



Related MLN Matters Article #: MM3898

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MMA – Erroneous Guidance – Basis to Waive Penalty

Key Words

MM3898, CR3898, R739CP, Penalty, Waiver, 903, MMA

Provider Types Affected

Physicians, suppliers, and providers who bill Medicare and who face penalties as a result of such billings

Key Points

- The effective date of the instruction is July 24, 2003.
- The implementation date is January 19, 2006.
- Section 903 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) establishes a basis for waiving penalties and interest charges levied on providers and suppliers who incurred such penalties and/or interest as a result of following Medicare guidance, which turned out to be erroneous.
- Medicare can grant a waiver of a penalty when ALL of the following conditions are present:
 - The guidance was erroneous.
 - The guidance was issued by the Secretary of the Department of Health and Human Services or was issued by a Medicare contractor (carrier, fiscal intermediary, durable medical equipment regional carrier (DMERC) or regional home health intermediary (RHHI)) acting within the scope of the contractor's Medicare contract authority.
 - The guidance was in writing.
 - The guidance related to the furnishing of an item or service or to the submission of a claim for benefits for furnishing such item or service with respect to the provider or supplier submitting such claim.
 - The guidance was issued timely.
 - The provider or supplier accurately and fully presented the circumstances relating to such items, services, and claim to the Medicare contractor or to the Centers for Medicare & Medicaid Services (CMS), and did so in writing.

- The provider or supplier followed the guidance provided by the Medicare contractor (or by CMS).

Important Links

The related MLN Matters article can be found at

<http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM3898.pdf> on the CMS website.

The official instructions (CR3898) issued can be found at

<http://www.cms.hhs.gov/Transmittals/downloads/R739CP.pdf> on the CMS website.