

National Correct Coding Initiative
Correct Coding Solutions, LLC
A Medicare Contractor
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Carmel, IN 46082-0907
Fax: 317-571-1745

April 14, 2009

Ms. Marie Mindeman
American Medical Association
511 North State Street
Chicago, IL 60610

Dear Ms. Mindeman:

The Centers for Medicare and Medicaid Services (CMS) which owns the Medically Unlikely Edits (MUE) and determines its contents has asked us to communicate information to you about the inappropriate use of an Advanced Beneficiary Notice (ABN) with MUE denials. CMS requests that you forward a copy of this letter to all organizations that participated in the review of MUEs and that they inform their membership about this issue.

CMS stated in CR5402 (December 8, 2006): "Finally, excess charges due to units of service greater than the MUE may not be billed to the beneficiary (this is a 'provider liability'), and this provision can neither be waived nor subject to an Advanced Beneficiary Notice (ABN)."

An MUE denial is an *initial* determination based on a coding denial, not a medical necessity denial. By statute an ABN may be applied only if the *initial* determination on a claim results in a denial due to medical necessity.

If a provider appeals an MUE denial and some UOS are denied as not medically necessary, the provider should NOT apply an ABN to bill the beneficiary. An appeal is not an *initial* determination, and by statute the ABN provision only applies to the *initial* determination. The *National Correct Coding Initiative Policy Manual for Medicare Services*, version 14.3 posted on the CMS website on October 1, 2008 contained incorrect information on this issue and has been corrected.

CMS requests that your organization inform its members that they cannot utilize an ABN under any circumstance to bill a beneficiary for UOS denied due to an MUE even if the denial is upheld due to lack of medical necessity on appeal.



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CMS and we appreciate your assistance with MUE.

Sincerely,

A handwritten signature in cursive script, appearing to read "Niles R. Rosen".

Niles R. Rosen, M.D.
Medical Director
Medically Unlikely Edit Program
National Correct Coding Initiative
Correct Coding Solutions LLC
Phone: 317-571-1720

Cc: Valeria Allen, CMS COTR for NCCI/MUE
Marsha Mason-Wonsley, CMS CPT Coding Specialist
Karen O'Hara, AMA