

**§ 476.88**

**42 CFR Ch. IV (10-1-00 Edition)**

(d) *Payment.* Medicare fiscal intermediaries and carriers are not precluded from making payment determinations with regard to coverage determinations made under paragraph (c) of this section.

(e) *Survey, compliance and assistance activities.* PRO review and monitoring activities fulfill the requirements for compliance and assistance activities of State survey agencies under section 1864(a) with respect to sections 1861(e)(6), 1861(j)(8), 1861(j)(12), and 1861(k) of the Act, and activities required of intermediaries and carriers under §§ 421.100(d) and 421.200(f) of this chapter.

(f) *Appeals.* The requirements and procedures for PRO review of changes as a result of DRG validation and the reconsideration, hearing and judicial review of PRO initial denial determinations are set forth in part 473 of this chapter.

[50 FR 15330, Apr. 17, 1985; 50 FR 41886, Oct. 16, 1985, as amended at 53 FR 6648, Mar. 2, 1988. Redesignated at 64 FR 66279, Nov. 24, 1999]

**§ 476.88 Examination of the operations and records of health care facilities and practitioners.**

(a) *Authorization to examine records.* A facility claiming Medicare payment must permit a PRO or its subcontractor to examine its operation and records (including information on charges) that are pertinent to health care services furnished to Medicare beneficiaries and are necessary for the PRO or its subcontractor to—

(1) Perform review functions including, but not limited to—

(i) DRG validation;

(ii) Outlier review in facilities under a prospective payment system; and

(iii) Implementation of corrective action and fraud and abuse prevention activities;

(2) Evaluate cases that have been identified as deviating from the PRO norms and criteria, or standards; and

(3) Evaluate the capability of the facility to perform quality review functions under a subcontract with the PRO.

(b) *Limitations on access to records.* A PRO has access to the records of non-Medicare patients if—

(1) The records relate to review performed under a non-Medicare PRO contract and if authorized by those patients in accordance with State law; or

(2) The PRO needs the records to perform its quality review responsibilities under the Act and receives authorization from the facility or practitioner.

(c) *Conditions of examination.* When examining a facility's operation or records the PRO must—

(1) Examine only those operations and records (including information on charges) required to fulfill the purposes of paragraph (a) of this section;

(2) Cooperate with agencies responsible for other examination functions under Federal or Federally assisted programs in order to minimize duplication of effort;

(3) Conduct the examinations during reasonable hours; and

(4) Maintain in its principal office written records of the results of the examination of the facility.

**§ 476.90 Lack of cooperation by a health care facility or practitioner.**

(a) If a health care facility or practitioner refuses to allow a PRO to enter and perform the duties and functions required under its contract with HCFA, the PRO may—

(1) Determine that the health care facility or practitioner has failed to comply with the requirements of § 474.30(c) of this chapter and report the matter to the HHS Inspector General; or

(2) Issue initial denial determinations for those claims it is unable to review, make the determination that financial liability will be assigned to the health care facility, and report the matter to the HHS Inspector General.

(b) If a PRO provides a facility with sufficient notice and a reasonable amount of time to respond to a request for information about a claim, and if the facility does not respond in a timely manner, the PRO will deny the claim.

**§ 476.93 Opportunity to discuss proposed initial denial determination and changes as a result of a DRG validation.**

Before a PRO reaches an initial denial determination or makes a change as a result of a DRG validation, it must—

(a) Promptly notify the provider or supplier and the patient's attending physician (or other attending health care practitioner) of the proposed determination or DRG change; and

(b) Afford an opportunity for the provider or supplier and the physician (or other attending health care practitioner) to discuss the matter with the PRO physician advisor and to explain the nature of the patient's need for health care services, including all factors which preclude treatment of the patient as an outpatient or in an alternative level of inpatient care.

**§ 476.94 Notice of PRO initial denial determination and changes as a result of a DRG validation.**

(a) *Notice of initial denial determination*—(1) *Parties to be notified.* A PRO must provide written notice of an initial denial determination to—

- (i) The patient, or if the patient is expected to be unable to comprehend the notice, the patient's next of kin, guardian or other representative or sponsor;
- (ii) The attending physician, or other attending health care practitioner;
- (iii) The facility; and
- (iv) The fiscal intermediary or carrier.

(2) *Timing of the notice.* The notice must be delivered to beneficiaries in the facility or mailed to those no longer in the facility, within the following time periods—

- (i) For admission, on the first working day after the initial denial determination;
- (ii) For continued stay (e.g., outliers in facilities under a prospective payment system), by the first working day after the initial denial determination if the beneficiary is still in the facility, and within 3 working days if the beneficiary has been discharged;
- (iii) For preprocedure review, before the procedure is performed;
- (iv) For preadmission review, before admission;
- (v) If identification as a Medicare program patient has been delayed, within three working days of identification;
- (vi) For retrospective review, (excluding DRG validation and post procedure review), within 3 working days of the initial denial determination; and

(vii) For post-procedure review, within 3 working days of the initial denial determination.

(3) *Preadmission review.* In the case of preadmission review, the PRO must document that the patient and the facility received notice of the initial denial determination.

(b) *Notice of changes as a result of a DRG validation.* The PRO must notify the provider and practitioner of changes to procedural and diagnostic information that result in a change of DRG assignment, within 30 days of the PRO's decision.

(c) *Content of the notice.* The notice must be understandable and written in plain English and must contain—

- (1) The reason for the initial denial determination or change as a result of the DRG validation;
- (2) For day outliers in hospitals, the date on which the stay or services in the facility will not be approved as being reasonable and medically necessary or appropriate to the patients' health care needs;
- (3) A statement informing each party or his or her representative of the right to request in accordance with the provisions of part 473, subpart B of this chapter—
  - (i) Review of a change resulting from DRG validation; or
  - (ii) Reconsideration of the initial denial determination;
- (4) The locations for filing a request for reconsideration or review and the time period within which a request must be filed;
- (5) A statement about who is liable for payment of the denied services under section 1879 of the Act; and
- (6) A statement concerning the duties and functions of the PRO under the Act.

(d) *Notice to payers.* The PRO must provide prompt written notice of an initial denial determination or changes as a result of a DRG validation to the Medicare fiscal intermediary or carrier within the same time periods as the notices to the other parties.

(e) *Record of initial denial determination and changes as a result of a DRG validation.* (1) The PRO must document and preserve a record of all initial denial determinations and changes as a result of DRG validations for six years