

# Strategic Financial Planning



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## The 'Lesser of' Conundrum: Solving the Puzzle Through Payment Terms and the Chargemaster

By Jamie Cleverley and Lauree Handlon

*Evaluating the financial impact of 'lesser of' provisions requires a thorough review of contract language and how that language is applied.*

Many commercial contracts include “lesser of” language obligating healthcare providers to accept the lower of contract-ed rates or billed charges. On the surface, the language appears to be a straight forward provision. However, key differ- ences in lesser of types and applications can result in sizable payment differences for providers. Complicating the issue, contract language may not be clear about definitions or applications. Or applica- tions may differ from language described in contracts. Urgency has been placed upon hospital finance leaders to under- stand these differences to ensure appropriate payment for services. They must also understand the lesser of

provisions and develop strategies to mitigate lost revenue.

### **Understanding Types/Application of Lesser of Provisions**

When contract language says “payment is the lesser of contracted rate or charge,” without further guidance, providers may not understand how payers are going to review claims.

Lesser of provisions can be perceived in three ways:

- > Non-aggregate or line level
- > Aggregate or claim level
- > Combination of non-aggregate and aggregate

Non-aggregate or “line-level” lesser of occurs when payers compare providers’ charge amounts for a single line item per unit on claims to agreed-upon payment fees for that service code (see the first exhibit on page 2). If providers charge amounts that are below the payment fees, the charge amounts will be paid.

Aggregate or “claim-level” lesser of occurs when payers compare providers’ charge amounts for all service codes on claims (total claim charges) to agreed-upon payment fees for all service codes (total payments). If providers’ charge amounts for all items are below total payment fees for all items, the total charge amount will be paid (see the second exhibit on page 2).

Combined non-aggregate and aggregate scenarios involve payers instituting both non-aggregate and aggregate review of charges to payments, with individual

lines reviewed first. Initially, payments are determined on the lesser of, non-aggregate. Once those lesser of amounts are determined, then total payments are compared with total charges. These dual applications are rare, but they do exist and providers should be aware of them.

### Solving the Lesser of Puzzle

To solve the lesser of puzzle, hospitals and health systems need to understand the applications and implications of attempting to make lesser of situations go away. First, it is important to understand the magnitude of lost payments

from submitting charges below fee schedule amounts. Providers should determine whether the additional revenue is worth the energy and whether the potential pricing changes may have adverse affects on patient volumes.

Evaluating the financial impact requires a thorough review of contract language to determine where lesser of language is present and how the lesser of language is being applied. It is also critical to involve team members with adjudication experience because payers could process claims differently than how the contract

language reads. If it is different, that might prompt further conversations with payers.

Once the language is confirmed and the model has been built, claims can be processed to determine where charges are lower than fee amounts. At this stage, providers can determine if further action is needed or if the additional revenue is not material enough to warrant mitigation efforts. If providers decide to pursue mitigation efforts, several strategies can be employed.

## Non-aggregate Claim Example

### Non-aggregate Lesser Of

Revenue Code	HCPCS	Volume	Charge	Payment	Payment Type	Final Payment	
300	85576	1	\$50	\$100	Fee schedule item	\$50	*The charge for this line is less than the payment, so the line evokes the lesser of provision and receives the billed charge as payment.
300	86226	1	\$150	\$125	Fee schedule item	\$125	*The charge for this line is greater than the payment.
<b>Claim Totals</b>			<b>\$200</b>	<b>\$225</b>		<b>\$175</b>	*The total payment is made up of one line receiving the charge and one line receiving the payment fee.

Source: Cleverley & Associates. Used with permission.

Non-aggregate lesser of provisions require that provider charge amounts be paid if the line-level charge amounts are below the line-level payer payment fees.

## Aggregate Claim Example

### Aggregate Lesser Of

Revenue Code	HCPCS	Volume	Charge	Payment	Payment Type	Final Payment	
300	85576	1	\$50	\$100	Fee schedule item		
300	86226	1	\$150	\$125	Fee schedule item		
<b>Claim Totals</b>			<b>\$200</b>	<b>\$225</b>		<b>\$200</b>	*Total charge is less than total payment, so claim received total charges.

Source: Cleverley & Associates. Used with permission.

Aggregate lesser of provisions require that provider charge amounts be paid if the charge amounts for all service codes on a claim are below the total payer payment fees.

Combined non-aggregate and aggregate scenarios involve payers instituting both non-aggregate and aggregate review of charges to payments, with individual lines reviewed first. Initially, payments are determined on the lesser of, non-aggregate. Once those lesser of amounts are determined, then total payments are compared with total charges. These dual applications are rare, but they do exist and providers should be aware of them.

**Strategy 1: Adjusting Charge Structure—  
Primary Service Items**

Providers often immediately look to modifying charge structures to maximize payments. However, while lesser of provisions may pertain to select payers, the established charges apply to all payers. This can present challenges when lesser of language is present for highly sensitive services. Multiple potential solutions to modifying charge structures are available and some are quick fixes. However, quick fixes may create long-term detriments that greatly outweigh immediate benefits. Again, impact analyses are critical.

Non-aggregate lesser of situations are the easier of the lesser of provisions to attack. The straight forward approach would be to increase individual charges for items to the highest fee schedule with lesser of provisions. This approach may need to be reviewed for individual items because increases may result in significant changes. If the required changes in charges are perceived to be too high, the additional net revenue may not be worth the increases. In addition, providers may have several payers with the same fee amounts for a given service but with different volume utilization. A decision will need to be made to increase to the highest amount or to a different level that could potentially capture the majority of the yield but without the same level of charge increase.

The approach becomes more involved for aggregate lesser of provisions. Because the lesser of is based on the total claim charges versus the total claim payments, determining which items to increase may present challenges. For per unit payment methods (such as fee schedule only type claims), the same approach as non-aggregate can eliminate the issue if each item is increased to fee schedule or per unit payment amounts.

However, in case rate or per visit payment methods where flat rates are paid for all or most service items on claims, identifying the item or items to increase can be tricky. In the end, if providers intend to eliminate aggregate lesser of situations, then they need to consider them in a similar way to non-aggregate schedules. The example below illustrates the challenges with this method.

The primary service is an emergency department (ED) level III evaluation and management code (CPT 99283) with a case payment rate of \$1,946. Eliminating all potential lesser of claims involving this primary service code would result in a 96 percent increase in price from \$995 to \$1,946 for this particular item charge. While the provider would be assured that no lesser of provisions would be triggered, this scenario presents serious implications.

First, an increase of this magnitude could price the provider well out of market for emergency services. Second, an increase this large to a high charge volume service could actually cause a facility’s rate increase to exceed payer rate limits. In

turn, this action would trigger decreases in payment terms.

The provider may determine that the required increase to the ED visit is simply an increase of 19 percent to \$1,188.15 in order to hit the contracted rate. While this is true, it would only solve the issue for this specific claim. Because each claim is made up of different service items, only an increase to the primary driving service equal to the contracted rate will eliminate all claims from triggering the lesser of. This extreme example portrays the difficulty in completely eliminating aggregate lesser of claims.

**Strategy 2: Adjusting Charge Structure—  
All Items**

Another approach for adjusting charge structure to resolve aggregate lesser of situations involves increasing the charge amount of all items typically found on lesser of claims. By increasing the items usually associated with lesser of claims, the charge increases can be distributed across multiple items, lessening the burden presented by any one item increasing.

<b>The Impact of Increasing the Price of Primary Items Driving Aggregate ‘Lesser Of’ Provisions</b>					
<b>Item Code</b>	<b>Revenue Code for Item</b>	<b>Associated HCPCS</b>	<b>Volume</b>	<b>Charges</b>	<b>Adjusting Charge Structure—Primary Service Item</b>
ABC2640	637	A9270	1	\$3.85	\$3.85
ABC0090	320	74000	1	\$284.00	\$284.00
ABC0145	324	71010	1	\$470.00	\$470.00
ABC0181	450	99283	1	\$995.00	\$1,946.00
<b>Total Charges</b>				<b>\$1,752.85</b>	<b>\$2,703.85</b>
<b>Contracted Rate</b>				<b>\$1,946.00</b>	<b>\$1,946.00</b>

*Source: Cleverley & Associates. Used with permission.*

Increasing individual charges for items to the highest fee schedule with lesser of provisions becomes more involved for aggregate lesser of provisions. Eliminating all potential lesser of claims involving this primary service code would result in a 96 percent increase in price from \$995 to \$1,946 for this particular item charge.

In the ED primary service example above, if all items are increased by 11 percent, then this claim would meet the contracted payment rate for this particular case. The dilemma with this approach is that each claim will be different in composition so the level of increase to codes on one claim may cause charges to exceed payment but fail to do so on another. In the end, all instances of aggregate lesser of situations will not be eliminated. However, gaps can be significantly reduced. While the composition of each claim will not be the same, similarities will be present. Meaning, there likely will be codes with higher frequencies of being associated with aggregate lesser of claims. Focusing increases on those codes will help spread out the charge increases while generating additional yield.

### Strategy 3: Charge Capture Efforts

Another approach to reduce aggregate lesser of situations involves a charge capture assessment. Reviewing charge practices at the HCPCS level for market and national peers allows providers to identify charge capture opportunities and provides another method to combat aggregate lesser of situations.

To illustrate, consider again the ED case example above. For this particular case, if the provider had captured an additional amount of approximately \$200 in billable services, it would have captured the full contracted payment amount. In a review of claims history, it was found that this organization has significantly less reported utilization of certain lab tests than its market peers. If the organization is not capturing the charges for these

tests, correcting that problem would close the payment gap for this claim and many others. The key benefit of this approach is that it does not require any price increase for any services. Again, however, not all aggregate lesser of situations will be eliminated.

### Strategy 4: Contract Evaluation and Negotiation

Finally, an evaluation of contract terms and profitability can help providers determine how aggressive they want to be with mitigation efforts. For example, if the terms are comparatively generous and high profitability results from contracts, then aggressive mitigation may not be warranted. Instead, a change in conventional thinking could be in order. This approach requires providers to reinterpret the traditional understanding of the lesser of provision as many providers feel revenue is “being left on the table.” When providers are subject to the lesser of and if established payment amounts are high, the provider may be equipped to accept that payment is actually 100 percent of billed charges. In reality, this is a win for the managed care team and the organization. If current charges are covering cost with the levels of revenue to maintain operations, is receiving 100 percent of billed charges from the payer damaging?

Alternatively, if profitability is low or if there is pressure for significant price reduction, then contracts could be renegotiated. In most cases, once lesser of language has been set, providers are tied to the provisions and will need to seek ways to deal with results of the provisions.

One way to manage lesser of provision challenges is to move payment to different areas to accomplish payment neutrality or improvement. This approach is becoming more relevant in situations when providers would like to lower prices to be more market competitive but are unable to do so without dipping well below lesser of provisions.

### Achieving Advancement in the Lesser of Challenge

As a provider, whether your approach to addressing lesser of situations is changing the contract terms, accepting the provision as is with a different mind-set, or making charge changes in an attempt to eliminate the result of lesser of situations, a decision to move forward will need to be made.

Providers are not alone in this challenge. Understanding lesser of provisions is the first step, followed by a review of all possible strategies. Being armed with a complete understanding of the magnitude of the issue and the benefits and challenges associated with each strategy will help providers make informed decisions. Finally, it is unlikely one decision will solve the issue forever. Ongoing review and discussions of these critical areas will help increase net revenue while understanding market position. ☞

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