



Brian P. Kemp, Governor

Frank W. Berry, Commissioner

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## PUBLIC NOTICE OF PROPOSED RULE CHANGES

Pursuant to the Georgia Administrative Procedures Act, Official Code of Georgia (O.C.G.A.) § 50-13-1, et seq., the Georgia Department of Community Health is required to provide public notice of its intent to adopt, amend, or repeal certain rules other than interpretative rules or general statements of policy. Accordingly, the Department hereby provides notice of its intent to adopt the **Rules and Regulations for Statistical Sampling for Overpayment Estimates of Program Integrity Reviews, Rules & Regs., R. 111-3-11**. These changes are being proposed pursuant to the authority granted to the Department in O.C.G.A. §§ 33-21A-12 and 49-4-1. An exact copy of the revised rules and a synopsis of the revisions are attached to this public notice.

## NOTICE OF PUBLIC HEARING


An opportunity for public comment will be held on June 10, 2019 at 10:00 a.m. at the Department of Community Health (2 Peachtree St., N.W., Atlanta, GA 30303) in the 5<sup>th</sup> Floor Board Room. Oral comments may be limited to ten (10) minutes per person. Individuals who are disabled and require assistance to participate during this meeting should contact the Office of General Counsel at (404) 656-7993 at least three (3) business days prior to the meeting.

Individuals wishing to comment in writing on any of the proposed changes should do so on or before June 30, 2019. Comments may be faxed to (404) 463-5025, emailed to [vharrell@dch.ga.gov](mailto:vharrell@dch.ga.gov), or mailed to the following address:

Attention: Valerie Harrell  
Office of General Counsel  
Georgia Department of Community Health  
2 Peachtree Street, NW, 40<sup>th</sup> Floor  
Atlanta, GA 30303

Comments from written and public testimony will be provided to the Board of Community Health prior to July 11, 2019. The Board will vote on the proposed changes on July 11, 2019.

**NOTICE IS HEREBY GIVEN THIS 9<sup>th</sup> DAY OF MAY, 2019**

  
Frank W. Berry, Commissioner

**RULES OF THE  
DEPARTMENT OF COMMUNITY HEALTH  
DIVISION OF MEDICAL ASSISTANCE PLANS**

**CHAPTER 111-3-11  
RULES AND REGULATIONS FOR STATISTICAL SAMPLING FOR OVERPAYMENT  
ESTIMATES OF PROGRAM INTEGRITY REVIEWS**

**SYNOPSIS OF PROPOSED NEW RULE**

**STATEMENT OF PURPOSE:** The Georgia Department of Community Health proposes to add Chapter 111-3-11. By adding this chapter, the procedures of how to use statistical sampling shall be outlined and used consistently by the Department and/or its vendors. This change is being proposed pursuant to authority granted in O.C.G.A. §§33-21A-12 and 49-4-1.

**MAIN FEATURE OF THE PROPOSED RULE:** Outline the standards to be used when using statistical sampling on reviews.

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**111-3-11-.01 Legal Authority.**

These rules are adopted and published pursuant to the Official Code of Georgia Annotated § 33-21A-12 and § 49-4-1 et seq.

**Authority:** O.C.G.A. § 33-21A-12 and § 49-4-1, et seq.

**111-3-11-.02 Title and Purpose.**

These rules shall be known as the Rules and Regulations for Statistical Sampling for Overpayment Estimates of Program Integrity Reviews to provide for consistent oversight of statistical sampling conducted by the Department, Care Management Organizations (CMO), and other Contracted Entities.

**Authority:** O.C.G.A. § 33-21A-12 and § 49-4-142(a).

**111-3-11-.03 Definitions.**

Unless the context otherwise requires, as used in these rules the term:



(1) **Care Management Organization (CMO)** means a managed care organization that has a health maintenance organization Certificate of Authority or Consent Order issued by the Georgia Office of the Insurance and Fire Safety Commissioner, and is operating under contract with the Georgia Department of Community Health.

(2) **CMS** means the Centers for Medicare & Medicaid Services, United States Department of Health and Human Services.

(3) **Contracted Entity** means a business enterprise that has a contractual relationship with the Department or a CMO to conduct program integrity reviews or audits of providers.

(4) **Department** means the Department of Community Health (DCH).

(5) **Extrapolation Audit** means statistical sampling for overpayment estimation that projects the results of a probability sample to the universe from which the sample was drawn.

(6) **Provider** means any individual or entity furnishing Medicaid services pursuant to a provider agreement with the Department or has contracted with a CMO to provide health care services to members.

(7) **Sampling** means conducting a review on a defined universe with common characteristics. The defined universe must include the time period of the review, not to exceed the time period otherwise authorized for review.

(8) **State** means the State of Georgia, unless otherwise noted.

**Authority:** O.C.G.A. § 33-21A-12 and § 49-4-142(a).

#### **111-3-11-.04 Use of Statistical Sampling for Overpayment Estimation**

(1) DCH, CMOs, and Contracted Entities may determine the amount of overpayment made by a provider by means of a random sample and extrapolation audit. The random sample and extrapolation audit must be conducted in accordance with generally accepted statistical methods, and shall base the selection criteria on a random sampling methodology generally accepted by the statistical profession and in consultation with a statistician.

(2) Sample selection and statistical calculations are performed using RAT-STATS, SPSS, SAS, or another statistical analysis software package approved by the Department.

(3) Extrapolation may only be used if there is a determination that the level of payment error involving the provider exceeds a 10% error rate and documented education intervention has failed to correct the level of payment error. The justification for this determination must be documented prior to sampling. Acceptable justification includes, but is not limited to, (i) preliminary analysis of claims data, (ii) results of a probe sample review, or (iii) other investigative information.



(4) Overpayment estimates obtained using statistical sampling and extrapolation are based on overpayments identified within a statistically valid random sample of claims. The confidence level of the statistical sampling must be at least ninety percent (90%). Overpayments within the sample must be limited to the amount exceeding the correct reimbursement for any services rendered in accordance with applicable policy.

(5) Prior to a CMO and a Contracted Entity using extrapolation as a method of auditing claims, the CMO and Contracted entity shall obtain permission from DCH, Office of Inspector General, Program Integrity Unit.

(6) Pursuant to O.C.G.A. § 26-4-118, DCH, the CMOs, and Contracted Entities shall not use extrapolation for pharmacy claims.

**Authority: 42 § C.F.R. 455.1**

#### **111-3-11-.05 Consultation with a Statistical Expert**

The sampling methodology used by a Contracted Entity, or by DCH if projections are completed internally, to project overpayments must be reviewed by a statistician, or by a person with equivalent expertise in probability sampling and estimation methods. This review is done to ensure that a statistically valid sample is drawn and that statistically valid methods for projecting overpayments are followed. DCH and CMOs shall obtain from the statistical expert a written approval of the methodology for the type of statistical sampling to be performed.

**Authority: 42 § C.F.R. 455.1**

#### **111-3-11-.06 Appeals of the Use of Extrapolation Steps**

A provider may appeal the results of an extrapolation audit based on the accuracy of the random sampling methodology by:

- (1) presenting evidence to show that the sample used was invalid and cannot be used to project the overpayments identified in the sample to total billings for the audit period; or
- (2) within 90 days of the request for appeal, conduct an audit at the provider's expense of either:
  - (a) a valid random sample using the same random sample methodology used by DCH, or
  - (b) an audit of one hundred percent (100%) of medical records of payments received during the audit period.

**Authority: O.C.G.A. § 50-13-13.**

**111-3-11-.07 Severability.**

In the event that any rule, sentence, clause, or phrase of any of these rules and regulations may be construed by any court of competent jurisdiction to be invalid, illegal, unconstitutional, or otherwise unenforceable, such determination or adjudication shall in no manner affect the remaining rules or portions thereof. The remaining rules or portions of rules shall remain in full force and effect, as if such rule or portions thereof so determined, declared, or adjudged invalid or unconstitutional were not originally a part of these rules.

**Authority:** O.C.G.A. § 33-21A-12 and § 49-4-142(a).