



It is becoming more and more common for providers to receive what appear to be innocuous medical records requests from both federal and commercial payors. These requests are typically based on data analytics available to the payor that identify the provider as an outlier in some respect. Payors use the analytics to look for potential overpayment issues. Unfortunately, most providers do not understand the significance of these requests and the impact that an incomplete response can have on a future potential overpayment demand and/or possible imposition of a payment suspension by Medicare or a commercial payor.

Unified Program Integrity Contractors (UPICs), operating on behalf of Medicare, can reopen claims for good cause pursuant to [42 CFR 405.986](#). Commercial payors usually have similar contractual provisions that allow them to reopen claims or seek reimbursement of claims that the payor believes were improperly paid.

The following examples demonstrate how important an appropriate response is for medical record requests. The provider's response can result in potentially drastically different outcomes with respect to a potential resulting overpayment demand.

**Picture this:** ABC Labs receives a medical records request from XZY UPIC, one of Centers for Medicare and Medicaid Services's UPICs, which states that XZY UPIC has good cause to reopen claims pursuant to 42 CFR 405.986. XZY UPIC is requesting records for 100 claims from 70 beneficiaries for a specific date of service range.

**Scenario one:** ABC Labs is extremely busy and assigns the project to an employee in its billing department. Employee gathers the requisitions and lab reports for all 100 claims and submits the information to XZY UPIC within the deadline. Not long after, ABC Labs receives a letter stating that it is subject to a payment suspension and a pre-payment review of all claims based, at least in part, on XZY UPIC's review of the records and its determination that the claims were not reasonable and medically necessary. ABC Labs also gets notification that of the 100 claims reviewed, XZY UPIC determined that 100 percent should have been denied. Accordingly, XZY UPIC has extrapolated an overpayment amount of several million dollars to represent 100 percent of the claims submitted by ABC Labs during that date of service range.

**Scenario two:** ABC Labs contacts its health law attorney upon receipt of the request. The attorney informs ABC Labs about its obligations to maintain and produce documentation sufficient to establish medical necessity and that ABC Labs needs to reach out to each ordering physician to obtain their records as well. The attorney, alone or in conjunction with a consultant, reviews all the records to determine if attestations are required for missing signatures or if other amendments are necessary to correct insufficient documentation. With the attorney's advice, ABC Labs sends a much more robust and complete response to the medical records request. XZY UPIC makes a determination that only 10 of the 100 claims should have been denied and extrapolates that denial out to 10 percent of all the claims submitted during that date of service range and the resulting overpayment is only six figures.

Obviously, there are no guarantees that an attorney's assistance will make such a dramatic difference, but health law attorneys deal with medical records requests, payment suspensions and overpayment demands on a daily basis and typically have a wealth of experience in responding to each of these. Getting an attorney involved early can be critical for planning a course of action for responding to future notifications and demands. There is a lot of information online – for example, CMS's [Medicare Learning Network fact sheets](#) regarding medical record documentation, and a provider's attorney can help a provider navigate CMS requirements, UPIC requirements and even requirements for responding to private payors.

Additionally, it is equally important to draft a formal policy setting out the procedure for responding to medical records requests, which includes identifying personnel responsibilities and setting out who must be informed when a records request is received. Training should be implemented to ensure that the policy is adhered to each time a medical records request is received.

Regardless of whom the records request is from – federal or commercial payor – it is important for a provider to get an attorney involved as soon as it receives a medical records request from either a UPIC or commercial payor. Failure to properly and completely comply with a records request can lead to a substantial overpayment demand or other penalties.

For additional information on these important requests, please contact the attorneys below.



COURTNEY TITO

[Read More](#)



ELIZABETH SULLIVAN

**federal and commercial payor medical record requests are important dont dismiss them**

---



[Read More](#)