

WORKING PAPER: Financial Liability Protection Provisions & Statutory FLP Triggers

Financial Liability Protection [FLP] provisions all involve the use of Advance Beneficiary Notices [ABNs].
FLP provisions are triggered by a claims denial on a specified statutory basis.

Financial Liability Protection [FLP] Provisions →	§1879 Limitation On Liability [LOL] Part A claims and assigned Part B claims.	§1842(l) Physicians Services Refund Requirement [RR] Part B Unassigned Claims.	§1834(a)(18) DMEPOS Refund Requirement [RR] Part B Unassigned Claims.	§1834(j)(4) DMEPOS Refund Requirement [RR] Part B Unassigned Claims.	§1879(h) DMEPOS Refund Requirement [RR] Part B Assigned Claims.
The FLP Triggers (Statutory bases for denial) ↓					
§1862(a)(1) Medical Necessity	● §1879(a)-(c)	● §1842(l)(1) ["EL-ONE"]	N/A	● §1834(j)(4)(C)	N/A
§1862(a)(9) Custodial Care	● §1879(a)-(c)	N/A	N/A	N/A	N/A
§1861(e) or §1861(j) Non-certified Bed Placement (erroneous, inadvertent)	● §1879(e)	N/A	N/A	N/A	N/A
§1814(a)(2)(C) and §1835(a)(2)(A) Homebound & Intermittent Home Health	● §1879(g)(1)	N/A	N/A	N/A	N/A
§1861(dd)(3)(A) Beneficiary in Hospice found not to be terminally ill	● §1879(g)(2)	N/A	N/A	N/A	N/A
§1834(j)(1) No supplier number – DMEPOS	N/A	N/A	N/A	● §1834(j)(4)(A)	● §1879(h)(1)
§1834(a)(17)FIRST(B)* Prohibited telephone solicitation - DMEPOS	N/A	N/A	● §1834(a)(18)(A)	N/A	● §1879(h)(3)
§1834(a)(15) Advance coverage determination - DMEPOS	N/A	N/A	N/A	● §1834(j)(4)(B)	● §1879(h)(2)
* <u>§1834(a)(17)SECOND</u> is the Upgraded DME provision.					

There are no FLP provisions that are triggered by the other §1862(a) statutory exclusions (§1862(a)(2) –(a)(8) and §1862(a)(10)-(a)(21) “categorical exclusions”), nor by the many other “technical denials” (denials when the service does not meet the definition of a Medicare benefit.)

This Working Paper is not a legal document. The official Medicare program provisions are contained in relevant laws, regulations, and rulings.

Applicability of ABNs to Types of Claims Denials

Statutory basis for denial →	§1862(a)(1) "Not reasonable and necessary"	§1862(a)(2) through §1862(a)(21), inclusive	§1814(a)(2)(C) and §1835(a)(2)(A) [§1879(g)(1)] Homebound & Intermittent Home Health	§1861(dd)(3)(A) [§1879(g)(2)] Beneficiary in Hospice found not to be terminally ill	§1834(a)(17)(B) ¹ §1834(j)(1) ² §1834(a)(15) ³ DMEPOS - medical equipment and supplies	An item or service that does not meet the definition of any Medicare Benefit	§1861(e) or §1861(j) [§1879(e)] Non-certified Bed Placement
Type of Claim ↓	Medical Necessity Exclusion	"Categorical" or "Statutory" Exclusions	Technical Denials	Technical Denials	Technical Denials	All Other Technical Denials	Technical Denials
Part A Claims	§1879 – ALL Provider specific ABNs: HINN / NONC, HHABN, SNFABN Use ABN-G For hospice MN denials.	§1879 LOL applies only to §1862(a)(9) Custodial Care Exclusion ⁴ NONC / SNFABN ----- No ABN for §1862(a)(2)-(a)(8) & (a)(10)-(a)(21)	§1879(g)(1) - HHA claims HHABN for all	§1879(g)(2) - Hospice claims ABN-G for hospice denials.	Not applicable No ABN	Not applicable No ABN	§1879(e) HINN / NONC
Assigned Part B Claims (Includes "B of A" claims.)	§1879 – ALL ABN-G for all. ABN-L optional for physician-ordered laboratory tests.	No ABN for §1862(a)(2)-(a)(8) & (a)(10)-(a)(21) ----- See Footnote ⁴	§1879(g)(1) - HHA claims (Part A HHA exhausted) HHABN for all	Not applicable No ABN	§1879(h) - Med. Equip. & Supplies (DMEPOS) ABN-G for all.	Not applicable No ABN	Not applicable No ABN
Unassigned Part B Claims (Includes "B of A" claims.)	§1842(l) - Physicians' Services & §1834(j)(4) - Med. Equip. & Supplies (DMEPOS) - ABN-G for all. ----- Exceptions ⁵	No ABN for §1862(a)(2)-(a)(8) & (a)(10)-(a)(21) ----- See Footnote ⁴	Not applicable No ABN ----- See Footnote ⁶	Not applicable No ABN ----- See Footnote ⁶	§1834(a)(18) & §1834(j)(4) - Med. Equip. & Supplies (DMEPOS) ABN-G for all. ----- See Footnote ⁶	Not applicable No ABN	Not applicable No ABN

Applicability of ABNs to Types of Claims Denials, continued.

ABN	Advance Beneficiary Notice (generic term).
ABN-G	CMS-R-131-G (General Use Advance Beneficiary Notice).
ABN-L	CMS-R-131-L (Laboratory Use Advance Beneficiary Notice).
HINN	Hospital-Issued Notice of Noncoverage.
NONC	Notice of Non-Coverage (many various forms).
SNFABN	Skilled Nursing Facility Advance Beneficiary Notice.
HHABN	HCFA-R-296 Home Health Advance Beneficiary Notice.
DMEPOS	Durable Medical Equipment, Prosthetics, Orthotics, and Supplies.
MN	Medical Necessity.

FOOTNOTES

1 §1834(a)(17)FIRST(B) - Prohibited telephone solicitation DMEPOS denials – Refund Requirements [RR].

2 §1834(j)(1) - Failure to have a supplier number DMEPOS denials – [RR].

3 §1834(a)(15) - Payment denied in advance (advance coverage determination) DMEPOS denials – [RR].

4 The only liability protection for §1862(a)(2) - §1862(a)(21) “categorical exclusions” is for custodial care denials under §1862(a)(9), protected under §1879 Limitation On Liability [LOL].

5 The Refund Requirements [RR] do NOT apply to clinical laboratory services; diagnostic tests; screening mammograms, Pap smears and pelvic exams, colorectal and prostate cancer tests; ambulance services; blood; dialysis treatments; and drugs and biologicals; so no ABNs are given for any unassigned claims for these services.

6 There are no Limitation On Liability [LOL] protections, nor Refund Requirements [RR] protections, for any “technical benefit denials” other than those specific denials which are listed on this chart; so no ABN-Gs or ABN-Ls are given for “technical benefit denials” other than as listed above.