



## Issue Paper

# **Congress Must Conduct Oversight of Medicare Auditors to Ensure that True Fraud Is Eliminated**

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### Issue

New audit standards employed by Medicare contractors are having the following unfair unintended consequences:

- Data regarding fraudulently paid claims is being distorted;
- Eligible Medicare beneficiaries are not receiving medically necessary and covered benefits;
- Auditors for the Centers for Medicare and Medicaid Services (CMS) misinterpret and therefore misapply Medicare rules and regulations sometimes on a retroactive basis, leading to inaccurate error rate data;
- Legitimate providers furnishing medically necessary items and services are being hurt by unjustified monetary recoupments; and
- CMS will not be able to achieve the Administration's goal of reducing the error rate until it modifies its current audit policies.

### Background

The current Medicare claims auditing strategy is expensive, inefficient, and distorts the Medicare claims error rate for durable medical equipment, prosthetics, orthotics and supplies (DMEPOS). In 2008, the Medicare DMEPOS claims error rate was approximately 9 percent. In 2009, CMS adopted new auditing criteria that resulted in a DMEPOS claims error rate of 52 percent. For 2010, the claims error rate is reported to be an astonishing 75 percent, incorrectly suggesting that three out of four Medicare DMEPOS claims are paid improperly or are the result of fraud or abuse. In reality, Medicare audit contractors are applying new documentation requirements retroactively and without notice to DMEPOS providers. As a result, contractors are unfairly recouping money from providers even though documentation substantiates medical necessity for the DMEPOS item.

The American Association for Homecare (AAHomecare) and the New England Medical Equipment Dealers (NEMED) support the use of rational and appropriate auditing strategies aimed at rooting out fraud and abuse from the Medicare program. The Associations have supported numerous legislative initiatives intended to eliminate Medicare fraud. AAHomecare also developed a 13-point anti-fraud legislative action proposal and adopted a comprehensive code of ethics. Nine of the 13 elements of the Association's anti-fraud plan have been enacted by Congress.

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However, CMS' current audit strategy targets conscientious providers who are having to refund millions of dollars to Medicare for failing to satisfy new, unwritten documentation requirements that have been imposed retroactively. This strategy is unfair, inefficient, inconsistent and administratively burdensome. The size and scope of these audits are severely taxing providers' operational and financial resources. This is especially true for providers on prepayment audits whose cash flow is drastically reduced, jeopardizing their ability to continue caring for their patients. Moreover, the current auditing strategy wastes scarce Medicare resources that could be better aimed at focusing on true criminal activity.

### **Conclusion**

AAHomecare, NEMED and their members wish to assist CMS and Congress in an effort to eliminate fraud and abuse from the Medicare DMEPOS benefit. Our interests in achieving these goals coincide with CMS' interests and those of the Medicare beneficiaries our members serve. We ask that Congress provide oversight of CMS and its auditors to ensure that fraud detection efforts are effective and do not penalize legitimate providers.

***The American Association for Homecare** represents durable medical equipment providers, manufacturers, and others in the homecare community that serve the medical needs of millions of Americans who require oxygen equipment and therapy, mobility assistive technologies, medical supplies, inhalation drug therapy, and other medical equipment and services in their homes. Members operate more than 3,000 homecare locations in all 50 states. Please visit [www.aahomecare.org/athome](http://www.aahomecare.org/athome).*

***The New England Medical Equipment Dealers Association** is the regional trade association representing providers of home medical equipment and supplies, home oxygen therapy and respiratory equipment, custom wheelchairs and assistive technology, and home infusion therapy in the six New England states. Approximately 80% of Medicare and Medicaid beneficiaries receive their home medical equipment and related services from a NEMED member. Visit [www.nemed.org](http://www.nemed.org).*

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