

MSL WHITE PAPER

**ZPIC Audits:  
Are You In the Crosshairs?**



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## WHAT ARE ZPICs?

The ZPICs (Zone Program Integrity Contractors) program was created by the Centers for Medicare and Medicaid Services (CMS) with the primary goal “to identify cases of suspected fraud, develop them<sup>1</sup> thoroughly and in a timely manner, and take immediate action to ensure that Medicare Trust Fund monies are not inappropriately paid out and that any mistaken payments are recouped.”<sup>2</sup> ZPICs differ from other CMS contractors (e.g., Recovery Audit Contractors (RACs)) in that while they may recover overpayments made due to identified billing errors, **the primary focus is to investigate potential fraud, waste, and abuse.**

ZPICs replaced the fragmented Program Integrity Contractors (PICs) which were awarded strictly by line of business. The seven ZPIC zones, which align with the Medicare Administrative Contractors (MACs) zones, perform integrity functions for (a) Medicare Parts A & B; (b) Durable Medical Equipment Prosthetics, Orthotics, and Supplies; (c) Home Health; and (d) Medicare-Medicaid data matching.

| ZPIC                            | Zone | States/Countries Within Zone  |
|---------------------------------|------|---|
| Safeguard Services, LLC         | 1    | California, Hawaii, Nevada, American Samoa, Guam, and the Mariana Islands   |
| NCI, Inc.                       | 2    | Washington, Oregon, Idaho, Utah, Arizona, Wyoming, Montana, North Dakota, South Dakota, Nebraska, Kansas, Iowa, Missouri, Alaska      |
| Cahaba Safeguard Administrators | 3    | Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio, Kentucky   |
| Health Integrity, LLC           | 4    | Colorado, New Mexico, Texas, Oklahoma   |
| NCI, Inc.                       | 5    | Arkansas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, North Carolina, South Carolina, Virginia, West Virginia                |
| Cahaba Safeguard Administrators | 6    | Pennsylvania, New York, Delaware, Maryland, D.C., New Jersey, Massachusetts, New Hampshire, Vermont, Maine, Rhode Island, Connecticut |
| Safeguard Services, LLC         | 7    | Florida, Puerto Rico, Virgin Islands  |

<sup>1</sup> In this context, the use of “develop them” is synonymous with “investigate”.

<sup>2</sup> Per Chapter 4 of the Medicare Program Integrity Manual.



## ZPIC AUDIT SELECTION

A ZPIC investigation often begins without notice to the Provider. A ZPIC audit is seldom a random selection of a provider by the contractors. Rather, the ZPIC audit is generally initiated based on a number of different factors including data analysis, complaints, or referrals.

### *Data Analysis*

The ZPIC may use data analysis to identify outliers based on a high frequency of certain services, billing trends, or lengths of stay as compared to local and national patterns. The following is a list of examples that would increase the likelihood of a ZPIC audit:

- Home Health Agencies with patients having an extended numbers of visits;
- Hospice providers with high length of stay patients;
- A nursing home with a large volume of elevated “RUG” level claims; or
- An acute care hospital with high or unusual case mixes.

### *Complaints*

Complaints may be made by employees or beneficiaries to the Office of Inspector General or directly to the ZPIC, similar to a whistleblower program.

### *Referrals*

Referrals made to the ZPIC by other government contractors or law enforcement agencies. For example, a MAC may identify the claims of a provider as inconsistent with other providers in a specific geographic area and refer the provider to the ZPIC.

## ZPIC AUTHORITY AND THE ZPIC AUDIT PROCESS

Once a ZPIC has identified a provider as a candidate for audit, they may take a number of actions to further investigate potential fraud, such as:

- Request medical records and documentation, including patient charts and business reports;
- Conduct unannounced site visits at the provider’s location. There have been reports of armed law enforcement officials accompanying ZPIC auditors on site visits;
- Conduct interviews with the provider’s management and staff;
- Apply statistical sampling and extrapolation to billing or coding errors found;
- Subject the provider to pre-payment or post-payment review of existing and future claims;
- Submit to CMS a recommendation for the provider’s exclusion from the Medicare program; and
- Refer cases to law enforcement agencies such as the Department of Justice and the Office of Inspector General.



A provider may or may not be notified in advance that the ZPIC is conducting an audit. Often times, the provider learns of the audit when a team of ZPIC auditors shows up at their front door. The auditors will likely submit a document request for patient records which the provider will then have 15 days to respond. Also while onsite, the ZPIC auditors may conduct interviews with certain management personnel and staff. Most often this is performed individually in separate rooms. **MSL Note:** Providers have the right, *and it is recommended*, to have legal counsel present during these interviews. This should be arranged with legal counsel prior to the discovery that the provider is subject to a ZPIC audit.

After the initial onsite visit, the auditors may make additional record requests or request clarification of records already received. Unlike other government contractors, ZPICs do not have a limit on the number of document requests nor do they have a time period for which they must conclude the audit.

If a ZPIC finds a “sustained or high level of payment error,”<sup>3</sup> the auditors may use statistical sampling to extrapolate the amount of “determined” overpayments based on the error rate within the sampled claims. **MSL Note:** CMS has not specifically defined what constitutes a “high level of payment error.” This is subjective and a matter of judgment, and thus, represents an area that may be argued in the appeals process.

If the ZPIC does choose to use statistical sampling and extrapolation of the error rates to the entire population of claims under review, Chapter 8 of the Medicare Provider Integrity Manual does require the ZPIC to provide the following to the Provider:

- An explanation of why the review is being conducted;
- 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.

**MSL Note:** This is an area where you need an experienced team, including (a) CPAs or statisticians, and (b) clinical documentation specialists. Often the “math” may be correct, but the sampling methodology contains a bias that while not apparent to the untrained eye, can invalidate the extrapolation.

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<sup>3</sup> Per Chapter 8 of the Medicare Program Integrity Manual.



## **POSSIBLE ZPIC OUTCOMES**

While it is possible for a ZPIC audit to be performed without any adverse affect on a provider, this is usually not the case. Depending on the findings of the audit, there are several different outcomes a provider may face.

The most common result of an audit appears to be pre-payment review. Based on the error rate and extrapolation of that rate to the claims period, the ZPIC may place a provider on pre-payment review up to 100%. This means that up to 100% of the Provider's Medicare claims must be reviewed and approved by the ZPIC or MAC before they are paid. There have been several cases in the last year in which a provider was placed on 100% pre-payment review due to a ZPIC audit; and since the ZPIC audit has not been concluded, the Providers have not been paid on any of their Medicare claims for six months or more.

If the ZPIC does find alleged overpayments, on either a claim-by-claim basis or through claims extrapolation, the ZPIC may attempt to recoup those overpayments.

Should the ZPIC find alleged fraud, regardless of monetary amount, the ZPIC must refer the provider to enforcement agencies such as the Office of Inspector General. The Office of Inspector General then has 90 days to accept the referral, refer the case to the Department of Justice, or reject the case.

The final potential outcome of a ZPIC audit may be revocation of the provider's participation in the Medicare program. If the ZPIC determines the provider (a) violated the participation agreement or (b) the provider is uncooperative during the onsite visit, revocation may be recommended.

## **PROVIDER ZPIC RESPONSE**

Once a provider receives notice that a ZPIC audit is underway, or will be soon, the provider should take due care to respond promptly and completely to all requests made by the ZPIC. Here are a few action items the provider should consider when responding to a ZPIC:

- Contact your designated compliance officer.
- Contact your legal counsel, preferably counsel that has experience with ZPIC audits.
- Contact your CPA firm, preferably also having experience handling ZPIC audits.
- Consider contacting an independent billing specialist to dispute any billing issues.
- Comply promptly and completely to all data requests. The provider may question/dispute unreasonable requests, but the provider generally only has 15 days to respond. The provider can request additional time that may or may not be approved.
- Document and make copies of all correspondence with the ZPIC. Paginating all documents for reference is recommended.



- Keep communication channels open between the provider, the ZPIC auditor, and all other consulting parties involved.
- Take the ZPIC audit and all requests very seriously. Non-compliance may result in delayed or denied claims payments or possibly removal from the Medicare program.

Depending on the outcome of the ZPIC audit, there are several issues a provider may contest to reduce or eliminate alleged overpayments.

### *Procedural Considerations*

- Did the ZPIC provide the required information concerning its findings?
- Were the clinical findings correct?
- Did they review and correctly apply all documentation provided?
- Is a physician or clinical expert opinion necessary?

### *Statistical Sampling and Extrapolation Considerations*

- Did the ZPIC prove a sustained or high error rate?
- Was there a prior failed educational intervention?
- Were the sampling and statistical methods used appropriate and sound?

Your CPA Firm can evaluate each of these and challenge the ZPIC's audit methodologies and sample extrapolations to support legal counsel in matters related to documentation and audit procedures. Statistical sampling, extrapolation, and documentation are what your CPA Firm does on a daily basis when auditing financial statements.

## **ZPIC PREPAREDNESS AND BEST PRACTICES**

While it is not guaranteed that a provider will be selected for a ZPIC audit, it is in the best interest of all providers to be prepared for any governmental contract audit. Here are some best practices a provider can put in place today to ensure that a ZPIC or any other governmental contractor audit may proceed as smoothly as possible.

- Designate your compliance corporate officer and an internal point of contact, if not the same person, who will be responsible for all communications.
- Create a compliance plan and review it on a periodic basis, at least annually.
- Create a "response team" that will be notified in the event of an audit. This team should consist of an attorney, a CPA, and likely a billing specialist.
- Engage an outside billing specialist to conduct an annual coding accuracy review.
- Internally perform data analytics to identify potential areas of exposure.
- Review documentation procedures in all areas subject to audit.
- Enlist legal counsel or your CPA firm to train staff on how to respond to questions from ZPIC or other governmental contract auditors.



## OTHER ITEMS TO NOTE

A few other items of interest to note with regard to ZPIC audits:

- Depending on the census mix of a provider, pre-payment or post-payment review may create a cash-flow issue for the provider. If the ZPIC suspends a provider's payments and later finds the suspension was not necessary because neither fraud nor erroneous claims were found, the ZPIC cannot be held criminally or civilly liable as a result of their activities so long as due care was performed.
- Legal and expert fees paid by the provider while contesting a ZPIC's finding during an appeal process will not be reimbursed by the ZPIC or any other entity.
- Unlike RACs, ZPICs are not paid on a contingency basis. ZPICs may, however, be paid performance bonuses.
- Providers using third-party rehabilitation contractors should bear in mind that indemnification clauses for down-coded/rejected claims probably will not protect the provider's certification if a ZPIC discovers fraud committed by the rehabilitation company. This is true even if the provider's staff knew nothing of the fraud. It is the provider's responsibility to have appropriate procedures in place to identify and prevent fraud.

## MOORE STEPHENS LOVELACE, P.A.

MSL has numerous highly experienced and certified professionals with decades of audit defense experience. These include CPA's, Certified Fraud Examiners, and Certified Health Care Fraud Examiners. You wouldn't think to go to an IRS audit without your CPA by your side. Why would you for a ZPIC audit?

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