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# HHS-OIG Finds ZPICs Have Conflicts of Interest

## ZPICs May Have Conflicts of Interest



**(September 13, 2012):** Many physicians and other health care providers around the country are reeling from post-payment and pre-payment assessments conducted by Zone Program Integrity Contractors (ZPICs). As ZPIC audits are being conducted, an issue has recently arisen regarding their independence. According to a recent report issued by the [Office of Inspector General \(HHS-OIG\)](#), the independence of certain ZPIC contractors may possibly be hampered by the fact that one or more of the ZPICs had **"conflicts of interest."** According to HHS-OIG, a ZPIC **"could be in the position of evaluating work performed or associated with its own company."** For instance, one ZPIC's parent company had a contract with a Medicare Part D plan sponsor to provide technological implementation and operations. Another ZPIC's parent company owned Medicare Part C and D plans which were at work throughout the country. Another ZPIC applicant's parent company was also a Medicare Part C and D plan sponsor in the zones for which the ZPIC had submitted a proposal.

Nevertheless, HHS-OIG found that each one of these potential conflicts had in some way been **"mitigated."** This is done through screening processes and other techniques, by which those who bid on government contracts and perform the actual auditing duties of the ZPIC are not the same as those administer the company's (or parent company's) other programs. We've previously discussed some of the Medicaid contractors for various **"hot-spot"** cities, such as [Baton Rouge](#) and [Houston](#), and you might find it interesting to note that a lot of Medicaid claims processing contractors or benefit integrity contractors are companies that you will readily recognize. In fact, chances are that you have a copier or computer from one of them. Many of these large conglomerates have found that securing a bid for a Medicare or Medicaid contract can be a lucrative business, but because they are so large, there are often conflicts between the various divisions.

Looking specifically at HHS-OIG's report, the report itself does not name names. Although it does not identify which companies specifically had conflicts, it does instead note that two of the five ZPIC contracts currently awarded have **actual conflicts of interest**. This can be a scary thought -- what kinds of incentives do the people reviewing my claims for payment or denial have? Could they deny my claims for care and treatment because my practice is in a certain state or region, but pay similar claims so that their claims processing department has better numbers? Well, perhaps, but frankly that's a stretch. After defending physicians and other health care providers in more ZPIC audits than I can remember, one thing is far certain -- the ZPICs we have gone up against aren't going to let anything stand in their way from denying a claim which they believe should not have been paid. Although we may not agree with their assessment regarding the propriety of a claim, that much is certain.

## Effects on ZPIC Claim Review

At the end of the day, a ZPIC is a ZPIC and a RAC is a RAC. These Medicare contractors are designed to identify problematic claims, review them with a critical eye, and deny them if they don't meet stringent technical and medical requirements. The simple fact that the ZPIC's parent company owns other health

care operations is probably not enough to affect the judgment of individual nurses and reviewers responsible for examining your claims in connection with post-payment audits or pre-payment reviews. These individuals are trained to critically assess your documentation and make a determination whether it meets applicable coverage, coding and billing requirements. ZPIC nurses and auditors do not typically deviate from Medicare's guidelines. As a result, "close calls" almost always result in a denial. Over the years, we have worked on many cases where the ZPIC denied 100% of the claims in the sample reviewed. Moreover, ZPICs often cite multiple reasons for denying a claim, usually relying on **both** a technical aspect (missing signature/legibility) and a medical aspect (medically unnecessary service/documentation does not support the level billed). It's been our experience that a strong and thorough review of the medical records and the ZPIC's allegations can often identify legitimate arguments in support of payment, despite the fact that multiple reasons for denial may have been cited.

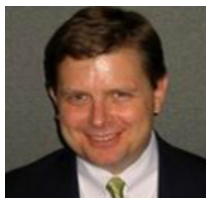
## **CMS Changes to the ZPIC Bidding Process**

As HHS-OIG's report reflects, it appears that CMS failed to adequately screen ZPICs and their subcontractors before awarding them contracts. As the report states:

***"[C]urrently, CMS does not use a written policy or standard checklist to facilitate its review of Organizational Conflict of Interest Certificates. In addition, we found no documentation showing that CMS conducted a review of some offerors' and subcontractors' certificates. In some cases, even after CMS had requested revised certificates, required conflict and financial interest information was still missing."***

In other words, it appears that CMS' efforts to pre-screen ZPICs for possible and actual conflicts were incomplete. As a result, OIG recommended that CMS develop more formal policies and procedures for reviewing conflict of interest problems and that CMS require bidders to more thoroughly note any actual or potential conflicts.

While these identified conflicts may raise questions about the accuracy of the bidding process, these discrepancies will not impact the legitimacy of any ZPIC audit you may have pending. Physicians and other health care providers must continue to take ZPIC and similar audits seriously. Although some ZPIC audits may only cover a few claims, many others may involve a statistically-relevant sample of the provider's claims where the alleged damages are ultimately extrapolated by the contractor. ZPIC audits are serious business, regardless of any findings suggesting that conflicts of interest may exist. Don't wait until the last minute -- engage qualified legal counsel to represent your practice or company in this process. When choosing legal counsel to represent you in connection with a ZPIC audit, it is **essential** that your lawyers have extensive knowledge of the process and experience representing providers in these specialized and complex administrative proceedings. Our attorneys would be happy to provide you with health care provider references who have gone through this process and exited the other side in one piece.



## **Liles Parker PLLC**

National Health Law and Business Transactions Firm

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**Robert W. Liles** represents physicians and other health care providers in Medicare post-payment / pre-payment audits and in the administrative appeals process. He also represents health care providers in similar Medicaid cases. Robert has extensive experience in health law and is often asked to speak at national conferences around the country on these issues. He assists clients with regulatory compliance issues, performs gap analyses, conducts internal reviews, and trains healthcare professionals on various legal and regulatory issues. For a free consultation, call Robert today at **1-800-475-1906**.