

# Feds Move to Extend 'Never Event' Nonpayment Rules Beyond Inpatient Hospital Services

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## *Rapid Report*

The Centers for Medicare & Medicaid Services (CMS) has moved to extend the reach of Medicare's policy of non-payment for "Never Events" beyond hospital inpatient services.

On December 2, 2008, CMS issued three proposed National Coverage Determinations (NCDs). If finalized, the NCDs would prohibit Medicare from paying for any medical care necessitated by one of three types of preventable errors, namely:

- Wrong surgical or invasive procedure performed
- Surgical or invasive procedure performed on wrong body part
- Surgical or invasive procedure performed on the wrong patient

The proposed NCDs broadly define "surgical and other invasive procedures" as "operative procedures in which skin or mucous membranes and connective tissue are incised **or** an instrument is introduced through a natural body orifice." (Emphasis added)

The Inpatient Prospective Payment System final rules for fiscal years 2008 and 2009 applied the no-payment for "never events" concept to inpatient hospital services. For patients discharged on or after Oct. 1, 2008, Medicare no longer pays a higher reimbursement rate (enhanced DRG) for the hospitalization if the sole reason for the higher rates was one of a list of Hospital-Acquired Conditions ("HACs") that was acquired during the hospitalization.

While the HAC rules apply to only inpatient services, the proposed NCDs could also directly impact payment for outpatient hospital and physician services and services of other healthcare providers and suppliers involved in any of the listed types of medical errors.

Interested individuals may submit comments on the proposed NCDs to CMS until Jan. 1, 2009, and final NCDs will be issued by early March 2009. Individuals wishing to view the proposed Decision Memos for the NCDs or to comment on them can do so online by clicking on the following links:

FEDS MOVE TO EXTEND 'NEVER EVENT' NONPAYMENT RULES BEYOND INPATIENT HOSPITAL SERVICES  
Cont.

- Wrong Surgery
- Wrong Body Part
- Wrong Patient