

Defending Against Statistical Sampling and Extrapolation

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Overview

- **When is statistical sampling and extrapolation used?**
- **What is the legal basis for statistical sampling and extrapolation?**
- **How is statistical sampling and extrapolation performed?**
- **How can I defend against extrapolated overpayment results?**

Use of Statistical Sampling for Overpayment Estimation

- **Acceptable tool in different audits: Medicare, Medicaid, tax, financial statements, etc.**
- **Appropriate when records are too voluminous for individual review**
- **Used in Medicare overpayment reviews since the 1970's**

Use of Statistical Sampling for Overpayment Estimation

- **CMS overpayment audit**
- **OIG self-disclosure protocol**
- **Internal compliance audit**

Legal Basis for Statistical Sampling for Overpayment Estimation

“The use of statistical sampling to project an overpayment. . . does not deny a provider or supplier due process. Neither the statute nor regulations require that a case-by-case review be conducted in order to determine that a provider or supplier has been overpaid and to determine the amount of overpayment.”

HCFA Ruling 86-1

Legal Basis for Statistical Sampling for Overpayment Estimation

Statistical sampling does not violate due process “so long as extrapolation is made from a representative sample and is statistically significant.”

Chaves County Home Health Service, Inc. v. Sullivan, 931 F.2d 914 (D.C. Cir. 1991), *cert. denied*, 402 U.S. 1091 (1992).

Performance of Statistical Sampling and Extrapolation

A Medicare contractor may not use extrapolation to determine overpayment amounts unless . . .

- There is a sustained or high level of payment error; or
- Documented educational intervention has failed to correct the payment error

42 U.S.C. § 1395ddd(f)(3)

Performance of Statistical Sampling and Extrapolation

- **Sustained or high level of payment error can be determined by:**
 - Error rate determinations by MR unit, ZPIC
 - Probe samples
 - Data analysis
 - Provider/supplier history
 - Information from law enforcement investigations
 - Allegations of wrongdoing by current or former employees of provider or supplier
 - Audits or evaluations conducted by the OIG

Source: Chapter 8 – Benefit Integrity; Medicare Program Integrity Manual; available at:
<http://www.cms.gov/manuals/downloads/pim83c08.pdf>

Performance of Statistical Sampling and Extrapolation

- **Additional Factors to Consider**

- Number of claims in universe
- Dollar values associated with claims
- Available resources
- Cost effectiveness of expected sampling results

Source: Chapter 8 – Benefit Integrity; Medicare Program Integrity Manual; available at: <http://www.cms.gov/manuals/downloads/pim83c08.pdf>

Performance of Statistical Sampling and Extrapolated Overpayment

- **Major Steps**

- Selecting the provider or supplier
- Selecting the period to be reviewed
- Defining the universe, the sampling unit, and the sampling frame

Source: Chapter 8 – Benefit Integrity; Medicare Program Integrity Manual; available at: <http://www.cms.gov/manuals/downloads/pim83c08.pdf>

Performance of Statistical Sampling and Extrapolation

- **Major Steps (cont.)**
 - Designing the sampling plan and selecting the sample
 - Reviewing each of the sampling units and determining if there was an overpayment or under payment
 - Estimating the overpayment

Source: Chapter 8 – Benefit Integrity; Medicare Program Integrity Manual; available at: <http://www.cms.gov/manuals/downloads/pim83c08.pdf>

Defending Against Extrapolation Results

- **No administrative or judicial review of determination of high level of payment error BUT determination must be made**
- **Failure to follow one or more requirements in Benefit Integrity Manual does not necessarily affect validity**
- **Not sufficient to argue better or more precise methods are available**

Defending Against Extrapolation Results

- **Can challenge validity of sampling methodology based on “the actual statistical validity of the sample as drawn and conducted”**
- **Test: Was the sample statistically valid?**
- **Contractor has burden of establishing sample was in fact random and statistically valid**

Defending Against Extrapolation Results

- **Procedural Challenges**
 - Did the contractor follow the MPIM?
 - Were allowed claims included in overpayment sample calculation?
 - Were calculations performed correctly at each level of appeal?

Defending Against Extrapolation Results

- **Substantive Challenges**
 - Likely need a statistician
 - » Where can you find one?
 - “One size does NOT fit all.”
 - It is not your job to explain how it should be done.

Defending Against Extrapolation Results

- **Examples of Substantive Challenges**
 - Is the sample representative?
 - Is the sample statistically significant?
 - » Is the sample size reliable?
 - » Is the sample within the required precision and confidence levels?

Defending Against Extrapolation Results

- **Medicare Appeals Process**
 - Redetermination
 - Reconsideration
 - Administrative Law Judge Hearing
 - Medicare Appeals Council
 - Federal District Court
- **Medicaid Appeals Process**
 - Appeal rights under state law

Defending Against Extrapolation Results

- **Obtain all documentation related to sampling calculations**
 - Consider provider's prior audit history
- **Know appeal timelines and requirements for each level**
- **Understand reasons for denial at each level**
- **Present reasons in written protest or position paper**
- **Prepare for oral testimony at hearing**

Questions

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