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Extrapolation Takes a Hit in OIG Report; 'Inconsistency Is Disturbing'

By Nina Youngstrom

A shadow has been cast on the extrapolation of Medicare overpayments in a new audit report[1] from the HHS Office of Inspector General (OIG). According to OIG, Medicare administrative contractors (MACs) and qualified independent contractors (QICs) weren't always consistent in the way they evaluate the extrapolation of overpayments during appeals of claim denials, which may affect the extrapolated amount.

"This is suggesting a lot of extrapolation may be improperly or at least inconsistently calculated, and extrapolation is where the real money is," said San Francisco attorney Judy Waltz, with Foley & Lardner. "For a national program, consistency is obviously important, so the fact that there is such identified inconsistency is disturbing, particularly given the financial impact for providers and suppliers."

Although extrapolation isn't applied every time, OIG noted that "due to the high volume of Medicare payments, CMS sometimes uses postpayment claim review in conjunction with statistical sampling to identify and recover overpayments made by the Federal Government to providers."

Providers and suppliers may challenge the methodology of the statistical sampling and overpayment estimation when they appeal overpayment findings. MACs and QICs review extrapolated overpayments during Medicare's five-step appeal process. In the event providers win the appeal, they only have to pay the actual overpayment identified in the audit versus the extrapolated amount. Because that's usually a big-dollar difference, it's paramount for the process of reviewing extrapolations to be "fair and reasonably consistent," OIG said.

OIG's audit focused on whether CMS ensured MACs and QICs reviewed appealed extrapolated overpayments consistently and in a way that adheres to CMS requirements. The *Medicare Program Integrity Manual* sets forth the main steps of statistical sampling,[2] which the report summarized:

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 whether there was an overpayment or an underpayment.
6. "Estimating the overpayment, as applicable."

CMS amended this section of the *Medicare Program Integrity Manual*, effective Jan. 2, 2019.[3] Program integrity contractors must assess whether the sample size is appropriate for the method used and whether the selected statistical methodology "is appropriate given the distribution of paid amounts in the sampling frame," OIG said. Program integrity contractors also must consult with a statistical expert.

Biggest Problem Is Simulation Testing

For its audit, OIG looked at reviews of extrapolated overpayments from Jan. 1, 2016, through Jan. 31, 2019, by six MACs and two QICs during the appeal process. The findings: Generally, MACs and QICs review appealed extrapolated overpayments in accordance with CMS requirements, but there isn't always consistency across the MACs and QICs in their interpretations of the requirements—and "CMS did not always provide sufficient guidance and oversight to ensure that these reviews were performed in a consistent manner," OIG said.

For example, seven of the eight MACs and QICs determined "whether the construction of the sampling frame could be replicated," and four of the eight only reviewed an extrapolation when requested by the provider.

The biggest inconsistency was in the use of a kind of simulation testing to review extrapolated overpayments.[4] The testing was connected to $42 million in extrapolated overpayments that were overturned in 2017 and 2018. One MAC performed simulation testing with all extrapolation reviews, "and two MACs recently changed their policies to include simulation testing for sample designs that are not well supported by the program integrity contractor," OIG said. However, three MACs and both QICs don't do simulation testing at all.

"The decision to use simulation testing had a substantial effect on the extrapolation review process, accounting for $41.5 million of the $42.0 million in overturned extrapolations identified in our sample," OIG said. "CMS did not provide guidance to the appellate contractors about when the procedure should be used. If CMS did not intend that the appellate contractors use this procedure, these extrapolations should not have been overturned. Conversely, if CMS intended that contractors use this procedure, it is possible that other extrapolations should have been overturned but were not."

OIG recommended that CMS give MACs and QICs more guidance to improve consistency in their reviews of extrapolated overpayments. Also, CMS should "identify and resolve discrepancies in the procedures MACs and QICs use to review extrapolations" during appeals. CMS agreed.

Although it's a mystery how OIG's findings affected individual providers and suppliers, extrapolation can have serious consequences, Waltz noted. "Think about the providers and suppliers who might have gone out of business if an extrapolation was improperly calculated and they were held responsible for the larger amount," she noted. "That's a big deal." The conclusions about the simulation testing findings are particularly troublesome. "You have to wonder, if the same test was applied to the initial determinations, would those MACs applying the simulation approach have also identified errors at that level, such that providers who did not appeal might have been stuck with an extrapolated overpayment that wasn't justified under the MAC's own statistical approach? In other words, for those MACs applying the simulation methodology, do they only scrutinize that factor on appeals?"

And CMS's response to the report seems a little cavalier, since it seems limited to a prospective approach, Waltz said. The flavor is, "Oh, sorry about that," which she said is inadequate since providers in some regions may have been burned.

"It is absolutely imperative that CMS provide clearer direction on methodology," she said. "Additional direction will also help providers check calculations on their own overpayments. Overpayment appeals at the first two levels of appeal are not easily available for public review." Administrative law judges from the Office of Medicare Hearings and Appeals don't publish their decisions, so providers are unable to review them for patterns of common errors by the MACs, she said.

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1 Christi A. Grimm, "Medicare Contractors Were Not Consistent in How They Reviewed Extrapolated Overpayments in the Provider Appeals Process," HHS, August 2020, https://go.usa.gov/xGa7a.
2 CMS, *Medicare Program Integrity Manual*, § 8.4.1.3, Pub. 100-08, July 27, 2020, https://go.cms.gov/32woneV.
3 CMS, "Guidance Regarding the Use of Statistical Sampling for Overpayment Estimation," Trans. 828, September 28, 2018, https://go.cms.gov/2qOQyXv.
4 Nina Youngstrom, "OIG Example of Inconsistency in Reviews of Extrapolation," *Report on Medicare Compliance* 29, no. 31 (August 31, 2020).