

Medicare Program Integrity Manual

Chapter 8 – Administrative Actions and Statistical Sampling for Overpayment Estimates

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8.1 - Appeal of Denials

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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 405.980, (b).) 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 Claims Processing Manual Pub 100-04, chapter 34 and 42 CFR 405.986. 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.

8.2 – Overpayment Procedures

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

This section applies to Medicare Administrative Contractors (MACs) and Zone Program Integrity Contractors (ZPICs). Hereinafter, Program Safeguard Contractors (PSCs) shall be included in the term ZPICs.

The ZPIC shall refer all identified overpayments to the MAC 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, contractors shall request recovery of the overpayment. The ZPIC shall refer such overpayments to the MAC only after the investigation has been vetted with CMS (see Pub. 100-08, chapter 4, section 4.6.4). In addition, if a ZPIC is making a referral to law enforcement, it shall refrain from referring the overpayment determination to the MAC during specified times noted in Pub. 100-08, chapter 4, section 4.18. If a large number of claims are involved, contractors consider using statistical sampling for overpayment estimation to calculate the amount of the overpayment. (See section 8.4 of this chapter.)

Contractors have the option to request the periodic production of records or supporting documentation for a limited sample of submitted claims from providers or suppliers to which amounts were previously overpaid to ensure that the practice leading to the overpayment is not continuing. The MAC may take any appropriate remedial action described in this chapter if a provider or supplier continues to have a high level of payment error. Offer the provider a consent settlement based on the potential projected overpayment amount.

8.2.1 – Overpayment Assessment Procedures

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

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 postpayment review. Whenever possible, CMS encourages contractors to report postpayment savings in terms of:

- Actual overpayment;
- Settlement based overpayment, or
- Extrapolated overpayments.

A. Example Format of An Overpayment Worksheet (also see Exhibit 46)

Provider/Supplier Name	
Provider/Supplier National Provider Identification Number (NPI) or Provider Transaction Access Number (PTAN)	
Reason for Review	
Type of Sample Reviewed: Statistical Sampling for Overpayment Estimation	
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	

8.2.1.1 – Definition of Overpayment Assessment Terms
(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

A. Actual Overpayment

An actual overpayment is, for those claims reviewed, the sum of payments (based on the amount paid to the provider/supplier and Medicare approved amounts) made to a

provider/supplier 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.

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

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

If contractors use statistical sampling for overpayment estimation of claims, they follow instructions in section 8.4 of this chapter 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/supplier of the overpayment and refer the case to overpayment staff to make payment arrangements with the provider/supplier to collect the overpayment.

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

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

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

- Refer to overpayment staff for recoupment of the actual overpayment for the claims reviewed; or
- Conduct an expanded review based on statistical sampling for overpayment estimation instructions in section 8.4 of this chapter and recoup the projected overpayment.

8.2.3.1 – Contractor Activities to Support Assessing Overpayment

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

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/supplier refund determination on non-assigned provider/supplier claims denied on the basis of §1862 (a)(1)(A)) (refer to Exhibit 14.1 of this manual);
- The §1870 determination for the provider/supplier for each overpaid assigned claim in the sample (refer to Exhibit 14.2 of this manual); and
- The amount of overpayment (after allowance for deductible and coinsurance).

B. Step 2

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

C. Step 3

If the provider/supplier 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.

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

(Rev. 687; Issued: 11-10-16; Effective: 12-12-16; Implementation: 12-12-16)

The MACs shall perform the actual recoupment identified by the ZPICs. When a ZPIC or medical review audit determines an extrapolated overpayment the sample claims reviewed are adjusted for denial. For history purposes, contractors shall deny the sample claims individually in the shared system and shall suppress the sample claims from going to HIGLAS. Once the entire extrapolated amount is identified, contractors shall create one large account receivable (AR) for the extrapolated amount (including the adjusted sample claim amounts) to demand and recoup.

A. If an expanded review of claims is conducted, contractors shall follow the sampling instructions found in section 8.4 of this chapter, obtain and review claims and medical records, and document for each claim reviewed:

- o The amount of the original claim;8
 - 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/supplier refund determination on non-assigned provider/supplier claims denied on the basis of §1862(a)(1)(A)) (refer to Exhibit 14.1 of this manual);
 - o The §1870 determination for the provider/supplier for each overpaid assigned claim in the sample (refer to Exhibit 14.2 of this manual); 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/supplier did not have knowledge that the service was not medically necessary;
- C. Notify the provider/supplier of the preliminary projected overpayment findings and review findings;
- D. If the provider/supplier 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.

8.2.3.3 - Reserved for Future Use

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

8.2.3.3.1 - Background on Consent Settlement

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

The Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 defines consent settlement as an agreement between the Secretary and a provider of services or supplier whereby both parties agree to settle a projected overpayment based on less than a statistically valid sample of claims and the provider of services or supplier agrees not to appeal the claims involved. The PSC and ZPIC BI units and the contractor medical review units shall submit via secure email the consent settlement to the Primary and Associate GTLs before offering a consent settlement to the provider or supplier. If the PSC or the ZPIC BI units or the contractor medical review units do not have secure email, the consent settlement shall be sent to the Primary GTL and the Associate GTL via

hard copy. Upon receipt, GTLs will forward the consent settlement to the Director of the Division of Benefit Integrity Management Operations. The PSC or the ZPIC BI units and the contractor medical review units may contact the provider upon approval of the consent settlement. Consent settlement documents carefully explain, in a neutral tone, what rights a provider waives by accepting a consent settlement. The documents shall also explain in a neutral tone the consequences of not accepting a consent settlement. A key feature of a consent settlement is a binding statement that the provider agrees to waive any rights to appeal the decision regarding the potential overpayment. The consent settlement agreement shall carefully explain this, to ensure that the provider is knowingly and intentionally agreeing to a waiver of rights. Consent settlement correspondence shall contain:

A complete explanation of the review and the review findings

A thorough discussion of §1879 and §1870 determinations, where applicable

The consequences of deciding to accept or decline the consent settlement offer

It is rare that a PSC or ZPIC BI unit will offer and develop a consent settlement. However, when the PSC or ZPIC offers and develops a consent settlement, the AC or MAC shall administer the settlement.

8.2.3.3.2 - Opportunity to Submit Additional Information Before Consent Settlement Offer

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003, section 935(a)(5) states the provider has the opportunity to submit additional information before being offered a consent settlement. Based on a postpayment review of the medical records, the contractor shall communicate in writing to the provider or supplier that:

- The preliminary evaluation of the records indicates there would be an overpayment;
- The nature of the problems in the billing and practice patterns identified in the evaluation;
- The steps that the provider or supplier can take to address the problems; and
- The provider or supplier has forty-five (45) days to furnish additional information concerning the medical records for the claims that have been reviewed.

If after forty-five (45) days, it is determined that there is still an overpayment, then the provider or supplier shall receive a consent settlement offer. If an overpayment is not warranted after additional review, then a follow-up letter shall be sent to the provider or supplier stating that no additional action is deemed necessary.

8.2.3.3.3 - Consent Settlement Offer

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

After the additional information concerning the medical records for the claims reviewed have been assessed and if it is still determined that there was an overpayment, the contractor shall offer the provider or supplier the opportunity to proceed with statistical sampling for overpayment estimation or a consent settlement. The PSC or the ZPIC BI units and the contractor medical review units may choose to present the consent settlement letter to the provider or supplier in a face-to-face meeting. The consent settlement correspondence shall describe the two options available to the provider or supplier. The provider or supplier is given 60 days from the date of the correspondence to choose an option. If there is no response, Option 1 shall be selected by default.

8.2.3.3.4 - Option 1 - Election to Proceed to Statistical Sampling for Overpayment Estimation

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

If a provider or supplier fails to respond, this option shall be selected by default. For providers or suppliers who select this option knowingly or by default, thereby rejecting the consent settlement offer and retaining their full appeal rights, PSC BI units and the contractor medical review units shall;

- Notify the provider or supplier of the actual overpayment and refer to overpayment recoupment staff; and
- Initiate statistical sampling for overpayment estimation of the provider's or supplier's claims for the service under review following instructions in the Program Integrity Manual, chapter 8, §8.4

If the review results in a decision to recoup the overpayment, the overpayment collection shall be initiated within 12 months of the decision.

8.2.3.3.5 - Option 2 - Acceptance of Consent Settlement Offer

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

A provider or supplier accepting Option 2 waives any appeal rights with respect to the alleged overpayment. Providers or suppliers selecting Option 2 that have any additional claims shall not be audited for the service under review within the same time period.

Model language for the consent settlement documents can be found in PIM Exhibit 15.

8.2.3.3.6 - Consent Settlement Budget and Performance Requirements for ACs

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

When supporting PSCs or ZPICs in consent settlements, the ACs shall report these costs in the PSC support activity code 23201.

8.2.4 - Coordination With Audit and Reimbursement Staff (Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

MAC MR staff must work closely with their Audit/Reimbursement staff from the beginning of the postpayment 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 Pub. 100-08, chapter 3, section 3.5.2;
- The identification of incorrectly paid or incorrectly denied services; and
- All other information required by the Cost Report Worksheets in Pub. 100-08, chapter 3, section 3.5.2 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 Program Integrity Manual.

8.3 – Suspension of Payment

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

This section applies to Medicare Administrative Contractors (MACs) and Zone Program Integrity Contractors (ZPICs). Hereinafter, Program Safeguard Contractors (PSCs) shall be included in the term ZPICs.

Hereinafter, suspension of payment may be referenced as “payment suspension.”

Requests for Suspension of Payment (“Payment Suspension”) may be approved when there is reliable information that an overpayment exists, when payments to be made may not be correct, or when there is a credible allegation of fraud existing against a provider. The process by which the ZPIC notifies and coordinates with the MAC to implement a CMS-approved suspension of payment shall be documented in the Joint Operating Agreement (JOA) between the MAC and the ZPIC. The ZPICs shall advise and coordinate the imposition of a payment suspension with the appropriate MAC when a payment suspension has been approved by CMS. The ZPIC shall perform the necessary medical review and development of overpayments for payment suspensions that have received CMS approval, when appropriate.

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 §405.370-375, which provide for the suspension of payments.

All payment suspensions shall be referred to the CMS/Center for Program Integrity (CPI) via the Fraud Investigation Database (FID) for approval. ZPICs shall notify their appropriate CPI Contracting Officer’s Representative (COR)/Business Function Lead (BFL) of the submission by providing the FID number via email.

8.3.1 – When Suspension of Payment May Be Used

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

A payment suspension may be used when there is:

Reliable information that an overpayment exists, but the amount of the overpayment is not yet determined;

Reliable information that the payments to be made may not be correct;

Reliable information that the provider fails to furnish records and other essential information necessary to determine the amounts due to the provider;

In cases of suspected fraud, a payment suspension may be used when there is a credible allegation of fraud.

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

NOTE: If a payment suspension is approved, this edit of withholding of Medicare funds takes precedent over any other edits withholding money in the MAC systems. When it is time to terminate the payment suspension, the withheld funds must first be applied to the Medicare overpayment(s) and any excess is then applied to any other outstanding overpayments or debts owed to CMS or HHS in accordance with 42 CFR §405.372(e), unless otherwise directed by CMS.

NOTE: For providers that file cost reports, a payment suspension may have little impact. If the provider is receiving periodic interim payments (PIP), the interim payments may be suspended. If the provider is not receiving PIPs, a payment 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 A/B MAC (A) has withheld (suspended) \$100,000 when the cost report is settled, the A/B MAC (A) would continue to hold the \$100,000. This means that if the cost report shows the Medicare program owing the provider \$150,000, the provider would only receive \$50,000 until the payment suspension action has been terminated. If the provider owes the Medicare program money at settlement, the amount of the suspended payment would increase the amount owed by the provider. In most instances, A/B MACs (A) should adjust interim payments to reflect projected cost reductions. The contractors are to 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 five percent of the periodic interim rate, the reduction in payment is not to exceed five percent. Occasionally, suspension of all interim payments may be appropriate.

NOTE: If a payment suspension is approved for a home health agency, all Requests for Anticipated Payments (RAPs) are to be suppressed (disapproved) in accordance with 42 C.F.R. §409.43(c)(2). The ZPIC shall make this request to CPI as part of its request for a payment suspension.

In addition, CMS may suppress RAP payments for program integrity concerns absent a payment suspension. If the ZPIC determines that a RAP suppression is appropriate they shall submit the following information to CMS:

- Are final bills being submitted by the HHA? Yes or No

- Indicate the volume (dollar and number of claims) of RAPs for the past 12 months.

A brief summary supporting the request for RAP suppression.

8.3.1.1 – Credible Allegation of Fraud Exists Against a Provider - Fraud Suspensions

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

A payment suspension may be used when the ZPIC, law enforcement, or CMS determines that a credible allegation of fraud exists against a provider or supplier (hereinafter referred to as provider). For purposes of section 8.3 et seq., these types of payment suspensions will be called “fraud suspensions.”

Fraud suspensions may also be imposed for reasons not typically viewed within the context of false claims. For example:

- The Quality Improvement Organization (QIO) has reviewed inpatient claims and determined that the diagnosis related groups (DRGs) have been upcoded.
- The ZPIC or MAC may suspect a violation of the physician self-referral ban. For this reason, the violation may be considered the cause for a payment suspension since claims submitted in violation of this statutory provision must be denied and any payments made would constitute an overpayment.
- Even though services are rendered and may be determined as medically necessary and reasonable by the Medicare contractor, law enforcement has credible allegations of kickbacks.
- Forged signatures on medical record documentation (e.g., Certificates of Medical Necessity (CMN), treatment plans, etc.) and/or other misrepresentations on Medicare claims or associated forms to obtain payment that would result in an overpayment determination.

Whether or not the ZPIC recommends a payment suspension to CMS, the final determination is determined on a case-by-case basis and requires review and analysis of the allegation and facts. The following information is provided to assist the ZPIC in deciding when to recommend a payment suspension to CPI.

A. Complaints

There is considerable latitude with regard to complaints alleging fraud, waste, and abuse. The provider’s Medicare history, including the volume and frequency of complaints concerning the provider, and the nature of the complaints all contribute to whether a payment suspension should be referred to CPI. If there is a credible allegation(s) that a provider is submitting or may have submitted false claims, the ZPIC may recommend a

fraud suspension to CPI only after the ZPIC has vetted the provider in accordance with Pub. 100-08, chapter 4, section 4.6.4. (If the MAC identifies the potential fraud issue from a complaint, the MAC shall refer its information to the respective ZPIC for development).

B. Requests for Suspension of Payment

For initial ZPIC requests to suspend payments, the ZPIC shall inform its assigned BFL of the potential suspension. The BFL will discuss all findings with the ZPIC. After informing the BFL about the suspension, the contractor shall submit the payment suspension request via the FID if the contractor determines such action is warranted. The Payment Suspension Administrative Action Request (AAR), draft suspension notice, and all other relevant documentation that supports the suspension request shall be uploaded by the contractor as part of the FID submission.

The ZPIC shall also prepare and submit, if appropriate, a payment suspension referral package to CPI via the FID for all requests received from (but not limited to):

- CMS
- Office of Inspector General (OIG)
- Federal Bureau of Investigation (FBI)
- Assistant United States Attorney (AUSA)
- Other law enforcement agencies

C. Other Situations

Other situations that may be considered when recommending a fraud suspension to CPI include, but are not limited to:

- Provider has pled guilty to, or been convicted of, Medicare, Medicaid, TRICARE, 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 upon, 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 ZPIC or the MAC; e.g., false treatment plans, false statements on provider application forms.

D. Good Cause Exceptions

Reference is made in 42 CFR §405.371(b)(1) that allows for good cause exceptions to not suspend payments or continue a payment suspension when there are credible allegations of fraud. These exceptions may be considered for approval by CMS if any apply:

- Law enforcement has requested that a payment suspension not be imposed because such action may compromise or jeopardize its investigation;
- CMS/CPI has determined that a beneficiary access to care issue may exist and potentially cause a danger to life or health in whole or part;
- CMS/CPI has been determined that other administrative remedies may be implemented that would be more effective in protecting Medicare funds (such as revocation, prepayment review); or
- CMS determines that the imposition or the continuation of a payment suspension is not in the best interest of the Medicare program.

Every 180 calendar days after the initiation of a payment suspension based on credible allegations of fraud, CMS is required to evaluate whether there is good cause to terminate the payment suspension. Good cause to terminate a payment suspension is deemed to exist if the payment suspension has been in effect for 18 months. However, there are two exceptions. The first exception is that the case has been referred to and is being considered by the OIG for an administrative action such as a civil monetary penalty or permissive exclusion, or such administrative action is pending, and the OIG has made its request to not terminate the payment suspension in writing. The second exception is that the Department of Justice has submitted a written request to extend the payment suspension based on the ongoing investigation and its anticipation of filing a criminal or civil action or both, or based on a pending criminal or civil action or both. (See 42 CFR §405.371(b)(2) and §405.371(b)(3).)

CMS/CPI makes the final decision on whether good cause to terminate exists, based on the totality of the circumstances. For all fraud suspensions, the ZPICs shall submit requests to CPI via the FID within 14 calendar days before the suspension expires. CPI will evaluate the request to consider whether good cause to terminate the payment suspension exists.

8.3.1.2 – Reliable Information that an Overpayment Exists - General Suspensions

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

A payment suspension may be implemented when the MAC, ZPIC, or CMS possesses reliable information that an overpayment exists. In this situation, the MAC shall refer its information to the respective ZPIC for development of a potential suspension. The ZPIC

shall refer a payment suspension to CPI via the FID for consideration. For the purposes of this section, these types of payment suspensions will be called “general suspensions.”

EXAMPLE (including but not limited to): Several claimed services identified from either a prepayment or post-payment review were determined to be non-covered or miscoded. It has been determined that there is a pattern of noncompliant billings (the provider has billed this service many times before) and it is suspected that there may be a substantial number of additional non-covered or miscoded claims paid in the past.

8.3.1.3 – Reliable Information that the Payments to Be Made May Not Be Correct - General Suspensions

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

A payment suspension may be implemented when the MAC or ZPIC or CMS possesses reliable information that the payments to be made may not be correct. In this situation, the MAC shall refer its information to the respective ZPIC for development of a potential suspension. The ZPIC shall refer a payment suspension to CPI for consideration. For the purposes of this section, these types of payment suspensions will be called “general suspensions.”

EXAMPLE (including but not limited to): Several claimed services identified from a post-payment review were determined to be non-covered or miscoded. It has been determined that the provider has not changed its billing behavior and it is suspected that there may be a continuance of non-covered or miscoded claimed services to be billed in the future.

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

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

A payment suspension may be used when the MAC, ZPIC, 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 MAC shall refer its information to the respective ZPIC for development of a potential suspension. The ZPIC shall refer a payment suspension to the CPI for consideration. For the purposes of this section, these types of payment suspensions will be called “general suspensions.”

EXAMPLE (including but not limited to): During a post-payment review, medical records and other supporting documentation are solicited from the provider to support payment. The provider fails to submit the requested records after two attempts. The ZPIC may request a payment suspension due to non-response from the provider.

In lieu of imposing a payment suspension, the MAC or ZPIC may deny the paid claims because the provider failed to provide the requested documentation after two attempts. In

either case, the MAC or ZPIC should determine if the provider is continuing to submit claims for the services in question and take appropriate action(s) to correct the behavior.

NOTE: In the above example, if the only reason for the payment suspension is the failure by the provider to furnish the requested records, and if the provider does eventually provide the requested information, the ZPIC shall discuss this matter with CPI for guidance.

EXAMPLE (including but not limited to): The provider fails to timely file an acceptable cost report. Refer to 42 CFR §405.371(d). (NOTE: Such requests regarding the timely filing of an acceptable cost report shall be submitted only to and approved by the CMS, Office of Financial Management and not CPI.)

8.3.2 – Procedures for Implementing a Payment Suspension (Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

8.3.2.1 – CMS Approval (Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

The initiation (including whether or not to give advance notice), modification, extension, or removal of any type of suspension requires the explicit prior approval of CPI. The ZPIC will discuss requests for payment suspension and other proposed administrative actions with CPI. Where applicable, MACs should consult with the respective ZPIC about any potential payment suspension it believes should be considered. At which point, the MAC shall refer its information to the respective ZPIC for development of a potential suspension.

A meeting may be held between the ZPIC and CPI prior to the approval of a payment suspension action involving an initial request, rebuttal, extension or termination.

The ZPIC shall request all initial payment suspensions via FID and provide all required information in the respective fields and upload all required attachments. Information uploaded to the FID shall include:

1. The AAR – Payment Suspension form
2. A draft of the proposed payment suspension initial notice following the format noted in section 8.3.2.2 of this chapter (in a word document format);
3. Any other supporting documentation.

For general suspensions, the ZPIC shall complete its statistical sampling and have its medical records request letter prepared prior to the submission of the suspension request into the FID. A copy of the medical record request letter shall be included as supporting documentation when the suspension request is submitted into the FID.

The ZPIC shall request all extensions to payment suspensions via the FID and provide all required information in the respective fields and upload all required attachments. The ZPIC shall make the request for an extension at least 14 calendar days before the anticipated expiration of the payment suspension. Information uploaded to the FID shall include:

1. An updated AAR – Payment Suspension form
2. A draft of the proposed payment suspension extension notice following the format noted in section 8.3.2.2 of this chapter (in a word document format);
3. Any other supporting documentation.

The ZPIC shall request all terminations to payment suspensions via the FID and provide all required information in the respective fields and upload all required attachments. The ZPIC shall make the request for a termination at least 14 calendar days before the anticipated expiration of the payment suspension. Information uploaded to the FID shall include:

1. A draft of the proposed payment suspension termination notice following the format noted in section 8.3.2.2 (in a word document format);
2. A draft of the associated overpayment determination notice(s) (in a word document format).

NOTE: All law enforcement-requested payment suspensions must be sent directly to CPI by law enforcement for consideration. If a ZPIC receives a law enforcement-requested payment suspension request, the ZPIC shall contact CPI for guidance.

The ZPIC shall not take steps to implement any of the above suspension actions without the explicit approval of CPI. If approved, CPI shall make appropriate changes to the draft notice before approving the payment suspension notice and upload the approval and documents via the FID.

When a payment suspension is approved by CPI, the ZPIC shall inform the respective MAC of this action and the MAC shall effectuate the suspension of payments to the provider unless prior notice of the payment suspension is necessary. When prior notice is necessary, the MAC shall effectuate the suspension of payment in concert with the established date from the payment suspension notice. The MACs shall ensure that all money on the payment floor is not released to the provider after the effective date of the suspension and the money is withheld in accordance with the payment suspension rules and regulations. MACs shall provide an accounting of the money withheld on day one of the payment suspension to the ZPIC. The ZPIC shall enter this amount in the FID as the first monetary entry.

Unless otherwise specified, when a payment suspension is imposed, no payments are to be released to the provider as of the effective date of the payment suspension. This includes payments for new claims processed, payments for adjustments to claims previously paid, interim PIPs, and RAPs. If it is discovered that money is released to the provider after the effective date of the payment suspension, the MAC or ZPIC shall contact CPI for guidance.

8.3.2.2 – The Notices Involving Payment Suspensions (Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

The ZPICs shall use the following exhibits in this manual as the model notices when preparing the draft notices for CMS approval:

- The Notice to Suspend Payments (Refer to Exhibits 16A to 16D)
- The Notice to Extend the Payment Suspension (Refer to Exhibit 16E)
The Notice to Terminate the Payment Suspension (Refer to Exhibit 16F)

8.3.2.2.1 – Issuing a Prior Notice versus Issuing a Concurrent Notice (Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

ZPICs shall inform the provider of the payment suspension action being taken. When prior notice is appropriate, the ZPIC shall, in most instances, give at least 15 calendar days' prior notice before effectuating the payment suspension. Day one begins the calendar day after the notice is mailed.

A. If the Medicare Trust Fund would be harmed by giving prior notice: the ZPIC shall recommend to CPI not to give prior notice if, in the ZPIC's opinion, any of the following apply:

1. A delay in implementing the payment 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 MAC's jurisdiction before the overpayment can be recovered;
3. The MAC or ZPIC 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; or
4. A delay may impact law enforcement's investigation.

If CPI approves waiver of the prior notice requirement, the ZPIC shall send the provider notice concurrent with implementation of the payment suspension, but no later than 5 calendar days after the payment suspension is imposed. If additional time is needed to release the notice, the ZPIC shall confer with CPI for guidance.

B. If the reason for the payment suspension request is because the provider failed to furnish requested information, the ZPIC shall recommend that CPI waive the prior notice. If CPI concurs to waive the prior notice requirement, the ZPIC shall send the provider notice concurrent with implementation of the payment suspension, but no later than 5 calendar days after the payment suspension is imposed. If additional time is needed to release the notice, the ZPIC shall confer with CPI for guidance.

C. If the payment suspension request is a fraud suspension, the ZPIC shall recommend to CPI that prior notice not be given. If CPI concurs to waive the prior notice requirement, the ZPIC shall send the provider notice concurrent with implementation of the payment suspension, but no later than five calendar days after the payment suspension is imposed. If additional time is needed to release the notice, the ZPIC shall confer with CPI for guidance.

8.3.2.2.2 – Content of Payment Suspension Notice

(Rev.778; Issued: 03-16-18; Effective: 05-16-18; Implementation: 05-16-18)

The ZPIC shall prepare a “draft notice” (in accordance with section 8.3.2.2 of this chapter) and send it, along with the recommendation and any other supportive information, to CPI for approval. The draft notice shall include, at a minimum:

- The date the payment suspension action will be or has been imposed;
- How long the suspension is expected to be in effect (**NOTE:** All payment suspensions shall be established in 180 calendar day increments.);
- The reason for suspending payment. (For fraud suspensions, the ZPIC shall include the rationale to justify the action being taken.);
- In most notices, the ZPIC shall identify and describe at least five example claims that are associated with the reason for the payment suspension, if available. *The claim examples are to be the most current claims available unless otherwise directed by CMS.* The notice shall only reference the example claim control number, the amount of payment, and the date of service;
- The extent of the payment suspension (i.e., 100 percent payment suspension or partial payment suspension, where less than 100 percent of payments are withheld);
- The payment suspension action is not appealable;
- CMS/CPI has approved implementation of the payment suspension;
- Documentation that the provider has been given the opportunity to submit a rebuttal statement within 15 calendar days of notification; and

- An address for the provider to mail the rebuttal.

8.3.2.2.3 – Shortening the Notice Period for Cause

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

At any time, the ZPIC may recommend to CPI that the prior notice be shortened during a previously approved notice period. Such a recommendation would be appropriate if the MAC or ZPIC believes that the provider will intentionally submit additional claims prior to the effective date of the payment suspension. If CPI approves that the payment suspension is to be imposed earlier than indicated in the issued notice, the ZPIC shall notify the provider in writing of the change and the reason. The ZPIC shall draft a notice for CPI's approval before releasing the notice to the provider.

8.3.2.2.4 – Mailing the Notice to the Provider

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

After consultation with and approval from CPI, the ZPIC shall send the approved payment suspension notice (initial, responses to rebuttals, extensions, and terminations) to the provider. All such notices shall be sent via USPS certified mail or utilizing other commercial mail carriers that allow the tracking of the correspondence to ensure receipt by the provider. In the case of fraud suspensions, the ZPIC shall send an informational copy to the OIG, FBI, or the AUSA for its file, if law enforcement has been previously involved and/or has an active investigation/case on the provider. The ZPIC shall also upload the signed copies of all notices released to the provider into the FID.

8.3.2.2.5 – Opportunity for Rebuttal

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

If the payment suspension is approved with prior notice, the provider is afforded an opportunity to submit to the ZPIC a statement within 15 calendar days indicating why the payment suspension action should not be imposed. However, this time may be shortened or lengthened for cause. (See 42 CFR §405.374(b).)

If the payment suspension is approved without prior notice, the provider is also afforded an opportunity to submit to the ZPIC a statement as to why the payment suspension action should not be imposed. (See 42 CFR §405.372(b)(2).) For purposes of consistency for both prior notice and no prior notice, CMS/CPI suggests that a 15 calendar day response time be established for the provider.

If a provider submits a rebuttal timely, a timely determination and written response by the ZPIC is required in accordance with 42 CFR §405.375. If a provider does not respond in a timely manner, the ZPIC shall submit a written response to the provider within 30 calendar days from the receipt date of the rebuttal.

ZPICs shall ensure the following:

- CMS Review – ZPICs shall forward the provider’s rebuttal statement and any pertinent information to CPI via the FID within 1 business day of receipt. The ZPIC shall evaluate the information presented and then draft a response addressing each item mentioned in the rebuttal and submit it to CPI for approval via the FID no later than 10 calendar days from receipt. The ZPIC may contact CPI for guidance before drafting a response.
- Timing –The payment suspension shall go into effect as indicated in the notice.
- Review of Rebuttal – Because payment suspension actions are not appealable, the rebuttal is the provider’s only opportunity to present information as to why suspension action should not be initiated or should be terminated. ZPICs shall carefully review the provider’s rebuttal statement and pertinent information, and shall consider all facts and issues raised by the provider. If the ZPIC is convinced that the payment suspension action should not be initiated or should be terminated, it shall consult with the CPI for guidance.
- Response – CMS is obligated to consider the initial rebuttal and supportive information received from the provider and to make a determination within 15 calendar days from receipt of the rebuttal. (See 42 CFR §405.375(a).) If a full response cannot be drafted in the required timeframe, the ZPIC shall draft an interim response for release that is approved by CPI.

8.3.2.3 – Claims Review During the Payment Suspension Period (Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

A payment suspension does not stop submitted claims from processing. A payment suspension only stops the claim payments from being released to the provider. These claim payments will be withheld in an account (which does not accrue any interest) for the purpose of applying the withheld funds to any potential overpayment(s) or other debts owed to CMS or HHS in accordance with 42 CFR §405.372(e). (This withholding of Medicare payments is for everything payable and releasable to the provider. It also includes adjustments to claims that would result in payments being released to the provider, RAPs, etc.) If a claim is submitted for payment and is partially or fully denied, the provider is afforded appeal rights to those denials.

8.3.2.3.1 – Claims Review (Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

While a payment suspension does not stop claims processing, CMS prefers that all claims being processed during the payment suspension period be reviewed on a prepayment basis for reasonableness and necessity. If fraud-related, the review of claims should also address whether services were actually rendered as billed. This will ensure that the withheld payments only include payable claims to be used in the disposition of the funds when the final overpayment(s) are determined.

A. Claims Review

Once a payment suspension has been imposed, the MACs and ZPICs shall follow the claims processing and review procedures in accordance with Pub. 100-08, chapter 3. MACs and ZPICs shall ensure that the provider is not substituting a new category of improper billings to counteract the effect of the payment suspension. (If such a situation arises, the ZPIC shall modify the payment suspension accordingly with CPI's approval.) If the claim is determined to not be payable, it shall be denied and the provider afforded its appeal rights. For claims that are not denied, the MAC shall send a remittance advice to the provider showing that payment was approved but the actual funds not sent.

ZPICs are not required to perform 100 percent prepayment review of claims processed during the payment suspension period. If prepayment review is not conducted, a post-payment review shall be performed on the universe of claims adjudicated for payment during the payment suspension, prior to the issuance of the overpayment determination. In order to reduce the burden of resources, if only specific claim types (or certain codes) are the subject of noncompliance, the ZPIC may elect to only place such claims types on prepayment or post-payment review. ZPICs shall consult with CPI for guidance when resources may be better utilized employing statistical sampling for overpayment determination(s). ZPICs shall use the principles of statistical sampling for overpayment estimation found in section 8.4 of this chapter to determine what percentage of claims in a given universe of withheld claims payments are payable. In all cases involving a post-payment review, the ZPIC shall follow the rules of reopening as defined in 42 C.F.R. §405.980 and inform the provider that the claims are reopened in accordance with the regulations when requesting records and supportive information.

B. Review of Suspected Fraudulent or Overpaid Claims:

The ZPIC shall follow procedures in Pub. 100-08, chapter 3, section 3.6 in establishing an overpayment. The overpayment consists of all claims in a specific time period(s) determined to have been paid incorrectly. The ZPIC shall make all reasonable efforts to expedite the determination of the overpayment amount. The ZPIC shall account for binding revised determinations or binding reconsiderations in its overpayment determination in accordance with 42 CFR §405.984.

NOTE: Claims selected for post-payment review may be reopened within one year for any reason or within four years for good cause. (See 42 CFR §405.980.) Cost report determinations may be reopened within three 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 one year rule is for adjustments to DRG claims. A provider has 60 calendar days to request a change in an assignment of a DRG. (See 42 C.F.R. §412.60(d).)

8.3.2.3.2 – Case Development – Program Integrity

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

The ZPIC shall enter all payment suspensions into the FID. In the Suspension Narrative field, the ZPIC shall include the items/services affected (i.e., type of item/service and applicable HCPCS/CPT codes). The first monetary entry of money withheld in the FID shall reflect the money withheld on Day One of the payment suspension.

8.3.2.4 – Duration of the Payment Suspension

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

A. Time Limits for General Suspensions

If CPI approves a general suspension, it will be for a 180 calendar day period. The ZPIC shall complete its medical review and any subsequent activities (i.e., statistical sampling extrapolation, draft overpayment determination notice, etc.) during the initial 180 days of a general suspension. CMS expects the medical reviews to be completed and the calculation of any potential overpayments to be determined before the end of the initial suspension period. Only in rare instances will an extension be granted.

If an extension is required, the ZPIC shall request an extension of an additional 180 calendar days if time is needed to complete the overpayment determination. Only CPI may approve the request to extend the period of the payment suspension for up to an additional 180 calendar days upon the written request of the ZPIC. The request to CPI to extend the payment suspension shall provide the following:

- The AAR – Payment Suspension form
- A draft of the proposed payment suspension extension notice following the format noted in section 8.3.2.2 of this chapter (in a word document format);
- A timeline of the completion of the medical review; and
- Any other supporting documentation.

If approved for an extension, the period of time shall not exceed 180 calendar days. General suspensions shall not continue beyond 360 calendar days. However, there may be an occasion when the information gathered by the ZPIC during its review supports a change from a general suspension to a fraud suspension. Only with CPI approval may the category of the type of payment suspension be transitioned from a general payment suspension to a fraud suspension. If the transition from a general payment suspension to a fraud payment suspension is approved, the provider must be informed of the new development by the ZPIC with a CPI-approved notice. Additionally, the provider must be afforded the opportunity for rebuttal.

B. Exceptions to Time Limits for Fraud Suspensions

If a payment suspension is based on credible allegations of fraud, the payment suspension may continue beyond 360 days with a written request for an extension from law enforcement. An extension may be warranted if there has not been a resolution of law enforcement's investigation of the potential fraud. After 18 months, good cause not to

continue a payment suspension is deemed to exist unless certain criteria are satisfied. (See 42 C.F.R. §405.371(b)(3).) To extend a fraud suspension beyond 18 months:

- The Department of Justice must submit a written request for an extension. Requests must include: 1) the identity of the person or entity under the payment suspension, 2) the amount of time needed for continuation of the payment suspension in order to conclude the criminal or civil proceeding or both, and 3) a statement of why and/or how criminal and/or civil actions may be affected if the payment suspension is not granted.
- The OIG must submit a written request to extend the payment suspension because the case is being considered by the OIG for an administrative action (e.g., permissive exclusions, CMPs) or such action is pending. However, this exception does not apply to pending criminal investigations by OIG.

C. Provider Notice of the Extension

The ZPIC shall obtain CPI approval for the extension request and draft notice, and shall notify the provider if the suspension action has been extended. The ZPIC shall prepare a “draft extension notice” (in accordance with section 8.3.2.2 of this chapter) and submit it via the FID, along with any other supportive information, to CPI for approval at least 14 calendar days before the payment suspension is set to expire. The draft notice shall follow the model language provided in the exhibits and shall include, at a minimum:

- The date the payment suspension will be extended (**NOTE:** The date is to be the same date the payment suspension was to expire);
- The reason for extending the payment suspension; and
- That CMS has approved the extension of the payment suspension.

Upon approval of the notice from CPI, the ZPIC shall provide a copy of the signed notice to CPI via the FID.

8.3.2.5 – Terminating the Payment Suspension

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

The ZPIC shall recommend to CPI that the payment suspension be terminated prior to the payment suspension expiring. The ZPIC shall provide this request via the FID at least 14 calendar days prior to the anticipated payment suspension expiration date. No action associated with the termination shall be taken without the explicit approval of CPI. The ZPIC shall prepare a “draft termination notice” (in accordance with section 8.3.2.2 of this chapter) and send it, along with a draft overpayment notice(s) and any other supportive information, to CPI for approval.

The ZPIC shall recommend to CPI that a suspension be terminated when any of the following occur:

- The basis for the payment suspension action was that an overpayment may exist or money to be paid may be incorrect, and the ZPIC has determined the amount of the overpayment, if any.
- The basis for the payment suspension action was that a credible allegation of fraud exists against the provider, and the amount of the overpayment has been determined.
- The basis for the payment suspension action was that payments to be made may not be correct, and the ZPIC has determined that current payments to be made are now correct, and any associated overpayments have been determined.
- The basis for the payment suspension action was that the provider failed to furnish records, and the provider has now submitted all appropriate requested records.

When the payment suspension is terminated, the disposition of the withheld funds shall be achieved in accordance with 42 CFR §405.372(e) and the payment suspension edit withholding the provider's funds is removed in the MAC system accordingly. Upon approval of the termination notice by CPI, the ZPIC shall provide a copy of the signed notice via the FID to CPI.

8.3.2.6 – Disposition of the Withheld Funds

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

The MAC and ZPIC shall maintain an accurate, up-to-date record of the dollar amount withheld and the claims that comprise the withheld amount. The MAC and ZPIC shall keep a separate accounting of payment on all claims affected by the payment 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 applied to reduce or eliminate any overpayment. (See section 8.2 of this chapter.) The MAC and ZPIC shall be able to provide, upon request, copies of the claims affected by the payment suspension. The MAC shall coordinate the issuance of the demand for the overpayment(s) and termination of the payment suspension with respect to approved action by CPI. The MAC shall apply the amount withheld first to the Medicare overpayment(s) and then apply any excess money to reduce any other obligation to CMS or to DHHS, unless otherwise directed by CMS. The MAC shall remit to the provider all monies held in excess of the amount the provider owes. If the provider owes more money than what was withheld as a result of the payment suspension, the MAC shall initiate recoupment action, unless otherwise directed by CMS. See 42 CFR §405.372(e).

8.3.2.7 – Contractor Suspects Additional Improper Claims

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

A. Present Time

If the payment suspension is in the process of being terminated or has been terminated, and the ZPIC believes that the provider will continue to submit noncovered, misrepresented, or potentially fraudulent claims, the ZPIC shall consider implementing or recommending other actions as appropriate (e.g., education, prepayment review, revocation, a new suspension of payment.)

B. Past Period of Time

If the payment suspension is in the process of being terminated or has been terminated, and the ZPIC believes there are past periods of claims submissions that may contain possible overpayments, the ZPIC shall consider recommending a new payment suspension covering those dates.

C. Additional Services

If, during the time that a provider is under a partial payment suspension for a particular service(s), the ZPIC determines there is reason to initiate a payment suspension action for a different service, a new payment suspension shall be initiated or the new service(s) shall be incorporated into the existing payment suspension depending on the circumstances. The ZPIC shall discuss this action with CPI for a decision.

Any time a new suspension action is initiated on a provider who is already under one or more partial payment suspension actions, the ZPIC shall, if appropriate: (1) obtain separate CMS approval, (2) issue an additional notice to the provider, and (3) offer a new rebuttal period to the provider.

8.3.3 – Suspension Process for Multi-Region Issues (National Payment Suspensions)

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

8.3.3.1 – DME Payment Suspensions (MACs and ZPICs)

(Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

For national payment suspensions involving durable medical equipment (DME) suppliers that are enrolled in multiple jurisdictions, the following is applicable for DME MACs and ZPICs:

- When CMS suspends payments to a DME supplier, all payments to the supplier are suspended in all DME jurisdictions if the same Tax Identification Number is used. The information (whether based on fraud or non-fraud) that payments should be suspended in one DME jurisdiction is sufficient reason for payment suspension decisions to apply to the other locations.

- The ZPIC that requests the national payment suspension to CPI shall become the “lead” contractor for the payment suspension if the payment suspension is approved. The lead contractor is responsible for informing the other respective contractors of the payment suspension being initiated and for the coordination of the payment suspension activities. CMS suggests that monthly contractor calls be held to communicate the current activities of the national suspension by each of the contractors.
- The lead is responsible for coordinating and reporting to its CORs and BFLs whether the other contractors are compliant with the payment suspension timeframe and activities.
- All non-lead contractors are also responsible for determining an overpayment(s) for its jurisdiction. Non-lead contractors shall take into account the findings of the lead contractor and take appropriate measures (prepayment review, etc.) to protect and safeguard Medicare Trust Fund dollars from being inappropriately paid.

For ZPIC-initiated DME payment suspensions:

- Each ZPIC shall be responsible for ensuring that the payment suspension edit has been initiated in its respective DME MAC jurisdiction and has communicated this to the lead ZPIC.

Each ZPIC shall be responsible for providing timely updates on the withheld money in its corresponding DME MAC jurisdiction to the lead ZPIC for input in the FID payment suspension module, and in accordance with the FID requirements.

8.3.3.2 – Non-DME National Payment Suspensions (MACs and ZPICs) (Rev. 670, Issued: 08-19-16, Effective: 11-23-16, Implementation: 11-23-16)

For national payment suspensions involving national providers (such as chain hospitals, chain Skilled Nursing Facilities, franchised clinics, laboratories, etc.) that are enrolled in multiple jurisdictions, the following may be applicable for MACs and ZPICs:

- When CMS suspends payments to a national provider, all payments to the national provider are suspended in all jurisdictions if they share the same Tax Identification Number. The information (whether based on fraud or non-fraud) that payments should be suspended in one jurisdiction is sufficient reason for payment suspension decisions to apply to the other locations.
- The ZPIC that requests the national payment suspension to CPI shall become the “lead” contractor for the payment suspension. The lead contractor is responsible for informing the other respective contractors of the payment suspension being initiated and for the coordination regarding the payment suspension activities.

CMS suggests that monthly contractor calls be held to communicate the current activities by each of the contractors.

- The lead is responsible for coordinating and reporting to its CORs and BFLs whether the other contractors are compliant with the payment suspension timeframe and activities.
- All non-lead contractors shall be responsible for determining an overpayment(s) for its jurisdiction. Non-lead contractors shall take into account the findings of the lead contractor and take appropriate measures (prepayment review, etc.) to protect and safeguard Medicare Trust Fund dollars from being inappropriately paid.

For ZPIC-initiated non-DME national payment suspensions:

- Each ZPIC shall be responsible for ensuring that the payment suspension edit has been initiated in its respective MAC jurisdiction and has communicated this to the lead ZPIC.

Each ZPIC shall be responsible for providing timely updates on the withheld money in its respective zone to the Lead ZPIC, so it can update the FID payment suspension module in accordance with the FID requirements.

8.4 - Use of Statistical Sampling for Overpayment Estimation (Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

8.4.1 – Introduction (Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

8.4.1.1 – General Purpose (Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

The purpose of this section is to provide instructions for PSC and ZPIC BI units and contractor MR units on the use of statistical sampling in their reviews to calculate and project (i.e., extrapolate) overpayment amounts to be recovered by recoupment, offset or otherwise. 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 reviews performed by the PSC or ZPIC BI units or contractor MR units. Reviews that are conducted by the PSC or ZPIC BI units or the contractor MR units to assist law enforcement with the identification, case development and/or investigation of suspected fraud or other unlawful activities may also use sampling methodologies that differ from those prescribed herein.

These instructions are provided so that a sufficient process is followed when conducting statistical sampling to project overpayments. Failure by the PSC or the ZPIC BI unit or

the contractor MR unit to follow one or more of the requirements contained herein does not necessarily affect the validity of the statistical sampling that was conducted or the projection of the overpayment. 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 ZPIC BI units or the contractor MR units 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 and/or the projection of the overpayment.

Use of statistical sampling to determine overpayments may be used in conjunction with other corrective actions, such as payment suspensions and prepayment review.

8.4.1.2 - The Purpose of Statistical Sampling

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

Statistical sampling is used to calculate and project (i.e., extrapolate) the amount of overpayment(s) made on claims. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), mandates that before using extrapolation to determine overpayment amounts to be recovered by recoupment, offset or otherwise, there must be a determination of sustained or high level of payment error, or documentation that educational intervention has failed to correct the payment error. By law, the determination that a sustained or high level of payment error exists is not subject to administrative or judicial review.

8.4.1.3 - Steps for Conducting Statistical Sampling

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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 sampling units and determining if there was an overpayment or 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.

8.4.1.4 - Determining When Statistical Sampling May Be Used

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

The PSC or ZPIC BI units and the contractor MR units shall use statistical sampling when it has been determined that a sustained or high level of payment error exists, or where documented educational intervention has failed to correct the payment error. A sustained or high level of payment error may be determined to exist through a variety of means, including, but not limited to:

- error rate determinations by MR unit, PSC, ZPIC or other area
- probe samples

- data analysis
- provider/supplier history
- information from law enforcement investigations
- allegations of wrongdoing by current or former employees of a provider or supplier
- audits or evaluations conducted by the OIG

Once a determination has been made that statistical sampling may be used, factors also to be considered for determining when to undertake statistical sampling for overpayment estimation instead of a claim-by-claim review 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.

8.4.1.5 - Consultation With a Statistical Expert

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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 ZPIC BI unit and the contractor MR 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 ZPIC BI unit or the contractor MR 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 ZPIC BI unit or the contractor MR 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 ZPIC BI unit or the contractor MR unit does not have staff with sufficient statistical experience as outlined here, it shall obtain such expert assistance prior to conducting statistical sampling.

8.4.1.6 - Use of Other Sampling Methodologies

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

Once it has been determined that statistical sampling may be used, nothing in these instructions precludes the Centers for Medicare & Medicaid Services (CMS) or the PSC or the ZPIC BI unit or the contractor MR unit from relying on statistically valid audit sampling methodologies employed by other law enforcement agencies, including but not limited to the OIG, the DOJ, the FBI, and other authoritative sources.

Where it is foreseen that the results of a PSC or ZPIC BI unit's or the contractor MR unit's review may be referred to law enforcement or another agency for litigation and/or other enforcement actions, the PSC or ZPIC BI unit or the contractor MR 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, the PSC or ZPIC BI unit or the contractor MR unit shall 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).

8.4.2 - Probability Sampling

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

Regardless of the method of sample selection used, the PSC or ZPIC BI unit or the contractor MR 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 in the target population 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) 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.

8.4.3 - Selection of Period to be Reviewed and Composition of Universe (Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

8.4.3.1 - Selection of Period for Review

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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

- How long the pattern of sustained or high level of payment error 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 Claims Processing Manual, chapter 34 §10.6)

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.**

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

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

The universe and sampling frame will usually cover 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 a cluster of claims, as, for example, the patient, a treatment "day", or any other sampling unit appropriate for the issue under review.

8.4.3.2.1 - Composition of the Universe

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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 consist of 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.

8.4.3.2.2 - The Sampling Unit

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

Sampling units are the elements that are selected according to the design of the survey and 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.

8.4.3.2.3 - The Sampling Frame

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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.

8.4.4 - Sample Selection

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

8.4.4.1 - Sample Design

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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.

8.4.4.1.1 - Simple Random Sampling

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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.)

8.4.4.1.2 - Systematic Sampling

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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.

8.4.4.1.3 - Stratified Sampling

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

Stratified sampling involves classifying the sampling units in the frame into non-overlapping groups, or strata. The stratification scheme should try to ensure that a sampling unit from a particular stratum is more likely to be 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 one in which 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 attained 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 8.4.11.1.

8.4.4.1.4 - Cluster Sampling

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

Cluster sampling involves drawing a random sample of clusters and reviewing either all units or a sample of units selected from each of the sampled clusters. Unlike strata, clusters are groups of units that do not necessarily have strong similarities, but for which their selection and review as clusters is more efficient economically than, for example, simple random sampling. 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 8.4.11.2.

Both stratification and cluster sampling involve the grouping of more elementary units. The former is frequently recommended when there is sufficient prior 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.

8.4.4.1.5 - Design Combinations

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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.”

8.4.4.2 - Random Number Selection

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

The PSC or ZPIC BI unit or the contractor MR unit shall identify the source of the random numbers used to select the individual sampling units. The PSC or ZPIC BI unit or the contractor MR 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 ZPIC BI unit or the contractor MR unit shall document any starting point if using a random number table or drawing a systematic sample. In

addition, the PSC or ZPIC BI units or the contractor MR units shall document the known seed value if a computer algorithm is used. The PSC or ZPIC BI units or the contractor MR units 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 features or the same ease in operation. For any particular problem, the PSC or ZPIC BI unit's or the contractor MR unit's statistician or systems programmer shall determine which package is best suited to the problem being reviewed.

8.4.4.3 - Determining Sample Size

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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 ZPIC BI unit or the contractor MR 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.

8.4.4.4 - Documentation of Sampling Methodology

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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

8.4.4.4.1 - Documentation of Universe and Frame

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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), 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 ZPIC BI units or the contractor MR units shall keep a copy of the frame.

8.4.4.4.2 - Arrangement and Control Totals

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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.

8.4.4.4.3 - Worksheets

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

The PSC or ZPIC BI units or the contractor MR units 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., UB-92 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.

8.4.4.4 - Overpayment/Underpayment Worksheets

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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.

8.4.4.5 - Informational Copies to Primary GTL, Associate GTL, SME or CMS RO

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

The PSC or ZPIC BI units or the contractor MR units shall send informational copies of the statistician-approved sampling methodology to their Primary GTL, Associate GTL, SME or CMS RO. The Primary GTL, Associate 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 ZPIC BI units or the contractor MR units shall not repeatedly send the methodology to the Primary GTL, Associate GTL, SME or CMS RO.

8.4.5 - Calculating the Estimated Overpayment

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

8.4.5.1 - The Point Estimate

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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 ZPIC BI unit or the contractor MR 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.)

8.4.5.2 - Calculation of the Estimated Overpayment Amount (Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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.

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

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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

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

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

The PSC or ZPIC BI unit or the contractor MR 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 ZPIC BI unit or the contractor MR 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 ZPIC BI unit or PSC MR unit shall obtain the advance approval of the Primary GTL; and the contractor MR unit shall obtain the advance approval of the 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 ZPIC BI units or contractor MR units).

8.4.6.1.1 - Written Notification of Review

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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 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 ZPIC BI unit or contractor MR 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.

8.4.6.1.2 - Determining Review Site

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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 ZPIC BI Unit or Contractor MR Unit Site Reviews

The PSC or ZPIC BI unit or the contractor MR unit site reviews are performed at a location of the PSC or ZPIC BI unit or the contractor MR unit.

8.4.6.2 - Meetings to Start and End the Review

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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.

8.4.6.3 - Conducting the Review

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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.

8.4.7 - Overpayment Recovery

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

8.4.7.1 - Recovery From Provider or Supplier

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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 and ZPICs, only ACs or MACs 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/issued identified during the review, and any recommended corrective actions.

8.4.7.2 - Informational Copy to Primary GTL, Associate GTL, SME or CMS RO

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

Send an informational copy of the demand letter to the Primary GTL, Associate 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 Primary GTL, Associate GTL, SME or CMS RO.

8.4.8 - Corrective Actions

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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.

8.4.9 - Changes Resulting From Appeals

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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.

8.4.9.1 - Sampling Methodology Overturned

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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 Primary GTL, Associate 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 Primary GTL, Associate 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 Primary GTL, Associate 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.

8.4.9.2 - Revised Initial Determination

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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.

8.4.10 - Resources

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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8.4.11 - Additional Discussion of Stratified Sampling and Cluster Sampling

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

8.4.11.1 – Stratified Sampling

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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.

8.4.11.2 - Cluster Sampling

(Rev. 377, Issued: 05-27-11, Effective: 06-28-11, Implementation: 06-28-11)

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.

Transmittals Issued for this Chapter

Rev #	Issue Date	Subject	Impl Date	CR#
<u>R778PI</u>	03/16/2018	Updates to Payment Suspension Notice	05/16/2018	10475
<u>R687PI</u>	11/10/2016	Extrapolated Overpayments	12/12/2016	9713
<u>R670PI</u>	08/19/2016	Update of Payment Suspension Instructions	11/23/2016	9396
<u>R377PI</u>	05/27/2011	Program Integrity Manual Reorganization of Chapters 3 and 8	06/28/2011	6560
<u>R71PI</u>	04/09/2004	Rewrite of Program Integrity Manual (except Chapter 10) to Apply to PSCs	05/10/2004	3030
<u>R03PIM</u>	11/22/2000	Complete Replacement of PIM Revision 1.	NA	1292
<u>R01PIM</u>	06/2000	Initial Release of Manual	NA	931

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