

113TH CONGRESS
1ST SESSION

S. 1012

To amend title XVIII of the Social Security Act to improve operations of recovery auditors under the Medicare integrity program, to increase transparency and accuracy in audits conducted by contractors, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 22, 2013

Mr. BLUNT (for himself and Mr. PRYOR) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to improve operations of recovery auditors under the Medicare integrity program, to increase transparency and accuracy in audits conducted by contractors, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Medicare Audit Improvement Act of 2013”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

- Sec. 2. Combined additional documentation request limit.
- Sec. 3. Improvement of recovery auditor operations.
- Sec. 4. Greater transparency of recovery auditor performance.
- Sec. 5. Accurate payment for rebilled claims.
- Sec. 6. Requirement for physician validation for medical necessity denials.
- Sec. 7. Assuring due process in application of guidelines for reopening and revision of determinations.

1 **SEC. 2. COMBINED ADDITIONAL DOCUMENTATION RE-**
 2 **QUEST LIMIT.**

3 (a) **ESTABLISHMENT OF LIMITS PER HOSPITAL.—**

4 The Secretary of Health and Human Services shall estab-
 5 lish a process under which the number of additional docu-
 6 mentation requests made to a hospital (as defined in sub-
 7 section (c)(3)) by Medicare contractors (as defined in sub-
 8 section (c)(1)) pursuant to prepayment and postpayment
 9 audits that require a hospital to submit a medical record
 10 for audit purposes, as required under chapter 3 of the
 11 Medicare Program Integrity Manual, or otherwise, shall
 12 be subject to a single, combined maximum limit of addi-
 13 tional documentation requests per year for the Medicare
 14 contractors specified in subsection (c)(1). However, such
 15 maximum limit shall be applied incrementally as a limit
 16 for requests for additional documentation in 45-day peri-
 17 ods during the year so that the maximum number of such
 18 requests in a 45-day period is 500 or, in the case of a
 19 hospital that receives less than \$100,000,000 in Medicare
 20 inpatient hospital payments in the previous year, 350.

21 (b) **ESTABLISHMENT OF PERCENTAGE-BASED LIM-**
 22 **ITS PER CLAIM TYPE.—**In addition to the limit estab-

1 lished under subsection (a), the Secretary shall establish
2 a distinct additional documentation request limit for each
3 hospital claim type (as defined in subsection (c)(2)) for
4 each hospital for a 45-day period in a year. For a hospital
5 for each hospital claim type for a 45-day period in a cal-
6 endar year, the additional documentation request limit
7 under this subsection for a claim type shall be 2 percent
8 of the total number of hospital discharges for such hos-
9 pital for the previous calendar year divided by 8.

10 (c) DEFINITIONS.—In this section:

11 (1) MEDICARE CONTRACTOR.—The term
12 “Medicare contractor” means any of the following:

13 (A) A Medicare administrative contractor
14 under section 1874A of the Social Security Act
15 (42 U.S.C. 1395kk), including a fiscal inter-
16 mediary and a carrier under sections 1816 and
17 1842, respectively.

18 (B) A recovery audit contractor under sec-
19 tion 1893(h) of such Act (42 U.S.C.
20 1395ddd(h)).

21 (C) A Comprehensive Error Rate Testing
22 (CERT) program contractor with a contract
23 with the Secretary of Health and Human Serv-
24 ices to review error rates under title XVIII of

1 the Social Security Act (42 U.S.C. 1395 et
2 seq.).

3 (2) HOSPITAL CLAIM TYPE.—Each of the fol-
4 lowing shall be considered a separate “hospital claim
5 type”:

6 (A) IPPS.—A claim for payment under
7 section 1886(d) of the Social Security Act (42
8 U.S.C. 1395ww(d)) made by a hospital for fur-
9 nishing inpatient hospital services.

10 (B) OUTPATIENT HOSPITAL SERVICES.—A
11 claim for payment under section 1833(t) of
12 such Act (42 U.S.C. 1395l(t)) made by a hos-
13 pital for furnishing covered OPD services.

14 (C) CAH SERVICES.—A claim for payment
15 for inpatient or outpatient critical access hos-
16 pital services, whether under section 1814(l) of
17 such Act (42 U.S.C. 1395f(l)) or under section
18 1834(g) of such Act (42 U.S.C. 1395m(g)).

19 (D) INPATIENT REHABILITATION SERV-
20 ICES.—A claim for payment under section
21 1886(j) of such Act (42 U.S.C. 1395ww(j))
22 made by a hospital for furnishing inpatient re-
23 habilitation services.

24 (E) OTHER INPATIENT SERVICES.—A
25 claim for payment under any other provision of

1 section 1886 of such Act (42 U.S.C. 1395ww)
2 made by a hospital for furnishing inpatient hos-
3 pital services, such as subsection (s) (relating to
4 inpatient hospital services furnish by a psy-
5 chiatric hospital) or subsection (m) (relating to
6 inpatient hospital services furnish by a long
7 term care hospital).

8 (F) SKILLED NURSING FACILITY SERV-
9 ICES.—A claim for payment under section
10 1888(e) of such Act (42 U.S.C. 1395yy(e))
11 made by a hospital for furnishing covered
12 skilled nursing facility services.

13 (3) HOSPITAL.—The term “hospital” means
14 the campus of a hospital (as defined in subsection
15 (e) of section 1861 of the Social Security Act (42
16 U.S.C. 1395x)) or of a psychiatric hospital (as de-
17 fined in subsection (f) of such section), a com-
18 prehensive outpatient rehabilitation facility (as de-
19 fined in subsection (cc)(2) of such section), a critical
20 access hospital (as defined in subsection (mm) of
21 such section), or a long-term care hospital (as de-
22 fined in subsection (ccc) of such section), as identi-
23 fied by the tax identification number of the hospital,
24 and includes all inpatient hospital facilities under

1 such number located in the same area as such cam-
2 pus.

3 (d) EFFECTIVE DATE.—This section takes effect on
4 the date of the enactment of this Act and shall apply with
5 respect to claims submitted for payment under title XVIII
6 of the Social Security Act for items or services furnished
7 by providers of services or suppliers on or after the first
8 day of the first month beginning 60 days after the date
9 of the enactment of this Act.

10 **SEC. 3. IMPROVEMENT OF RECOVERY AUDITOR OPER-**
11 **ATIONS.**

12 (a) RECOVERY AUDITORS.—

13 (1) IN GENERAL.—Section 1893(h) of the So-
14 cial Security Act (42 U.S.C. 1395ddd(h)) is amend-
15 ed by adding at the end the following new para-
16 graph:

17 “(10) MANDATORY TERMS AND CONDITIONS
18 UNDER CONTRACTS WITH RECOVERY AUDIT CON-
19 TRACTORS.—In addition to such other terms and
20 conditions as the Secretary may require under con-
21 tracts with recovery audit contractors under this
22 subsection with respect to a hospital, including a
23 psychiatric hospital (as defined in section 1861(f)),
24 the Secretary shall ensure each of the following re-
25 quirements are included under such contracts:

1 “(A) PENALTIES FOR CERTAIN COMPLI-
2 ANCE FAILURES.—

3 “(i) IN GENERAL.—Each such con-
4 tract shall provide for the imposition of fi-
5 nancial penalties by the Secretary under
6 such contract in the case of any recovery
7 audit contractor with respect to which the
8 Secretary determines there is a pattern of
9 failure by such contractor to meet any pro-
10 gram requirement described in clause (ii).
11 The Secretary shall establish the amount
12 of financial penalties and the periodicity
13 under which such penalties shall be im-
14 posed under this subparagraph, in no case
15 less often than annually.

16 “(ii) PROGRAM REQUIREMENT DE-
17 SCRIBED.—For purposes of this subpara-
18 graph, each of the following requirements
19 under the statement of work for a recovery
20 audit contractor constitutes a program re-
21 quirement with respect to which failure to
22 meet such requirement shall result in the
23 imposition of a financial penalty under
24 clause (i):

1 “(I) AUDIT DEADLINE.—Com-
 2 pleting a determination with respect
 3 to each audit of a hospital the recov-
 4 ery audit contractor conducts within
 5 the timeframes applicable under
 6 guidelines of the Secretary.

7 “(II) TIMELY COMMUNICA-
 8 TION.—In the case of a denial of a
 9 claim of a hospital, furnishing the
 10 hospital the required notice of the
 11 pending denial in a timely fashion
 12 consistent with claims and appeals
 13 timeframes specified in guidelines of
 14 the Secretary.

15 “(B) PENALTY FOR OVERTURNED AP-
 16 PEALS.—

17 “(i) IN GENERAL.—Each such con-
 18 tract shall require a recovery audit con-
 19 tractor to pay a fee to the prevailing party
 20 in the case of a claim denial that is over-
 21 turned on appeal.

22 “(ii) FEE AMOUNT.—The amount of
 23 the fee payable by a recovery audit con-
 24 tractor to a prevailing party under clause
 25 (i) shall be determined under a fee sched-

1 ule established by the Secretary for such
2 purpose. The amount of such fee under
3 such fee schedule shall reflect the cost in-
4 curred by a typical hospital in appealing a
5 claim denied by a recovery audit con-
6 tractor.

7 “(C) POSTPAYMENT AND PREPAYMENT AU-
8 DITS.—

9 “(i) REQUIRING FOCUS ON WIDE-
10 SPREAD PAYMENT ERRORS.—

11 “(I) IN GENERAL.—The Sec-
12 retary shall not approve the conduct
13 of a postpayment or prepayment med-
14 ical necessity audit by a recovery
15 audit contractor unless such review
16 addresses a widespread payment error
17 rate (as defined in clause (ii)).

18 “(II) CESSATION OF AUDIT.—A
19 recovery audit contractor that com-
20 mences an audit under subclause (I)
21 shall cease such audit or any similar
22 audits, if upon annual review, the ap-
23 plicable payment error rate is no
24 longer a widespread payment error
25 rate (as so defined).

1 “(ii) WIDESPREAD PAYMENT ERROR
2 RATE DEFINED.—

3 “(I) IN GENERAL.—In this sub-
4 paragraph, the term ‘widespread pay-
5 ment error rate’ means, with respect
6 to medical necessity reviews conducted
7 by a recovery audit contractor, a pay-
8 ment error rate that exceeds the rate
9 specified in subclause (II) for a par-
10 ticular medical necessity audit deter-
11 mined by the Secretary using a statis-
12 tically significant sampling of claims
13 submitted by hospitals in the jurisdic-
14 tion of the recovery audit contractor
15 and adjusted to take into account
16 claim denials overturned on appeal.

17 “(II) RATE SPECIFIED.—The
18 rate specified in this subclause is 40
19 percent, except that the Secretary
20 shall annually evaluate such rate and
21 reduce it as necessary to account for
22 changes in payment error rates with
23 the aim of continued, steady improve-
24 ment of billing practices.

1 “(D) GUIDELINES FOR PREPAYMENT RE-
2 VIEW.—

3 “(i) IN GENERAL.—A recovery audit
4 contractor may conduct prepayment review
5 only in the manner provided under prepay-
6 ment review guidelines (described in clause
7 (ii)) established by the Secretary.

8 “(ii) CONSISTENT PREPAYMENT RE-
9 VIEW GUIDELINES.—For purposes of pre-
10 payment review activities authorized under
11 this subsection and section 1874A(h) (re-
12 lating to prepayment review by medicare
13 administrative contractors), the Secretary
14 shall establish guidelines under which con-
15 sistent criteria for minimum payment error
16 rates or improper billing practices occasion
17 prepayment review by contractors under
18 this subsection and section 1874A. Such
19 guidelines shall include criteria and time-
20 frames for termination of prepayment re-
21 view.”.

22 (2) CONFORMING AMENDMENT TO APPLY FI-
23 NANCIAL PENALTIES IMPOSED ON RECOVERY CON-
24 TRACTORS TO THE TRUST FUNDS.—Section
25 1893(h)(2) of the Social Security Act (42 U.S.C.

1 1395ddd(h)(2)) is amended by inserting “, and
 2 amounts collected by the Secretary under paragraph
 3 (10)(A)(i) (relating to financial penalties for con-
 4 tractor compliance failures),” after “paragraph
 5 (1)(C)”.

6 (b) CONFORMING AMENDMENT FOR MEDICARE AD-
 7 MINISTRATIVE CONTRACTORS.—Section 1874A of the So-
 8 cial Security Act (42 U.S.C. 1395kk–1) is amended by
 9 adding at the end the following new subsection:

10 “(h) MANDATORY TERMS AND CONDITIONS UNDER
 11 CONTRACTS WITH MEDICARE ADMINISTRATIVE CON-
 12 TRACTORS.—In addition to such other terms and condi-
 13 tions as the Secretary may require under contracts with
 14 medicare administrative contractors under this section
 15 with respect to a hospital, including a psychiatric hospital
 16 (as defined in section 1861(f)), the Secretary shall ensure
 17 each of the following requirements are included under
 18 such contracts:

19 “(1) POSTPAYMENT AND PREPAYMENT AU-
 20 DITS.—

21 “(A) REQUIRING FOCUS ON WIDESPREAD
 22 PAYMENT ERRORS.—

23 “(i) IN GENERAL.—The Secretary
 24 shall not approve the conduct of a
 25 postpayment or prepayment medical neces-

1 sity audit by a medicare administrative
2 contractor unless such review addresses a
3 widespread payment error rate (as defined
4 in subparagraph (B)).

5 “(ii) CESSATION OF AUDIT.—A medi-
6 care administrative contractor that com-
7 mences an audit under clause (i) shall
8 cease such audit or any similar audits, if
9 upon annual review, the applicable pay-
10 ment error rate is no longer a widespread
11 payment error rate (as so defined).

12 “(B) WIDESPREAD PAYMENT ERROR RATE
13 DEFINED.—In this paragraph, the term ‘wide-
14 spread payment error rate’ means, with respect
15 to medical necessity reviews conducted by a
16 medicare administrative contractor, a payment
17 error rate of 40 percent or greater for a par-
18 ticular medical necessity audit determined by
19 the Secretary using a statistically significant
20 sampling of claims submitted by hospitals in
21 the jurisdiction of the medicare administrative
22 contractor and adjusted to take into account
23 claim denials overturned on appeal.

24 “(2) GUIDELINES FOR PREPAYMENT REVIEW.—

25 A medicare administrative contractor may only con-

1 duct prepayment review in the manner provided
 2 under prepayment review guidelines established by
 3 the Secretary under section 1893(h)(10)(D)(ii).”.

4 (c) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to contracts entered into or re-
 6 newed with recovery audit contractors under section
 7 1893(h) of the Social Security Act (42 U.S.C.
 8 1395ddd(h)) and medicare administrative contractors
 9 under section 1874A of the Social Security Act (42 U.S.C.
 10 1395kk–1) on or after the date of the enactment of this
 11 Act.

12 **SEC. 4. GREATER TRANSPARENCY OF RECOVERY AUDITOR**
 13 **PERFORMANCE.**

14 (a) ANNUAL PUBLICATION OF RELEVANT PERFORM-
 15 ANCE INFORMATION.—Section 1893(h) of the Social Secu-
 16 rity Act (42 U.S.C. 1395ddd(h)), as amended by section
 17 3(a), is further amended by adding at the end the fol-
 18 lowing new paragraph:

19 “(11) INFORMATION ON RECOVERY AUDIT CON-
 20 TRACTOR PERFORMANCE.—With respect to each re-
 21 covery audit contractor with a contract under this
 22 section for a contract year, the Secretary shall pub-
 23 lish on the Internet website of the Centers for Medi-
 24 care & Medicaid Services the following information

1 with respect to the performance of each such recovery
2 audit contractor:

3 “(A) PUBLICLY AVAILABLE INFORMATION
4 ON AUDIT RATES, DENIALS, AND APPEALS OUT-
5 COMES.—With respect to the performance of
6 each such recovery audit contractor during a
7 contract year, the Secretary shall post on such
8 Internet website the following information:

9 “(i) AUDITS.—The aggregate number
10 of claims audited by the recovery audit
11 contractor during the contract year in-
12 volved, as well as the number of audits of
13 each of the following audit types (each in
14 this paragraph referred to as an ‘audit
15 type’):

16 “(I) Automated.

17 “(II) Complex.

18 “(III) Medical necessity review.

19 “(IV) Part A claims.

20 “(V) Part B claims.

21 “(VI) Durable medical equipment
22 claims.

23 “(VII) Part A medical necessity.

24 “(ii) ADR REQUESTS.—The aggregate
25 number of requests for medical records, re-

1 ferred to as additional documentation re-
2 quests, for each audit type during the con-
3 tract year involved.

4 “(iii) DENIALS.—The aggregate num-
5 ber of denials for each audit type made by
6 the recovery audit contractor during the
7 contract year involved.

8 “(iv) DENIAL RATES.—The denial
9 rate of the recovery audit contractor dur-
10 ing the contract year involved for part A
11 claims, part B claims, and durable medical
12 equipment claims for each audit type dur-
13 ing the contract year involved.

14 “(v) APPEALS.—The aggregate num-
15 ber of appeals filed by providers of services
16 and suppliers with respect to denials for
17 each audit type made by the recovery audit
18 contractor during the contract year in-
19 volved.

20 “(vi) APPEALS RATES.—The aggre-
21 gate rate of appeals filed by providers of
22 services and suppliers with respect to deni-
23 als for each audit type made by the recov-
24 ery audit contractor during the contract
25 year involved.

1 “(vii) APPEALS VOLUME AND OUT-
2 COMES AT EACH OF THE 5 STAGES OF AP-
3 PEAL.—For claims denied by a recovery
4 audit contractor, the number of claims
5 during the contract year that were ap-
6 pealed by the provider, the number of con-
7 cluded appeals that did not advance to a
8 subsequent appeals stage, and the number
9 and percentage of completed appeals that
10 were decided in favor of the provider, for
11 each level of appeal as follows:

12 “(I) Reconsideration by the rel-
13 evant medicare contractor.

14 “(II) Redetermination by a quali-
15 fied independent contractor.

16 “(III) Administrative law judge
17 hearing.

18 “(IV) Medicare Appeals Council
19 review.

20 “(V) United States District
21 Court judicial review.

22 “(viii) NET DENIALS; NET DENIAL
23 RATES.—The net denials for each audit
24 type, calculated as the number of denials
25 for such audit type under clause (iii)

1 minus the number of such denials that are
2 overturned on appeal and the net denial
3 rate for each audit type, calculated in the
4 same manner as denial rates under clause
5 (iv) but subtracting from denials those de-
6 nials that are overturned on appeal.

7 “(B) PUBLIC AVAILABILITY OF INDE-
8 PENDENT PERFORMANCE EVALUATION.—The
9 Secretary shall make available on such Internet
10 website the results of any performance evalua-
11 tion with respect to each recovery audit con-
12 tractor conducted by an independent entity se-
13 lected by the Secretary for such purpose. Each
14 performance evaluation shall include in its re-
15 sults for posting on such Internet website a de-
16 termination of annual error rates of the recov-
17 ery audit contractor for each audit type and the
18 net denials and net denial rates described in
19 subparagraph (A)(viii).”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall apply to contracts entered into or re-
22 newed with recovery audit contractors under section
23 1893(h) of the Social Security Act (42 U.S.C.
24 1395ddd(h)) on or after the date of the enactment of this
25 Act.

1 **SEC. 5. ACCURATE PAYMENT FOR REBILLED CLAIMS.**

2 (a) REBILLING UNDER PART B INPATIENT CLAIMS
 3 DENIED BASED ON SITE OF SERVICE WHERE SERVICES
 4 FOUND MEDICALLY NECESSARY AT THE OUTPATIENT
 5 LEVEL.—

6 (1) RECOVERY AUDITORS.—Section 1893(h) of
 7 the Social Security Act (42 U.S.C. 1395ddd(h)), as
 8 amended by sections 3(a) and 4(a), is further
 9 amended by adding at the end the following new
 10 paragraph:

11 “(12) TREATMENT OF RESUBMISSION OF SPEC-
 12 IFIED CLAIMS AS ORIGINAL CLAIMS.—

13 “(A) TREATMENT AS ORIGINAL CLAIM.—

14 The resubmission of a specified claim (as de-
 15 fined in subparagraph (C)) shall be deemed to
 16 be an original claim for purposes of—

17 “(i) payment under part B; and

18 “(ii) provisions under this title relat-
 19 ing to—

20 “(I) the authority of a hospital to
 21 resubmit a claim for payment under
 22 the appropriate section of this title;
 23 and

24 “(II) requirements for the timely
 25 submission of claims, including under

1 sections 1814(a), 1842(b)(3), and
2 1835(a).

3 “(B) PAYMENT FOR ITEMS AND SERVICES
4 UNDER RESUBMITTED CLAIM.—Payment shall
5 be made for a specified claim resubmitted under
6 subparagraph (A) for all the items and services
7 furnished for which payment may be made
8 under part B.

9 “(C) DEFINITIONS.—In this paragraph:

10 “(i) SPECIFIED CLAIM.—

11 “(I) IN GENERAL.—The term
12 ‘specified claim’ means a claim sub-
13 mitted by a hospital for payment
14 under part A for inpatient hospital
15 services which a recovery audit con-
16 tractor (or entity adjudicating a pro-
17 vider appeal of a Medicare claim de-
18 nied payment by a recovery audit con-
19 tractor) determines, subject to sub-
20 clause (II), that the inpatient hospital
21 services were not medically necessary
22 and reasonable under section
23 1862(a)(1)(A).

24 “(II) REQUIREMENTS FOR DE-
25 TERMINATION.—A recovery audit con-

1 tractor or entity adjudicating such
 2 provider appeal shall, before com-
 3 pleting a determination described in
 4 subclause (I), assess and make a spe-
 5 cific finding as to whether the denied
 6 inpatient hospital services were medi-
 7 cally necessary and reasonable in an
 8 outpatient setting of the hospital.

9 “(ii) RESUBMISSION.—The term ‘re-
 10 submission’ includes, with respect to a
 11 specified claim of a hospital, the submis-
 12 sion by the hospital of a new claim or of
 13 an adjusted original claim.”.

14 (2) CONFORMING AMENDMENT FOR MEDICARE
 15 ADMINISTRATIVE CONTRACTORS.—Subsection (h) of
 16 section 1874A of the Social Security Act (42 U.S.C.
 17 1395kk–1), as added by section 3(b), is further
 18 amended by adding at the end the following new
 19 paragraph:

20 “(3) TREATMENT OF RESUBMISSION OF SPECI-
 21 FIED CLAIMS AS ORIGINAL CLAIMS.—

22 “(A) TREATMENT AS ORIGINAL CLAIM.—

23 The resubmission of a specified claim (as de-
 24 fined in subparagraph (C)) shall be deemed to
 25 be an original claim for purposes of—

1 “(i) payment under part B; and

2 “(ii) provisions under this title relat-
3 ing to—

4 “(I) the authority of a hospital to
5 resubmit a claim for payment under
6 the appropriate section of this title;
7 and

8 “(II) requirements for the timely
9 submission of claims, including under
10 sections 1814(a), 1842(b)(3), and
11 1835(a).

12 “(B) PAYMENT FOR ITEMS AND SERVICES
13 UNDER RESUBMITTED CLAIM.—Payment shall
14 be made for a specified claim resubmitted under
15 subparagraph (A) for all the items and services
16 furnished for which payment may be made
17 under part B.

18 “(C) DEFINITIONS.—In this paragraph:

19 “(i) SPECIFIED CLAIM.—

20 “(I) IN GENERAL.—The term
21 ‘specified claim’ means a claim sub-
22 mitted by a hospital for payment
23 under part A for inpatient hospital
24 services which a medicare administra-
25 tive contractor (or entity adjudicating

1 a hospital appeal of a Medicare claim
 2 denied payment by a medicare admin-
 3 istrative contractor) determines, sub-
 4 ject to subclause (II), that the inpa-
 5 tient hospital services were not medi-
 6 cally necessary and reasonable under
 7 section 1862(a)(1)(A).

8 “(II) REQUIREMENTS FOR DE-
 9 TERMINATION.—A medicare adminis-
 10 trative contractor or entity adjudi-
 11 cating such provider appeal shall, be-
 12 fore completing a determination de-
 13 scribed in subclause (I), assess and
 14 make a specific finding as to whether
 15 the denied inpatient hospital services
 16 were medically necessary and reason-
 17 able in an outpatient setting of the
 18 hospital.

19 “(ii) RESUBMISSION.—The term ‘re-
 20 submission’ includes, with respect to a
 21 specified claim of a hospital, the submis-
 22 sion by the hospital of a new claim or of
 23 an adjusted original claim.”.

24 (3) CONFORMING AMENDMENT FOR CERT CON-
 25 TRACTORS.—

1 (A) TREATMENT OF RESUBMISSION OF
2 SPECIFIED CLAIMS AS ORIGINAL CLAIMS.—A
3 Comprehensive Error Rate Testing (CERT)
4 program contractor with a contract with the
5 Secretary of Health and Human Services to re-
6 view error rates under title XVIII of the Social
7 Security Act (42 U.S.C. 1395 et seq.) shall
8 deem the resubmission of a specified claim (as
9 defined in subparagraph (C)) as an original
10 claim for purposes of—

11 (i) payment under part B of such title
12 XVII; and

13 (ii) provisions under such title relating
14 to—

15 (I) the authority of a hospital to
16 resubmit a claim for payment under
17 the appropriate section of such title;
18 and

19 (II) requirements for the timely
20 submission of claims, including under
21 sections 1814(a), 1842(b)(3), and
22 1835(a) of such Act (42 U.S.C.
23 1395f(a), 1395u(b)(3), and 1395n(a),
24 respectively).

1 (B) PAYMENT FOR ITEMS AND SERVICES
2 UNDER RESUBMITTED CLAIM.—Payment shall
3 be made for a specified claim resubmitted under
4 subparagraph (A) for all the items and services
5 furnished for which payment may be made
6 under part B of such title XVIII.

7 (C) DEFINITIONS.—In this paragraph:

8 (i) SPECIFIED CLAIM.—

9 (I) IN GENERAL.—The term
10 “specified claim” means a claim sub-
11 mitted by a hospital (as defined in
12 section 1861(e) of such Act (42
13 U.S.C. 1395x(e))) for payment under
14 title XVIII of such Act for inpatient
15 hospital services which a Comprehen-
16 sive Error Rate Testing (CERT) pro-
17 gram contractor (or entity adjudi-
18 cating a hospital appeal of a Medicare
19 claim denied payment by a CERT
20 program contractor) determines the
21 inpatient hospital services were not
22 medically necessary and reasonable
23 under section 1862(a)(1)(A) of such
24 Act (42 U.S.C. 1395y(a)(1)(A)).

1 (II) REQUIREMENTS FOR DETER-
2 MINATION.—A CERT program con-
3 tractor or entity adjudicating such
4 provider appeal shall, before com-
5 pleting a determination described in
6 subclause (I), assess and make a spe-
7 cific finding as to whether the denied
8 inpatient hospital services were medi-
9 cally necessary and reasonable in an
10 outpatient setting of the hospital.

11 (ii) RESUBMISSION.—The term “re-
12 submission” includes, with respect to a
13 specified claim of a hospital, the submis-
14 sion by the hospital of a new claim or of
15 an adjusted original claim.

16 (iii) EFFECTIVE DATE.—The amend-
17 ments made by paragraphs (1) and (2),
18 and the provisions of paragraph (3), shall
19 apply to contracts entered into or renewed
20 with recovery audit contractors under sec-
21 tion 1893(h) of the Social Security Act (42
22 U.S.C. 1395ddd(h)), medicare administra-
23 tive contractors under section 1874A of
24 the Social Security Act (42 U.S.C.
25 1395kk–1) and Comprehensive Error Rate

1 Testing (CERT) program contractors, re-
2 spectively, on or after the date of the en-
3 actment of this Act.

4 (b) TREATMENT OF AUDITED CLAIMS AS RE-
5 OPENED.—

6 (1) RECOVERY AUDITORS.—Section 1893(h)(4)
7 of the Social Security Act (42 U.S.C.
8 1395ddd(h)(4)) is amended by adding after and
9 below subparagraph (B) the following: “For pur-
10 poses of the ability of a hospital to resubmit a claim
11 for payment under the appropriate section of this
12 title and for purposes of requirements for the timely
13 submission of claims by hospitals, including under
14 sections 1814(a), 1842(b)(3), and 1835(a), any
15 claim that is the subject of an audit by a recovery
16 audit contractor with a contract under this section
17 shall be deemed to be a reopened claim. Such re-
18 opened claims are not subject to the timely filing
19 limitations under such sections (and related regula-
20 tions) and shall be adjusted and paid without regard
21 to such timely filing limitations.”.

22 (2) CONFORMING AMENDMENT FOR MEDICARE
23 ADMINISTRATIVE CONTRACTORS.—Section 1874A(h)
24 of the Social Security Act (42 U.S.C. 1395kk–1(h)),
25 as added by section 3(b) and as amended by sub-

1 section (a)(2), is further amended by adding at the
2 end the following new paragraph:

3 “(4) TREATMENT OF AUDITED CLAIMS AS RE-
4 OPENED.—For purposes of the ability of a hospital
5 to resubmit a claim for payment under the appro-
6 priate provisions of this title and for purposes of re-
7 quirements for the timely submission of claims by
8 hospitals, including under sections 1814(a),
9 1842(b)(3), and 1835(a), any claim that is the sub-
10 ject of an audit by a medicare administrative con-
11 tractor with a contract under this section shall be
12 deemed to be a reopened claim. Such reopened
13 claims are not subject to the timely filing limitations
14 under such sections (and related regulations) and
15 shall be adjusted and paid without regard to such
16 timely filing limitations.”.

17 (3) CONFORMING AMENDMENT FOR CERT CON-
18 TRACTORS.—

19 (A) TREATMENT OF AUDITED CLAIMS AS
20 REOPENED.—Any claim made for payment for
21 services furnished by a hospital under title
22 XVIII of the Social Security Act (42 U.S.C.
23 1395 et seq.) that is the subject of an audit by
24 a Comprehensive Error Rate Testing (CERT)
25 program contractor with a contract with the

1 Secretary of Health and Human Services shall
2 be deemed to be a reopened claim for purposes
3 of the ability of such hospital to resubmit a
4 claim for payment under the appropriate provi-
5 sions of such title XVIII and for purposes of re-
6 quirements for the timely submission of claims
7 by hospitals under such title XVIII, including
8 under sections 1814(a), 1842(b)(3), and
9 1835(a) of the Social Security Act (42 U.S.C.
10 1395f(a), 1395u(b)(3), and 1395n(a), respec-
11 tively). Such reopened claims are not subject to
12 the timely filing limitations under such sections
13 (and related regulations) and shall be adjusted
14 and paid without regard to such timely filing
15 limitations.

16 (B) DEFINITION.—In this paragraph, the
17 term “hospital” has the meaning given such
18 term in subsection (e) of section 1861 of the
19 Social Security Act (42 U.S.C. 1395x), and in-
20 cludes a psychiatric hospital as defined in sub-
21 section (f) of such section.

22 (4) EFFECTIVE DATE.—The amendments made
23 by paragraphs (1) and (2), and the provisions of
24 paragraph (3), shall take effect on the date of the

1 enactment of this Act and apply to claims subject to
2 audit on or after September 1, 2010.

3 **SEC. 6. REQUIREMENT FOR PHYSICIAN VALIDATION FOR**
4 **MEDICAL NECESSITY DENIALS.**

5 (a) RECOVERY AUDITORS.—Section 1893(h) of the
6 Social Security Act (42 U.S.C. 1395ddd(h)), as amended
7 by sections 3(a), 4(a), and 6(a)(1), is further amended by
8 adding at the end the following new paragraph:

9 “(13) PHYSICIAN VALIDATION OF MEDICAL NE-
10 CESSITY DENIALS MADE BY NON-PHYSICIAN REVIEW-
11 ERS.—

12 “(A) IN GENERAL.—Each contract under
13 this section for a recovery audit contractor shall
14 require that a physician (as defined in section
15 1861(r)(1)) review each denial of a claim for
16 medical necessity when a medical necessity re-
17 view of such claim is performed and a denial is
18 made by an employee of the contractor who is
19 not a physician (as so defined).

20 “(B) DETERMINATION; VALIDATION.—A
21 physician reviewing a claim under subparagraph
22 (A) shall—

23 “(i) make a determination whether
24 the denial of the claim under the medical

1 necessity review by the non-physician em-
2 ployee is appropriate;

3 “(ii) sign and certify such determina-
4 tion; and

5 “(iii) append such signed and certified
6 determination to the claim file.

7 “(C) TREATMENT AS MEDICALLY NEC-
8 CESSARY.—A claim with respect to which a de-
9 nial has been made as described in subpara-
10 graph (A) for which the physician determines
11 the denial is not appropriate under subpara-
12 graph (B) shall be deemed to be medically nec-
13 essary.

14 “(D) MEDICAL NECESSITY REVIEW DE-
15 FINED.—In this paragraph, the term ‘medical
16 necessity review’ means, with respect to an
17 audit of a claim of a provider of services or sup-
18 plier, a review conducted by a recovery audit
19 contractor for the purpose of determining
20 whether an item or service furnished for which
21 the claim is filed by such provider of services or
22 supplier is reasonable and necessary for the di-
23 agnosis or treatment of illness or injury under
24 section 1862(a)(1)(A).”.

1 (b) CONFORMING AMENDMENT TO MEDICARE AD-
2 MINISTRATIVE CONTRACTORS.—Subsection (h) of section
3 1874A of the Social Security Act (42 U.S.C. 1395kk–1),
4 as added by section 3(b) and as amended by subsections
5 (a)(2) and (b)(2) of section 6, is further amended by add-
6 ing at the end the following new paragraph:

7 “(5) PHYSICIAN VALIDATION OF MEDICAL NE-
8 CESSITY DENIALS MADE BY NON-PHYSICIAN REVIEW-
9 ERS.—

10 “(A) IN GENERAL.—A physician (as de-
11 fined in section 1861(r)(1)) shall review each
12 denial of a claim for medical necessity when a
13 medical necessity review of such claim is per-
14 formed and a denial is made by an employee of
15 the contractor who is not a physician (as so de-
16 fined).

17 “(B) DETERMINATION; VALIDATION.—A
18 physician reviewing a claim under subparagraph
19 (A) shall—

20 “(i) make a determination whether
21 the denial of the claim under the medical
22 necessity review by the non-physician em-
23 ployee is appropriate;

24 “(ii) sign and certify such determina-
25 tion; and

1 “(iii) append such signed and certified
2 determination to the claim file.

3 “(C) TREATMENT AS MEDICALLY NEC-
4 CESSARY.—A claim with respect to which a de-
5 nial has been made as described in subpara-
6 graph (A) for which the physician determines
7 the denial is not appropriate under subpara-
8 graph (B) shall be deemed to be medically nec-
9 essary.

10 “(D) MEDICAL NECESSITY REVIEW DE-
11 FINED.—In this paragraph, the term ‘medical
12 necessity review’ means, with respect to an
13 audit of a claim of a provider of services or sup-
14 plier, a review conducted by a medicare admin-
15 istrative contractor for the purpose of deter-
16 mining whether an item or service furnished for
17 which the claim is filed by such provider of
18 services or supplier is reasonable and necessary
19 for the diagnosis or treatment of illness or in-
20 jury under section 1862(a)(1)(A).”.

21 (c) CONFORMING REQUIREMENT FOR CERT CON-
22 TRACTORS.—

23 (1) CONTRACT REQUIREMENT FOR PHYSICIAN
24 VALIDATION OF MEDICAL NECESSITY DENIALS MADE
25 BY NON-PHYSICIAN REVIEWERS.—The Secretary of

1 Health and Human Services shall require under
2 each contract with a Comprehensive Error Rate
3 Testing (CERT) program contractor to review error
4 rates under title XVIII of the Social Security Act
5 (42 U.S.C. 1395 et seq.) that the CERT program
6 contractor ensure that a physician (as defined in
7 section 1861(r)(1) of such Act (42 U.S.C.
8 1395x(r)(1))) reviews each denial of a claim for
9 medical necessity when a medical necessity review of
10 such claim is performed and a denial is made by an
11 employee of the contractor who is not a physician
12 (as so defined).

13 (2) DETERMINATION; VALIDATION.—A physi-
14 cian reviewing a claim under paragraph (1) shall—

15 (A) make a determination whether the de-
16 nial of the claim under the medical necessity re-
17 view by the non-physician employee is appro-
18 priate;

19 (B) sign and certify such determination;
20 and

21 (C) append such signed and certified deter-
22 mination to the claim file.

23 (3) TREATMENT AS MEDICALLY NECESSARY.—

24 A claim with respect to which a denial has been
25 made as described in paragraph (1) for which the

1 physician determines the denial is not appropriate
2 under paragraph (2) shall be deemed to be medically
3 necessary.

4 (4) MEDICAL NECESSITY REVIEW DEFINED.—

5 In this subsection, the term “medical necessity re-
6 view” means, with respect to an audit of a claim of
7 a provider of services or supplier, a review conducted
8 by a CERT program contractor for the purpose of
9 determining whether an item or service furnished for
10 which the claim is filed by such provider of services
11 or supplier is reasonable and necessary for the diag-
12 nosis or treatment of illness or injury under section
13 1862(a)(1)(A) of the Social Security Act (42 U.S.C.
14 1395y(a)(1)(A)).

15 (d) EFFECTIVE DATE.—The amendments made by
16 subsections (a) and (b), and the provisions of subsection
17 (c), shall apply to contracts entered into or renewed with
18 recovery audit contractors under section 1893(h) of the
19 Social Security Act (42 U.S.C. 1395ddd(h)), medicare ad-
20 ministrative contractors under section 1874A of the Social
21 Security Act (42 U.S.C. 1395kk-1) and Comprehensive
22 Error Rate Testing (CERT) program contractors, respec-
23 tively, on or after the date of the enactment of this Act.

1 **SEC. 7. ASSURING DUE PROCESS IN APPLICATION OF**
2 **GUIDELINES FOR REOPENING AND REVISION**
3 **OF DETERMINATIONS.**

4 Section 1869(b)(1)(G) of the Social Security Act (42
5 U.S.C. 1395ff(b)(1)(G)) is amended by adding at the end
6 the following: “The Secretary’s compliance with such
7 guidelines shall be subject to administrative and judicial
8 review under this section.”.

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