

MLN Matters Number: MM3898

Related Change Request (CR) #: 3898

Related CR Release Date: November 1, 2005

Effective Date: July 24, 2003

Related CR Transmittal #: 739

Implementation Date: January 19, 2006

MMA – Erroneous Guidance – Basis to Waive Penalty

Note: This article was updated on February 15, 2013, to reflect current Web addresses. All other information remains unchanged.

Provider Types Affected

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

Provider Action Needed



STOP – Impact to You

Providers and suppliers may not be subject to a penalty if the basis for the penalty that would have otherwise been applicable was that the provider acted in accordance with erroneous guidance from the Medicare program.



CAUTION – What You Need to Know

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;

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- 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).



GO – What You Need to Do

Review CR3898 if you feel you are being subjected to a penalty for acting in accordance with erroneous guidance from the Medicare program.

Background

Section 903 © of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to as 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. **CR3898 details the conditions under which a provider or supplier may seek a waiver of a penalty due to such erroneous guidance. CR3898 does not address the waiver of interest charges.**

Additional Information

Full details of the process for seeking and obtaining a waiver can be found in Chapter 33 (Miscellaneous Hold Harmless Provisions), Section 10 (Erroneous Program Guidance: Basis to Waive Penalty) of the *Medicare Claims Processing Manual*. That material is attached to CR3898, which can be found by going to <http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R739CP.pdf> on the CMS website.

For additional information relating to this issue, please refer to your local carrier or intermediary at their toll-free number, which may be found at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/provider-compliance-interactive-map/index.html> on the CMS website.

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