

Options for Responding if Your Practice is Placed on ZPIC Prepayment Review



(September 3, 2012): Zone Program Integrity Contractors (ZPICs) have turned much of their attention to prepayment review, the process by which the Medicare contractor reviews a claim for problems before it is paid. Unlike postpayment review, ZPIC prepayment review does not have an administrative appeals process, making these types of reviews incredibly damaging for a small provider or supplier. In addition, there is no concrete method for getting off ZPIC prepayment review - it is left essentially to the discretion of the contractor. Couple this with [recent rules eliminating the time restrictions for a ZPIC](#) to keep a provider on prepayment review, and the ZPIC could theoretically maintain a prepayment review action forever.

I. Options for Handling a ZPIC Prepayment Review:

Recently, we noticed that some providers had attempted to turn to the Small Business Association (SBA) to sort out their problems with ZPICs and Medicare. While a creative option, it is not likely a solution that is going to get you very far. The [Centers for Medicare & Medicaid Services \(CMS\)](#) and its contractors are not obliged to follow the direction of the SBA or many other entities, and even if they were, there is considerable support from the public and the government regarding the prepayment review process in light of the persistent Medicare fraud from which the program suffers. Instead, there are really only two options for responding to prepayment review.

First, you could file a suit for injunctive relief against CMS. For this option, you would hire an attorney to sue the government in the hopes that a federal judge would find that the ZPIC should be restrained from continuing its prepayment review. Normally, you would need to prove at least 3 things to obtain an injunction:

- 1. a cause of action against CMS;**
- 2. a probable right to the relief sought (success on the merits); and**
- 3. an imminent, irreparable harm.**

Unfortunately, proving a cause of action against CMS or a ZPIC can be difficult, as can be proving irreparable harm (that is, something that can not be fixed with money). Just think about it - in what other industry would a consumer get to pay for something first and then find out if the product they bought it broken. But under the current Medicare system, that is exactly what is happening. The government is paying for medical services without seeing if they are legitimate until several years later. So the ZPIC prepayment review process is probably going to be upheld by a federal judge as a fair exercise of the government's right to protect its funds. Moreover, ZPIC prepayment review does not involve the destruction of property or the loss of life (although there is possibly an access argument that could exist in certain situations), and usually unless one of these two elements is present, there is not "irreparable harm." Instead, whatever harm actually does occur can be fixed with money. Because of these issues, it can be very hard, if not impossible, to successfully obtain injunctive relief. Add to this the costs and expenses associated with going to federal court, and this is not really a great option.

Second, we've developed a strategy to deal with ZPIC prepayment review based on our experience with clients who've gone through the process in the past. While this involves a lot of work and some great organizational skills, it is the only true way to get off of ZPIC prepayment review and stay off. Quite simply, you have to attempt to meet the ZPIC's demands and requirements, until you've proven to them that you've cleared up any problems associated with your claims. The process can be drawn out, especially when it takes about 4 - 6 months for the ZPIC to make a decision on your first set of claims, but once you know what problems they've identified, you can proactively address those problems so that the ZPIC cannot rely on that issue moving forward. Eventually, the ZPIC will have nothing left to criticize, and with some well-placed calls from an attorney, will likely terminate the prepayment review. The lasting benefit of this option, of course, is that your claims should be easily defensible in any administrative, civil, or criminal action that may be brought against you. Through the course of this process, it is important to engage and retain qualified health law counsel to assist and advise you on aspects of the ZPIC prepayment review and specific coding, billing, and medical necessity issues identified.

II. Final Remarks:

ZPIC prepayment review is hard because there is no proverbial "silver bullet" to end it. And the government is turning to this effective tool more and more often, as it recognizes the fiscal benefits of preserving the Medicare trust fund. Nevertheless, it can cost honest providers tremendous time, energy, and in some cases their business. ZPIC prepayment review generally cuts off the cash flow of either 30, 70, or 100% of a provider's Medicare claims as the ZPIC reviews those claims, and for most providers, this is too much to bear. Nevertheless, those providers who have a lot at stake and the resources to survive for a substantial amount of time can and do make it out of ZPIC prepayment review.

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[Robert Liles](#) counsels providers on prepayment review issues and represents clients in Medicare and Medicaid postpayment appeals. In addition, he advises clients on HIPAA compliance risks, HIPAA breach notification and implementing effective compliance plans. Robert also performs GAP analyses, internal claims reviews, and trains healthcare professionals on compliance issues. For a free consultation, call Robert today at: **1 (800) 475-1906**.