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(Original Signature of Member)

112TH CONGRESS
2D SESSION

H. R. _____

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 HOUSE OF REPRESENTATIVES

Mr. GRAVES of Missouri (for himself and Mr. SCHIFF) introduced the following bill; which was referred to the Committee on

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 2012”.

1 (b) TABLE OF CONTENTS.—The table of contents of
2 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. Restoring due process rights under the AB rebilling demonstration.
- Sec. 6. Accurate payment for rebilled claims.
- Sec. 7. Requirement for physician validation for medical necessity denials.

3 **SEC. 2. COMBINED ADDITIONAL DOCUMENTATION RE-**
4 **QUEST LIMIT.**

5 (a) ESTABLISHMENT OF ANNUAL LIMITS.—The Sec-
6 retary of Health and Human Services shall establish a
7 process under which the number of additional documenta-
8 tion requests made by a Medicare contractor (as defined
9 in subsection (b)(1)) pursuant to a complex prepayment
10 audit or complex postpayment audit under chapter 3 of
11 the Medicare Program Integrity Manual, or otherwise,
12 with respect to part A claims (as defined in subsection
13 (b)(2)) of a hospital in a year may not exceed, across all
14 such contractors with respect to such claims of such hos-
15 pital—

16 (1) 2 percent of all such claims for such year;

17 and

18 (2) 500 additional documentation requests dur-
19 ing any 45-day period.

20 (b) DEFINITIONS.—In this section:

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

1 (A) A Medicare administrative contractor
2 under section 1874A of the Social Security Act
3 (42 U.S.C. 1395kk), including a fiscal inter-
4 mediary and a carrier under sections 1816 and
5 1842, respectively.

6 (B) A recovery audit contractor, zone pro-
7 gram integrity contractor, and program safe-
8 guard or integrity contractor under section
9 1893(h) of such Act (42 U.S.C. 1395ddd(h)).

10 (C) A Comprehensive Error Rate Testing
11 (CERT) program contractor with a contract
12 with the Secretary of Health and Human Serv-
13 ices to review error rates under title XVIII of
14 the Social Security Act (42 U.S.C. 1395 et
15 seq.).

16 (2) PART A CLAIM.—The term “part A claim”
17 means a claim for payment under part A of title
18 XVIII of the Social Security Act (42 U.S.C. 1395c
19 et seq.) made by a hospital for furnishing inpatient
20 hospital services to individuals entitled to have pay-
21 ment made on their behalf under such part A for the
22 furnishing of such services.

23 (3) HOSPITAL.—The term “hospital” has the
24 meaning given such term under subsection (e) of
25 section 1861 of the Social Security Act (42 U.S.C.

1 1395x), and includes a psychiatric hospital as de-
2 fined in subsection (f) of such section. In applying
3 such definition for purposes of this section, such
4 term means the campus of the hospital, as identified
5 by the tax identification number of the hospital, and
6 includes all inpatient hospital facilities under such
7 number located in the same area.

8 (c) EFFECTIVE DATE.—This section takes effect on
9 the date of the enactment of this Act and shall apply with
10 respect to claims submitted for payment under title XVIII
11 of the Social Security Act for items or services furnished
12 by providers of services or suppliers on or after January
13 1, 2013.

14 **SEC. 3. IMPROVEMENT OF RECOVERY AUDITOR OPER-**
15 **ATIONS.**

16 (a) RECOVERY AUDITORS.—

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

21 “(10) MANDATORY TERMS AND CONDITIONS
22 UNDER CONTRACTS WITH RECOVERY AUDIT CON-
23 TRACTORS.—In addition to such other terms and
24 conditions as the Secretary may require under con-
25 tracts with recovery audit contractors under this

1 subsection with respect to a hospital, including a
2 psychiatric hospital (as defined in section 1861(f)),
3 the Secretary shall ensure each of the following re-
4 quirements are included under such contracts:

5 “(A) PENALTIES FOR CERTAIN COMPLI-
6 ANCE FAILURES.—

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

20 “(ii) PROGRAM REQUIREMENT DE-
21 SCRIBED.—For purposes of this subpara-
22 graph, each of the following requirements
23 under the statement of work for a recovery
24 audit contractor constitutes a program re-
25 quirement with respect to which failure to

1 meet such requirement shall result in the
2 imposition of a financial penalty under
3 clause (i):

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

10 “(II) TIMELY COMMUNICA-
11 TION.—In the case of a denial of a
12 claim of a hospital, furnishing the
13 hospital a demand letter in a timely
14 fashion under claims and appeals
15 timeframes applicable under guide-
16 lines of the Secretary.

17 “(B) PENALTY FOR OVERTURNED AP-
18 PEALS.—

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

24 “(ii) FEE AMOUNT.—The amount of
25 the fee payable by a recovery audit con-

1 tractor to a prevailing party under clause
2 (i) shall be determined under a fee sched-
3 ule established by the Secretary for such
4 purpose.

5 “(C) POSTPAYMENT AND PREPAYMENT AU-
6 DITS.—

7 “(i) REQUIRING FOCUS ON WIDE-
8 SPREAD PAYMENT ERRORS.—

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

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

24 “(ii) WIDESPREAD PAYMENT ERROR
25 RATE DEFINED.—

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

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

23 “(D) GUIDELINES FOR PREPAYMENT RE-
24 VIEW.—

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

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

20 (2) CONFORMING AMENDMENT TO APPLY FI-
21 NANCIAL PENALTIES IMPOSED ON RECOVERY CON-
22 TRACTORS TO THE TRUST FUNDS.—Section
23 1893(h)(2) of the Social Security Act (42 U.S.C.
24 1395ddd(h)(2)) is amended by inserting “, and
25 amounts collected by the Secretary under paragraph

1 (10)(A)(i) (relating to financial penalties for con-
2 tractor compliance failures),” after “paragraph
3 (1)(C)”.

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

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

17 “(1) POSTPAYMENT AND PREPAYMENT AU-
18 DITS.—

19 “(A) REQUIRING FOCUS ON WIDESPREAD
20 PAYMENT ERRORS.—

21 “(i) IN GENERAL.—The Secretary
22 shall not approve the conduct of a
23 postpayment or prepayment medical neces-
24 sity audit by a medicare administrative
25 contractor unless such review addresses a

1 widespread payment error rate (as defined
2 in subparagraph (B)).

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

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

22 “(2) GUIDELINES FOR PREPAYMENT REVIEW.—
23 A medicare administrative contractor may only con-
24 duct prepayment review in the manner provided

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

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

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

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

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

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

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

14 “(I) Automated.

15 “(II) Complex.

16 “(III) Medical necessity review.

17 “(IV) Part A claims.

18 “(V) Part B claims.

19 “(VI) Durable medical equipment
20 claims.

21 “(VII) Part A medical necessity.

22 “(ii) DENIALS.—The aggregate num-
23 ber of denials for each audit type made by
24 the recovery audit contractor during the
25 contract year involved.

1 “(iii) DENIAL RATES.—The denial
2 rate of the recovery audit contractor dur-
3 ing the contract year involved for part A
4 claims, part B claims, and durable medical
5 equipment claims.

6 “(iv) APPEALS.—The aggregate num-
7 ber of appeals filed by providers of services
8 and suppliers with respect to denials for
9 each audit type made by the recovery audit
10 contractor during the contract year in-
11 volved.

12 “(v) APPEALS RATES.—The aggregate
13 rate of appeals filed by providers of serv-
14 ices and suppliers with respect to denials
15 for each audit type made by the recovery
16 audit contractor during the contract year
17 involved.

18 “(vi) APPEALS OUTCOMES AT EACH
19 OF THE 5 STAGES OF APPEAL.—The out-
20 come of each appeal filed by a provider of
21 services or supplier of a denial made by a
22 recovery audit contractor at each level of
23 appeal as follows:

24 “(I) Reconsideration by the rel-
25 evant medicare contractor.

1 “(II) Redetermination by a quali-
2 fied independent contractor.

3 “(III) Administrative law judge
4 hearing.

5 “(IV) Medicare Appeals Council
6 review.

7 “(V) United States District
8 Court judicial review

9 “(vii) NET DENIALS.—The net denial
10 for each audit type, calculated as the dif-
11 ference between the number of denials for
12 such audit type under clause (ii) and the
13 number of denials for such audit type over-
14 turned on appeal.

15 “(B) PUBLIC AVAILABILITY OF INDE-
16 PENDENT PERFORMANCE EVALUATION.—The
17 Secretary shall make available on such Internet
18 website the results of any performance evalua-
19 tion with respect to each recovery audit con-
20 tractor conducted by an independent entity se-
21 lected by the Secretary for such purpose. Each
22 performance evaluation shall include in its re-
23 sults for posting on such Internet website a de-
24 termination of annual error rates of the recov-
25 ery audit contractor for each audit type and the

1 net denials described in subparagraph
2 (A)(vii).”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 subsection (a) shall apply to contracts entered into or re-
5 newed with recovery audit contractors under section
6 1893(h) of the Social Security Act (42 U.S.C.
7 1395ddd(h)) on or after the date of the enactment of this
8 Act.

9 **SEC. 5. RESTORING DUE PROCESS RIGHTS UNDER THE AB**
10 **REBILLING DEMONSTRATION.**

11 (a) **CLARIFICATION OF AVAILABILITY OF ALL AP-**
12 **PEAL RIGHTS.**—In conducting the AB Rebilling Dem-
13 onstration (as defined in subsection (b)), the Secretary of
14 Health and Human Services may not prohibit any appeal
15 from, or any form of appeal available to, a hospital with
16 respect to the inpatient hospital services furnished for
17 which payment may be made under part A of title XVIII
18 of the Social Security Act for which the claim submitted
19 by such hospital was denied as an inpatient admission by
20 a recovery auditor with a contract under section 1893(h)
21 of such Act (42 U.S.C. 1395ddd(h)) due to a finding by
22 the contractor that the inpatient admission was not rea-
23 sonable and medically necessary.

24 (b) **AB REBILLING DEMONSTRATION DEFINED.**—In
25 this section, the term “AB Rebilling Demonstration”

1 means the Medicare Part A to Part B Rebilling (AB Re-
2 billing) Demonstration conducted during calendar years
3 2012 through 2014 by the Secretary of Health and
4 Human Services through the Administrator of the Centers
5 for Medicare & Medicaid Services under which a hospital
6 with a participation agreement under the Medicare pro-
7 gram may receive 90 percent of the allowable part B pay-
8 ment for part A short-stay claims that are denied on the
9 basis that the inpatient admission was not reasonable and
10 necessary.

11 **SEC. 6. ACCURATE PAYMENT FOR REBILLED CLAIMS.**

12 (a) REBILLING UNDER PART B INPATIENT CLAIMS
13 DENIED BASED ON SITE OF SERVICE WHERE SERVICES
14 FOUND MEDICALLY NECESSARY AT THE OUTPATIENT
15 LEVEL.—

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

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

23 “(A) TREATMENT AS ORIGINAL CLAIM.—

24 The resubmission of a specified claim (as de-

1 fined in subparagraph (C)) shall be deemed to
2 be an original claim for purposes of—

3 “(i) payment under part B; and

4 “(ii) provisions under this title relat-
5 ing to—

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

10 “(II) requirements for the timely
11 submission of claims, including under
12 sections 1814(a), 1842(b)(3), and
13 1835(a).

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

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

21 “(i) SPECIFIED CLAIM.—The term
22 ‘specified claim’ means a claim submitted
23 by a hospital for payment under part A for
24 inpatient hospital services which a recovery
25 audit contractor determines—

1 “(I) the inpatient hospital serv-
2 ices were not medically necessary and
3 reasonable under section
4 1862(a)(1)(A) based on site of serv-
5 ice; and

6 “(II) the services furnished would
7 be medically necessary and reasonable
8 in an outpatient setting of the hos-
9 pital.

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

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

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

23 “(A) TREATMENT AS ORIGINAL CLAIM.—
24 The resubmission of a specified claim (as de-

1 fined in subparagraph (C)) shall be deemed to
2 be an original claim for purposes of—

3 “(i) payment under part B; and

4 “(ii) provisions under this title relat-
5 ing to—

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

10 “(II) requirements for the timely
11 submission of claims, including under
12 sections 1814(a), 1842(b)(3), and
13 1835(a).

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

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

21 “(i) SPECIFIED CLAIM.—the term
22 ‘specified claim’ means a claim submitted
23 by a hospital for payment under part A for
24 inpatient hospital services which a medi-

1 care administrative contractor deter-
2 mines—

3 “(I) the inpatient hospital serv-
4 ices were not medically necessary and
5 reasonable under section
6 1862(a)(1)(A) based on site of serv-
7 ice; and

8 “(II) the services furnished would
9 be medically necessary and reasonable
10 in an outpatient setting of the hos-
11 pital.

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

17 (3) CONFORMING REQUIREMENT FOR CERT
18 CONTRACTORS.—

19 (A) TREATMENT OF RESUBMISSION OF
20 SPECIFIED CLAIMS AS ORIGINAL CLAIMS.—A
21 Comprehensive Error Rate Testing (CERT)
22 program contractor with a contract with the
23 Secretary of Health and Human Services to re-
24 view error rates under title XVIII of the Social
25 Security Act (42 U.S.C. 1395 et seq.) shall

1 deem the resubmission of a specified claim (as
2 defined in subparagraph (C)) as an original
3 claim for purposes of—

4 (i) payment under part B of such title
5 XVII; and

6 (ii) provisions under such title relating
7 to—

8 (I) the authority of a hospital to
9 resubmit a claim for payment under
10 the appropriate section of such title;
11 and

12 (II) requirements for the timely
13 submission of claims, including under
14 sections 1814(a), 1842(b)(3), and
15 1835(a) of such Act (42 U.S.C.
16 1395f(a), 1395u(b)(3), and 1395n(a),
17 respectively).

18 (B) PAYMENT FOR ITEMS AND SERVICES
19 UNDER RESUBMITTED CLAIM.—Payment shall
20 be made for a specified claim resubmitted under
21 subparagraph (A) for all the items and services
22 furnished for which payment may be made
23 under part B of such title XVIII.

24 (C) DEFINITIONS.—In this paragraph:

1 (i) SPECIFIED CLAIM.—The term
2 “specified claim” means a claim submitted
3 by a hospital (as defined in section 1861(e)
4 of such Act (42 U.S.C. 1395x(e))) for pay-
5 ment under title XVIII of such Act for in-
6 patient hospital services which a Com-
7 prehensive Error Rate Testing (CERT)
8 program contractor determines—

9 (I) the inpatient hospital services
10 were not medically necessary and rea-
11 sonable under section 1862(a)(1)(A)
12 of such Act based on site of service;
13 and

14 (II) the services furnished would
15 be medically necessary and reasonable
16 in an outpatient setting of the hos-
17 pital.

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

23 (4) EFFECTIVE DATE.—The amendments made
24 by paragraphs (1) and (2), and the provisions of
25 paragraph (3), shall apply to contracts entered into

1 or renewed with recovery audit contractors under
2 section 1893(h) of the Social Security Act (42
3 U.S.C. 1395ddd(h)), medicare administrative con-
4 tractors under section 1874A of the Social Security
5 Act (42 U.S.C. 1395kk–1) and Comprehensive Error
6 Rate Testing (CERT) program contractors, respec-
7 tively, on or after the date of the enactment of this
8 Act.

9 (b) TREATMENT OF AUDITED CLAIMS AS RE-
10 OPENED.—

11 (1) RECOVERY AUDITORS.—Section 1893(h)(4)
12 of the Social Security Act (42 U.S.C.
13 1395ddd(h)(4)) is amended by adding after and
14 below subparagraph (B) the following:

15 “For purposes of the ability of a hospital to resub-
16 mit a claim for payment under the appropriate sec-
17 tion of this title and for purposes of requirements
18 for the timely submission of claims by hospitals, in-
19 cluding under sections 1814(a), 1842(b)(3), and
20 1835(a), any claim that is the subject of an audit
21 by a recovery audit contractor with a contract under
22 this section shall be deemed to be a reopened
23 claim.”.

24 (2) CONFORMING AMENDMENT FOR MEDICARE
25 ADMINISTRATIVE CONTRACTORS.—Section 1874A(h)

1 of the Social Security Act (42 U.S.C. 1395kk–1(h)),
2 as added by section 3(b) and as amended by sub-
3 section (a)(2), is further amended by adding at the
4 end the following new paragraph:

5 “(4) TREATMENT OF AUDITED CLAIMS AS RE-
6 OPENED.—For purposes of the ability of a hospital
7 to resubmit a claim for payment under the appro-
8 priate provisions of this title and for purposes of re-
9 quirements for the timely submission of claims by
10 hospital, including under sections 1814(a),
11 1842(b)(3), and 1835(a), any claim that is the sub-
12 ject of an audit by a medicare administrative con-
13 tractor with a contract under this section shall be
14 deemed to be a reopened claim.”.

15 (3) CONFORMING REQUIREMENT FOR CERT
16 CONTRACTORS.—

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

1 of the ability of such hospital to resubmit a
2 claim for payment under the appropriate provi-
3 sions of such title XVIII and for purposes of re-
4 quirements for the timely submission of claims
5 by hospitals under such title XVIII, including
6 under sections 1814(a), 1842(b)(3), and
7 1835(a) of the Social Security Act (42 U.S.C.
8 1395f(a), 1395u(b)(3), and 1395n(a), respec-
9 tively).

10 (B) DEFINITION.—In this paragraph, the
11 term “hospital” has the meaning given such
12 term in subsection (e) of section 1861 of the
13 Social Security Act (42 U.S.C. 1395x), and in-
14 cludes a psychiatric hospital as defined in sub-
15 section (f) of such section.

16 (4) EFFECTIVE DATE.—The amendments made
17 by paragraphs (1) and (2), and the provisions of
18 paragraph (3), shall take effect on the date of the
19 enactment of this Act and apply to claims subject to
20 audit on or after September 1, 2010.

21 **SEC. 7. REQUIREMENT FOR PHYSICIAN VALIDATION FOR**
22 **MEDICAL NECESSITY DENIALS.**

23 (a) RECOVERY AUDITORS.—Section 1893(h) of the
24 Social Security Act (42 U.S.C. 1395ddd(h)), as amended

1 by sections 3(a), 4(a), and 6(a)(1), is further amended by
2 adding at the end the following new paragraph:

3 “(13) PHYSICIAN VALIDATION OF MEDICAL NE-
4 CESSITY DENIALS MADE BY NON-PHYSICIAN REVIEW-
5 ERS.—

6 “(A) IN GENERAL.—Each contract under
7 this section for a recovery audit contractor shall
8 require that a physician (as defined in section
9 1861(r)(1)) review each denial of a claim for
10 medical necessity when a medical necessity re-
11 view of such claim is performed and a denial is
12 made by an employee of the contractor who is
13 not a physician (as so defined).

14 “(B) DETERMINATION; VALIDATION.—A
15 physician reviewing a claim under subparagraph
16 (A) shall—

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

21 “(ii) sign and certify such determina-
22 tion; and

23 “(iii) append such signed and certified
24 determination to the claim file.

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

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

19 (b) CONFORMING AMENDMENT TO MEDICARE AD-
20 MINISTRATIVE CONTRACTORS.—Subsection (h) of section
21 1874A of the Social Security Act (42 U.S.C. 1395kk–1),
22 as added by section 3(b) and as amended by subsections
23 (a)(2) and (b)(2) of section 6, is further amended by add-
24 ing at the end the following new paragraph:

1 “(5) PHYSICIAN VALIDATION OF MEDICAL NE-
2 CESSITY DENIALS MADE BY NON-PHYSICIAN REVIEW-
3 ERS.—

4 “(A) IN GENERAL.—A physician (as de-
5 fined in section 1861(r)(1)) shall review each
6 denial of a claim for medical necessity when a
7 medical necessity review of such claim is per-
8 formed and a denial is made by an employee of
9 the contractor who is not a physician (as so de-
10 fined).

11 “(B) DETERMINATION; VALIDATION.—A
12 physician reviewing a claim under subparagraph
13 (A) shall—

14 “(i) make a determination whether
15 the denial of the claim under the medical
16 necessity review by the non-physician em-
17 ployee is appropriate;

18 “(ii) sign and certify such determina-
19 tion; and

20 “(iii) append such signed and certified
21 determination to the claim file.

22 “(C) TREATMENT AS MEDICALLY NEC-
23 CESSARY.—A claim with respect to which a de-
24 nial has been made as described in subpara-
25 graph (A) for which the physician determines

1 the denial is not appropriate under subpara-
2 graph (B) shall be deemed to be medically nec-
3 essary.

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

15 (c) CONFORMING REQUIREMENT FOR CERT CON-
16 TRACTORS.—

17 (1) CONTRACT REQUIREMENT FOR PHYSICIAN
18 VALIDATION OF MEDICAL NECESSITY DENIALS MADE
19 BY NON-PHYSICIAN REVIEWERS.—The Secretary of
20 Health and Human Services shall require under
21 each contract with a Comprehensive Error Rate
22 Testing (CERT) program contractor to review error
23 rates under title XVIII of the Social Security Act
24 (42 U.S.C. 1395 et seq.) that the CERT program
25 contractor ensure that a physician (as defined in

1 section 1861(r)(1) of such Act (42 U.S.C.
2 1395x(r)(1))) reviews each denial of a claim for
3 medical necessity when a medical necessity review of
4 such claim is performed and a denial is made by an
5 employee of the contractor who is not a physician
6 (as so defined).

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

9 (A) make a determination whether the de-
10 nial of the claim under the medical necessity re-
11 view by the non-physician employee is appro-
12 priate;

13 (B) sign and certify such determination;
14 and

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

17 (3) TREATMENT AS MEDICALLY NECESSARY.—

18 A claim with respect to which a denial has been
19 made as described in paragraph (1) for which the
20 physician determines the denial is not appropriate
21 under paragraph (2) shall be deemed to be medically
22 necessary.

23 (4) MEDICAL NECESSITY REVIEW DEFINED.—

24 In this subsection, the term “medical necessity re-
25 view” means, with respect to an audit of a claim of

1 a provider of services or supplier, a review conducted
2 by a CERT program contractor for the purpose of
3 determining whether an item or service furnished for
4 which the claim is filed by such provider of services
5 or supplier is reasonable and necessary for the diag-
6 nosis or treatment of illness or injury under section
7 1862(a)(1)(A) of the Social Security Act (42 U.S.C.
8 1395y(a)(1)(A)).

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