

**Medicare
Intermediary Manual**
**Part 2 – Audits, Reimbursement, Program
Administration**

Department of Health and
Human Services (DHHS)
HEALTH CARE FINANCING
ADMINISTRATION (HCFA)

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CHANGE REQUEST 1389

<u>HEADER SECTION NUMBERS</u>	<u>PAGES TO INSERT</u>	<u>PAGES TO DELETE</u>
2229 (Cont.) – 2229 (Cont.)	2-224.13 – 2-224.14 (2 pp.)	2-224-13 – 2-224.14 (2 pp.)

**CLARIFICATION--EFFECTIVE DATE: January 1, 2001
IMPLEMENTATION DATE: January 29, 2001**

Section 2229, Recovery of Overpayments Due to a Pattern of Furnishing Excessive or Noncovered Services, clarifies existing policy and removes outdated or inapplicable guidance statements and references.

These instructions should be implemented within your current operating budget.

DISCLAIMER: The revision date and transmittal number only apply to the redlined material. All other material was previously published in the manual and is only being reprinted.

A. Investigating a Pattern of Furnishing Excessive or Noncovered Services.--The purpose of such an investigation is to determine:

o Whether the alleged practice involves something more than isolated instances of unnecessary or noncovered services. If only isolated instances are involved, follow Part 3, §§3707-3714.2.

o Whether there is any indication of fraud in the claims filed by the provider. If you suspect that fraud could be involved, follow Part 3, §§4000ff.; and/or

o The amount of the overpayment (§2221) where recovery is not precluded by the rules on waivers of overpayment (Part 3 §§3707 and 3708.l) or administrative finality (Part 3, §§3799ff.).

B. Use of Statistical Sampling to Determine Overpayments.--A case-by-case review may require a significant diversion of staff. The cost of determining case-by-case the amount of an overpayment could be prohibitively high. An alternative to case-by-case review is a statistical sampling procedure involving the selection and examination of a sample carefully readjudicated. (See **Program Integrity Manual, Chapter 3, Section 6 - Postpayment Review of Claims**, for guidelines on use of sampling.) From the findings, estimate the overpayment to the provider or supplier. Sampling greatly reduces the **staff** requirements in estimating the overpaid amount and reduces the cost involved.

1. Sampling is Appropriate.--For an overpayment determination if the following criteria are met:

o There is evidence that a provider has been billing for excessive services not medically reasonable and necessary;

o The factors involved indicate that an objective sample can be drawn; and

o The factors involved indicate that 100 percent review of the claims will result in a cost disproportionate to the amount that can probably be recovered, or such a review is otherwise impracticable.

2. Sampling Not Appropriate.--Where the total claims are small. Do not substitute sampling for readjudication of individual claims.

C. Recoupment of the Overpayment.--Once you establish the overpayment, inform the provider. Discuss how the determination was made. If a sample of claims was used, give an explanation concerning the basis for determining the amount of the overpayment. Include a list of beneficiaries. (Notification of beneficiaries identified in the sample is handled in accordance with Part 3, §3710.3.) Sampling does not deprive individuals and providers of the right to be notified of determinations on their claims.

42 CFR 405.702 does not imply that determinations as to the amount due a provider must be made individually. It requires that where a decision is made in a particular case, the individual must be informed. Therefore, notify all individuals whose cases were reviewed and revised, of the revised decision.

Individuals not included in the sample do not have appeal rights.

Following such discussion, send a written notice to the provider. Include any changes agreed upon, confirming the discussion. This notice serves as the first demand letter. (See §2222A for the requirements of the demand letters, and check Column A of Exhibit 1 for items to include.)

Provide a full explanation of the pattern or practice which resulted in the overpayment and the basis for the amount determined to be an overpayment. As this can result from error or ignorance, consider the first request as an educational contact as well as the first demand letter.

Include an explanation of the waiver of liability provision (§1879 of the Act), giving the reasons why that provision could apply. If you determine that the provider did not know, and could not reasonably have been expected to know that the services were not reasonable and necessary, or were merely for custodial care, the provider might be entitled to waiver of liability. (See Part 3, §3708.) Include a discussion of the provider's appeal rights under §1879(d) of the Act. (See §2222C) for appropriate language.)