. 71, 04-09-04)

In simple random or systematic sampling the total overpayment in the frame may be estimated by calculating the mean overpayment, net of underpayment, in the sample and multiplying it by the number of units in the frame. In this estimation procedure, which is unbiased, the amount of overpayment dollars in the sample is expanded to yield an overpayment figure for the universe. The method is equivalent to dividing the total sample overpayment by the selection rate. The resulting estimated total is called the point estimate of the overpayment, i.e., the difference between what was paid and what should have been paid. In stratified sampling, an estimate is found for each stratum separately, and the weighted stratum estimates are added together to produce an overall point estimate.

In most situations the lower limit of a one-sided 90 percent confidence interval shall be used as the amount of overpayment to be demanded for recovery from the provider or supplier. The details of the calculation of this lower limit involve subtracting some multiple of the estimated standard error from the point estimate, thus yielding a lower figure. This procedure, which, through confidence interval estimation, incorporates the uncertainty inherent in the sample design, is a conservative method that works to the financial advantage of the provider or supplier. That is, it yields a demand amount for recovery that is very likely less than the true amount of overpayment, and it allows a reasonable recovery without requiring the tight precision that might be needed to support a demand for the point estimate. However, the PSC or Medicare contractor BI unit is not precluded from demanding the point estimate where high precision has been achieved.

Other methods of obtaining the point estimate are discussed in the standard textbooks on sampling theory. Alternatives to the simple expansion method that make use of auxiliary

variables include ratio and regression estimation. Under the appropriate conditions, ratio or regression methods can result in smaller margins of error than the simple expansion method. For example, if, as discussed earlier, it is believed that the overpayment for a sample unit is strongly correlated with the original paid amount, the ratio estimator may be efficient. The ratio estimator is the ratio of the sample net overpayment to the sample total original payment multiplied by the total of original paid dollars in the frame. If the actual correlation between the overpayment and the original paid amount is high enough, greater precision in estimation will be attained, i.e., the lower limit of the one-sided 90 percent confidence interval will be closer to the point estimate. Exercise caution about using alternatives such as ratio or regression estimation because serious biases can be introduced if sample sizes are very small. (The term bias is used here in a technical sense and does not imply a finding that treats the provider or supplier unfairly. A biased estimator is often used rather than an unbiased estimator because the advantage of its greater precision outweighs the tendency of the point estimate to be a bit high or low.)

3.10.5.2 - Calculation of the Estimated Overpayment Amount

(Rev. 71, 04-09-04)

The results of the sampling unit reviews are used to project an estimate of the overpayment amount. Each result shall be recorded except that a sampling unit's overpayment shall be set to zero if there is a limitation on liability determination made to waive provider or supplier liability for that sampling unit (per provisions found in §1879 of the Social Security Act (the Act)) and/or there is a determination that the provider or supplier is without fault as to that sampling unit overpayment (per provisions found in §1870 of the Act). Sampling units for which the requested records were not provided are to be treated as improper payments (i.e., as overpayments). Sampling units that are found to be underpayments, in whole or in part, are recorded as negative overpayments and shall also be used in calculating the estimated overpayment.

3.10.6 - Actions to be Performed Following Selection of Provider or Supplier and Sample

(Rev. 71, 04-09-04)

NOTE: The instructions in this section dealing with notification and determination of location of the review do not supercede instructions for PSCs or Medicare contractor BI units that are using statistical sampling for overpayment estimation as part of an investigation, either planned or on-going, into potential Medicare fraud.

3.10.6.1 – Notification of Provider or Supplier of the Review and Selection of the Review Site

(Rev. 71, 04-09-04)

The PSC or Medicare contractor BI unit shall first determine whether it will be giving advance notification to the provider or supplier of the review. Although in most cases the PSC or Medicare contractor BI unit shall give prior notification, the provider or supplier is not always notified before the start of the review. When not giving advance notice, the PSC or Medicare contractor BI unit shall obtain the advance approval of the GTL, Co-

GTL, SME or CMS RO. When giving advance notice, provide written notification by certified mail with return receipt requested (retain all receipts).

Second, regardless of whether you give advance notice or not, you shall determine where to conduct the review of the medical and other records: either at the provider or supplier's site(s) or at your office (PSC or Medicare contractor BI unit).

3.10.6.1.1 - Written Notification of Review

(Rev. 71, 04-09-04)

You shall include at least the following in the notification of review:

- *an explanation of why the review is being conducted (i.e., why the provider or supplier was selected),*
- *the time period under review,*
- *a list of claims that require medical records or other supporting documentation,*
- *a statement of where the review will take place (provider/supplier office or contractor/PSC site),*
- *information on appeal rights,*
- *an explanation of how results will be projected to the universe if claims are denied upon review and an overpayment is determined to exist, and*
- *an explanation of the possible methods of monetary recovery if an overpayment is determined to exist. .*

When advance notification is given, providers and suppliers have 30 calendar days to submit (for PSC or Medicare contractor BI unit site reviews) or make available (for provider/supplier site reviews) the requested documentation. Advise the provider or supplier that for requested documentation that is not submitted or made available by the end of 30 calendar days, you will start the review and you will deny those claims for which there is no documentation. The time limit for submission or production of requested documentation may be extended at your discretion.

NOTE: *You do not have to request all documentation at the time of notification of review. For example, you may decide to request one-half of the documentation before you arrive, and then request the other half following your arrival at the provider/supplier's site.*

*When advance notification is **not** given, you shall give the provider or supplier the written notification of review when you arrive at their site.*

3.10.6.1.2 - Determining Review Site

(Rev. 71, 04-09-04)

A. Provider/Supplier Site Reviews

Provider/supplier site reviews are performed at the provider's or supplier's location(s). Considerations in determining whether to conduct the review at the office of the provider or supplier include, but are not limited to, the following:

- *the extent of aberrant billing or utilization patterns that have been identified;*
- *the presence of multiple program integrity issues;*

- *evidence or likelihood of fraud or abuse; and/or,*
- *past failure(s) of the provider or supplier to submit requested medical records in a timely manner or as requested.*

B. PSC or Medicare contractor BI unit Site Reviews

PSC or Medicare contractor BI unit site reviews are performed at a location of the PSC or Medicare contractor BI unit.

3.10.6.2 - Meetings to Start and End the Review

(Rev. 71, 04-09-04)

In-person meetings to start and end the review are encouraged, but are not required or always feasible. If you hold an in-person meeting at the start of the review, explain both the scope and purpose of the review as well as discuss what will happen once you have completed the review. Attempt to answer all questions of the provider or supplier related to the review.

During an exit meeting, you may discuss the basic or preliminary findings of the review. Give the provider or supplier an opportunity to discuss or comment on the claims decisions that were made. Advise the provider or supplier that a demand letter detailing the results of the review and the statistical sampling will be sent if an overpayment is determined to exist.

3.10.6.3 - Conducting the Review

(Rev. 71, 04-09-04)

Following your receipt of the requested documentation (or the end of the period to submit or make available the requested documentation, whichever comes first), start your review of the claims. You may ask for additional documentation as necessary for an objective and thorough evaluation of the payments that have been made, but you do not have to hold up conducting the review if the documents are not provided within a reasonable time frame. Use physician consultants and other health professionals in the various specialties as necessary to review or approve decisions involving medical judgment. The review decision is made on the basis of the Medicare law, HCFA/CMS rulings, regulations, national coverage determinations, Medicare instructions, and regional/local contractor medical review policies that were in effect at the time the item(s) or service(s) was provided.

Document all findings made so that it is apparent from your written documentation if the initial determination has been reversed. Document the amount of all overpayments and underpayments and how they were determined.

You are encouraged to complete your review and calculate the net overpayment within 90 calendar days of the start of the review (i.e., within 90 calendar days after you have either received the requested documentation or the time to submit or make available the records has passed, whichever comes first). However, there may be extenuating circumstances or circumstances out of your control where you may not be able to complete the review within this time period (e.g., you have made a fraud referral to the OIG and are awaiting their response before pursuing an overpayment).

Your documentation of overpayment and underpayment determinations shall be clear and concise. Include copies of the local medical review policy and any applicable references needed to support individual case determinations. Compliance with these requirements facilitates adherence to the provider and supplier notification requirements.

3.10.7 - Overpayment Recovery

(Rev. 71, 04-09-04)

3.10.7.1 - Recovery from Provider or Supplier

(Rev. 71, 04-09-04)

Once an overpayment has been determined to exist, proceed with recovery based on applicable instructions (See Publication 100-6, Financial Management Manual, Chapter 3). Include in the overpayment demand letter information about the review and statistical sampling methodology that was followed. For PSCs, only ACs shall issue demand letters and recoup the overpayment.

The explanation of the sampling methodology that was followed shall include:

- *a description of the universe, the frame, and the sample design;*
- *a definition of the sampling unit,*
- *the sample selection procedure followed, and the numbers and definitions of the strata and size of the sample, including allocations, if stratified;*
- *the time period under review;*
- *the sample results, including the overpayment estimation methodology and the calculated sampling error as estimated from the sample results; and*
- *the amount of the actual overpayment/underpayment from each of the claims reviewed.*

Also include a list of any problems/issues identified during the review, and any recommended corrective actions.

3.10.7.2 - Informational Copy to GTL, Co-GTL, SME or CMS RO

(Rev. 71, 04-09-04)

Send an informational copy of the demand letter to the GTL, Co-GTL, SME or CMS RO. They will maintain copies of demand letters and will forward to CO upon request. If the demand letter is used routinely and repeatedly, you shall not repeatedly send it to the GTL, Co-GTL, SME or CMS RO.

3.10.8 - Corrective Actions

(Rev. 71, 04-09-04)

Take or recommend other corrective actions you deem necessary (such as payment suspension, imposition of civil money penalties, institution of pre- or post-payment review, additional edits, etc.) based upon your findings during or after the review.

3.10.9 - Changes Resulting From Appeals

(Rev. 71, 04-09-04)

If the decision issued on appeal contains either a finding that the sampling methodology was not valid, and/or reverses the revised initial claim determination, you shall take appropriate action to adjust the extrapolation of overpayment.

3.10.9.1 - Sampling Methodology Overturned

(Rev. 71, 04-09-04)

If the decision issued on appeal contains a finding that the sampling methodology was not valid, there are several options for revising the estimated overpayment based upon the appellate decision:

A. If the decision issued on appeal permits correction of errors in the sampling methodology, you shall revise the overpayment determination after making the corrections. Consult with your GTL, Co-GTL, SME or CMS RO to confirm that this course of action is consistent with the decision of the hearing officer (HO), administrative law judge (ALJ) or Departmental Appeals Board (DAB), or with the court order.

B. You may elect to recover the actual overpayments related to the sampled claims and then initiate a new review of the provider or supplier. If the actual overpayments related to the sampling units in the original review have been recovered, then these individual sampling units shall be eliminated from the sampling frame used for any new review. Consult with your GTL, Co-GTL, SME or CMS RO to confirm that this course of action is consistent with the decision of the HO, ALJ or DAB, or with the court order.

C. You may conduct a new review (using a new, valid methodology) for the same time period as was covered by the previous review. If this option is chosen, you shall not recover the actual overpayments on any of the sample claims found to be in error in the original sample. Before employing this option, consult with your GTL, Co-GTL, SME or CMS RO to verify that this course of action is consistent with the decision of the HO, ALJ or DAB, or with the court order.

3.10.9.2 - Revised Initial Determination

(Rev. 71, 04-09-04)

If the decision on appeal upholds the sampling methodology but reverses one or more of the revised initial claim determinations, the estimate of overpayment shall be recomputed and a revised projection of overpayment issued.

3.10.10 - Resources

(Rev. 71, 04-09-04)

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3.10.11 - Additional Discussion of Stratified Sampling and Cluster Sampling

(Rev. 71, 04-09-04)

3.10.11.1 – Stratified Sampling

(Rev. 71, 04-09-04)

Generally, one defines strata to make them as internally homogeneous as possible with respect to overpayment amounts, which is equivalent to making the mean overpayments for different strata as different as possible. Typically, a proportionately stratified design with a given total sample size will yield an estimate that is more precise than a simple random sample of the same size without stratifying. The one highly unusual exception is one where the variability from stratum mean to stratum mean is small relative to the average variability within each stratum. In this case, the precision would likely be reduced, but the result would be valid. It is extremely unlikely, however, that such a situation would ever occur in practice. Stratifying on a variable that is a reasonable surrogate for an overpayment can do no harm, and may greatly improve the precision of the estimated overpayment over simple random sampling. While it is a good idea to stratify whenever there is a reasonable basis for grouping the sampling units, failure to stratify does not invalidate the sample, nor does it bias the results.

If it is believed that the amount of overpayment is correlated with the amount of the original payment and the universe distribution of paid amounts is skewed to the right, i.e., with a set of extremely high values, it may be advantageous to define a “certainty stratum”, selecting all of the sampling units starting with the largest value and working backward to the left of the distribution. When a stratum is sampled with certainty, i.e., auditing all of the sample units contained therein, the contribution of that stratum to the overall sampling error is zero. In that manner, extremely large overpayments in the sample are prevented from causing poor precision in estimation. In practice, the decision of whether or not to sample the right tail with certainty depends on fairly accurate prior knowledge of the distribution of overpayments, and also on the ability to totally audit one stratum while having sufficient resources left over to sample from each of the remaining strata.

Stratification works best if one has sufficient information on particular subgroups in the population to form reasonable strata. In addition to improving precision there are a number of reasons to stratify, e.g., ensuring that particular types of claims, line items or coding types are sampled, gaining information about overpayments for a particular type of service as well as an overall estimate, and assuring that certain rarely occurring types of services are represented. Not all stratifications will improve precision, but such stratifications may be advantageous and are valid.

Given the definition of a set of strata, the designer of the sample must decide how to allocate a sample of a certain total size to the individual strata. In other words, how much of the sample should be selected from Stratum 1, how much from Stratum 2, etc.? As shown in the standard textbooks, there is a method of “optimal allocation,” i.e., one designed to maximize the precision of the estimated potential overpayment, assuming that one has a good idea of the values of the variances within each of the strata. Absent that kind of prior knowledge, however, a safe approach is to allocate proportionately. That is, the total sample is divided up into individual stratum samples so that, as nearly as possible, the stratum sample sizes are in a fixed proportion to the sizes of the individual stratum frames. It is emphasized, however, that even if the allocation is not optimal, using stratification with simple random sampling within each stratum does not introduce bias, and in almost all circumstances proportionate allocation will reduce the sampling error over that for an unstratified simple random sample.

3.10.11.2 - Cluster Sampling

(Rev. 71, 04-09-04)

Selecting payments in clusters rather than individually usually leads to a reduction in the precision of estimation. However, your reasons for using cluster sampling instead of simple random sampling may be driven by necessity and/or cost-savings related to the location of records or the nature of a record. For example, for medical review to determine the appropriateness of certain charges for a beneficiary it may be necessary to examine the complete medical record of the patient. This then may allow for review of claims for several services falling within the selected review period. In another instance, the medical records that you must review may be physically located in a cluster (e.g., the same warehouse, the same file drawer, the same folder) with the medical records for other similar claims and it is cost effective to select units from the same location. Whenever the cost in time and other resources of selecting and auditing clusters is the same as the cost of simple random sampling the same number of payments, it is better to use simple random sampling because greater precision will be attained.

When reviewing all the units in each cluster, the sample size is the number of clusters, not the number of units reviewed. This is single-stage cluster sampling, a method frequently used when sampling beneficiaries. One may choose to review a sample of units within

each cluster rather than all units. Textbooks that cover the topic of multi-stage sampling provide formulas for estimating the precision of such sample designs. One example for which multi-stage sampling might be an appropriate choice of design is the case of reviewing a supplier chain where records are spread out among many locations. The first-stage selection would be a sample of locations. At the second stage a subsample of records would be selected from each sampled location.

3.11 – Progressive Corrective Action (PCA) **(Rev. 71, 04-09-04)**

3.11.1 – General Information **(Rev. 71, 04-09-04)**

The principles of Progressive Corrective Action (PCA) provide further guidance, underlying principles and approaches to be used in deciding how to deploy resources and tools for medical review. These concepts are already part of existing manual instructions (e.g., how to conduct medical review) but are amplified here for easy understanding of expectations and basic requirements. Listed below are some key steps that are important for efficient and effective use of medical review resources and tools.

For Medicare to consider coverage and payment for any item or service, the information submitted by the supplier or provider (e.g., claims and CMNs) must be corroborated by the documentation in the patient's medical records that Medicare coverage criteria have been met. The patient's medical records include: physician's office records, hospital records, nursing home records, home health agency records, records from other healthcare professionals and/or test reports. This documentation must be maintained by the physician and/or provider and available to the contractor upon request.

This supporting information may be requested by CMS and its agents on a routine basis in instances where diagnoses on the claims or CMN do not clearly indicate medical necessity. For example, documentation supporting the medical necessity of a power wheelchair would not be requested in the vast majority of cases where patients have definite medical conditions such as neurological spinal cord injury, cerebral palsy, MS or stroke with residual meiplegia (not all inclusive). On the other hand, it is more likely that documentation would be requested for patients whose diagnoses are limited to non-neurological conditions such as COPD, congestive heart failure, coronary artery disease, arthritis or obesity (not all inclusive).

The contractor medical review staff employs a number of procedures to identify claims that do not definitively indicate medical necessity. These techniques include data analysis, beneficiary complaints, alerts from other organizations, and others.

Once a contractor identifies a claim using one or more of the above procedures, the contractor requests supporting documentation in the form of medical records as referenced above.

3.11.1.1 – Review of Data *(Rev. 71, 04-09-04)*

Data analysis is an essential first step in determining whether patterns of claims submission and payment indicate potential problems. Such data analysis may include simple identification of aberrancies in billing patterns within a homogeneous group, or much more sophisticated detection of patterns within claims or groups of claims that might suggest improper billing or payment.

Data analysis itself may be undertaken as part of general surveillance and review of submitted claims, or may be conducted in response to information about specific problems stemming from complaints, provider or beneficiary input, fraud alerts, reports from CMS, other contractors, or independent government and nongovernment agencies.

3.11.1.2 - "Probe" Reviews *(Rev. 71, 04-09-04)*

Before deploying significant medical review resources to examine claims identified as potential problems from data analysis, take the interim step of selecting a small "probe" sample of potential problem claims (prepayment or postpayment) to validate the hypothesis that such claims are being billed in error. This ensures that medical review activities are targeted at identified problem areas. Such a sample should be large enough to provide confidence in the result, but small enough to limit administrative burden. A general rule of thumb for the decision about how many claims should be included in the probe sample is that it should not exceed more than 20-40 claims for any individual provider (in the case of a hypothesized provider specific problem), or 100 claims distributed among a wider universe of providers (in the case of a hypothesized systemic problem). For provider specific problems, notify providers (in writing or by telephone) that a probe sample is being done and of the result of the probe review. Contractors may use a letter similar to the letter in Program Integrity Manual (PIM) Exhibit 7.5 when notifying providers of the probe review and requesting medical records. Contractors may advise providers of the probe sample at the same time that medical records are requested.

Generally, a provider should be subject to no more than one probe review at any time; however, multiple probes may be conducted for very large billers as long as they will not constitute undue administrative burden.

For service specific probes (widespread probes) contractors must attempt to narrow the focus of the review so as to not place undue burden on providers. Contractors must strive to target only aberrant providers, to the extent possible, during the course of widespread probe reviews.

3.11.1.3 – Target Medical Review Activities *(Rev. 71, 04-09-04)*

Subject providers only to the amount of medical review necessary to address the nature and extent of the identified problem.

After validating that claims are being billed in error, target medical review activities at providers or services that place the Medicare trust funds at the greatest risk while ensuring the level of review remains within the scope of the budget for medical review; that is, does not vary widely from the level of review set out in the budget and performance requirements (BPRs). This will ensure resources are available to follow through with the PCA process for targeted providers or services. Ensure that actions imposed upon Medicare providers for failure to meet Medicare rules, regulations and other requirements are appropriate given the level of non-compliance (e.g., a small level of non-compliance would not warrant 100% prepayment medical review).

3.11.1.4 - Requesting Additional Documentation *(Rev. 71, 04-09-04)*

When requesting additional documentation for medical review purposes notify providers that the requested documentation is to be submitted to the contractor within 30 days of the request.

However, if the documentation needed to make a medical review determination is not received within 45 days from the date of the documentation request, make a medical review determination based on the available medical documentation. Do not return the claim to the provider (RTP). If the claim is denied, deny payment or collect the overpayment. Fiscal intermediaries must reverse the claims denied on postpay review from the claims processing system so they do not appear on the Provider Statistical and Reimbursement Report.

3.11.1.5 – Provider Error Rate *(Rev. 71, 04-09-04)*

The provider error rate* is an important consideration in deciding how to address the problem.

Other factors, though, deserve consideration as well--such as the total dollar value of the problem and past history of the provider. Assess the nature of the problem as minor, moderate or significant concerns and use available tools appropriate to characterize the problem. Section 3.11.3 provides some vignettes for guidance on how to characterize and respond to varying levels of problems.

For prepayment review, use the following formula to calculate the provider's service specific error rate:

$$\frac{\text{dollar amount of allowable** charges for services billed in error as determined by MR***}}{\text{dollar amount of allowable** charges for services medically reviewed}}$$

For postpayment review, use the following formula to calculate the provider's service specific error rate:

$$\frac{\text{dollar amount of services paid in error as determined by MR***}}{\text{dollar amount of services medically reviewed}}$$

**If allowable charges are not available, submitted charges may be used until system changes are made.

***Net out (subtract) the dollar amount of charges underbilled

3.11.1.6 – Provider Feedback and Education **(Rev. 71, 04-09-04)**

Provider feedback and education is an essential part of solving problems.

When a widespread problem is identified affecting a large number of providers, solicit medical and specialty societies to help with educational efforts. See Exhibit 1 for additional interventions. When a problem is limited to a small group, provide feedback to providers on (1) the nature of the problems identified; (2) what steps they should take to address the problem; and (3) what steps you will take to address the problem. Focused provider education means direct 1:1 contact between you and the provider through a telephone contact, letter, or meeting. You must provide comparative data on how the provider varies from other providers in the same specialty payment area or locality. Graphic presentations may help to communicate the problem more clearly. The overall goal of providing feedback and education is to ensure proper billing practices so that claims will be submitted and paid correctly. Remove providers from medical review as soon as possible when they demonstrate compliance with Medicare billing requirements.

You must send written notification to all providers when they are placed on medical review and removed from medical review. We recognize that some providers may remain on medical review for long periods of time, despite your educational interventions and use of the PCA concepts. In the case of extended medical review activities, provide written notification at least every 6 months. Notification letters must be clear and concise and must include at least the following information: the reasons for medical review; previous review findings (if applicable); planned medical review (level of review and duration), potential for continuation of or increase in medical review levels (if identified problems continue, additional problems are identified, etc.); description of the specific actions the provider must take to resolve the problems identified in the medical review process; when appropriate, an offer to provide individualized education; and the name and telephone number of a contact person who is familiar with the contents of the notification letter. If a provider requests a meeting with you, you must make reasonable efforts to comply.

3.11.1.7 – Overpayments **(Rev. 71, 04-09-04)**

All overpayments identified must be collected or offset, as appropriate, as determined by CMS directives and your overpayment collection procedures.

3.11.1.8 – Fraud ***(Rev. 71, 04-09-04)***

At any time, if the medical review detects possible fraud, refer the issue to the Benefit Integrity Unit.

PCA requirements do not apply when a fraud development is initiated.

3.11.1.9 – Track Interventions ***(Rev. 71, 04-09-04)***

Track interventions (reviews and educational contacts) with individual providers through a provider tracking system (PTS).

The PTS will identify all individual providers and track all contacts made as a result of actions to correct identified problems such as eligibility and medical necessity issues. Record the name of the person contacted in the PTS. Use the PTS to coordinate contacts with providers (e.g., medical review education contacts). If a provider is contacted as a result of more than one problem, ensure that multiple contacts are necessary, timely and appropriate, not redundant. Coordinate this information with your Benefit Integrity Unit to assure contacts are not in conflict with benefit integrity related activities.

The PTS should contain the date a provider is put on a provider specific edit for medical review. Reassess all providers on medical review quarterly to determine if their behavior has changed. Note the results of the quarterly assessment in the PTS. If the behavior has resolved sufficiently and the edit was turned off, note the date the edit was turned off in the PTS. When a provider appeals a medical review determination to the Administrative Law Judge (ALJ), share appropriate information in the PTS with the ALJ to demonstrate corrective actions that you have taken. This instruction does not alter the existing appeal process used by providers.

3.11.1.10 – Track Appeals ***(Rev. 71, 04-09-04)***

Track and consider the results of appeals in your medical review activities.

It is not an efficient use of medical review resources to deny claims that are routinely appealed and reversed. When such outcomes are identified, take steps to (1) understand why hearing or appeals officers viewed the case differently than you did; and (2) discuss appropriate changes in policy, procedure, outreach or review strategies with your regional office.

3.11.2 – Implementation ***(Rev. 71, 04-09-04)***

You must educate providers about the PCA concepts. Include PCA as a regular part of your ongoing medical review training and new provider orientation training. In addition, request assistance from state medical societies to help with provider education.

NOTE: Provider includes physicians, suppliers, etc. A definition of provider can be found in the PIM Exhibit 1.

3.11.3 – Vignettes ***(Rev. 71, 04-09-04)***

The following are examples of vignettes that may result from medical review accompanied by suggested administrative actions. This information should be used only as a guide. It is not meant to be a comprehensive list of possible vignettes or an inclusive list of appropriate administrative actions.

1. Twenty claims are reviewed. One claim is denied because a physician signature is lacking on the plan of care. The denial reflects 7% of the dollar amount of claims reviewed. Judicious use of medical review resources indicates no further review is necessary at this time. Data analysis will determine where medical review activities should be targeted in the future.

2. Forty claims are reviewed. Twenty claims are for services determined to be not reasonable and necessary. These denials reflect 50% of the dollar amount of claims reviewed. One hundred percent prepayment review is initiated due to the high number of claims denied and the high dollar amount denied.

3. Forty claims are reviewed. Thirty-five claim are denied. These denials reflect 70% of the dollar amount of claims reviewed. Payment suspension is initiated due to the high denial percentage and the Medicate dollars at risk.

4. Forty claims are reviewed. Thirty-three claims are denied. These denials reflect 25% of the dollar amount of the claims reviewed. The contractor provides feedback to the provider about specific errors made and educates the provider on the correct way to bill. The contractor initiates a moderate amount (e.g., 30%) of prepayment medical review to ensure proper billing.

5. Thirty-five claims are reviewed. Thirty claims are denied representing 75% of the dollar amount of the claims reviewed. Many of the denials are because services were provided to beneficiaries who did not meet the Medicare eligibility requirements. A consent settlement offer is made but declined by the provider. A postpayment review of

a statistical sample for overpayment estimation is performed and an overpayment is projected to the universe. Overpayment collection is initiated.

6. Twenty-five claims are reviewed. Five claims representing 5% of the dollar amount of the claims are denied. This supplier is known to the DMERC as one who has a significant decrease in billing volume when targeted medical review is initiated. The DMERC is concerned that this supplier may be selectively submitting bills when placed on medical review and chooses to continue some level of prepayment medical review despite the low error rate.

7. Twenty claims are reviewed. Ten claims are denied for lack of complete physician orders representing 65% of the dollar amount of the claims. The RHHI informed the home health agency about the denials and the reason for the denials. In response, the agency owner initiated a mandatory training program for select staff. The HHA was put on 30% prepayment medical review. Results of the review indicated an improvement in the error rate to 30% (based on dollars denied divided by dollars reviewed). On appeal, nearly all of the denials were overturned. The RHHI consults with the ALJ to understand why the cases are being overturned and consults with the regional office on appropriate next steps.