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Pub 100-20 One-Time Notification	Centers for Medicare & Medicaid Services (CMS)
Executive Guidance Number 0212	Date: January 17, 2008
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PROGRAM AREA: Recoupment

SUBJECT: Limitation of Recoupment - FISS Recoupment and Claims Adjustment Process

APPLIES TO: Contractor specific

I. SUMMARY OF DOCUMENT: Section 1893(f)(2), added by Section 935(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA) requires CMS to change the way Medicare recoups certain overpayments.

II. CHANGES IN POLICY INSTRUCTIONS: (If not applicable, indicate N/A)

STATUS: R=REVISED, N=NEW, D=DELETED.

Status	CHAPTER/SECTION/SUBSECTION/TITLE
N/A	

III. CLEARANCES:

Clearance & Point of Contact (POC)	Name/Telephone/Component
Senior Official Clearance	Time Hill/410-786-5448/Director Office of Financial Management
Agency POC	Theresa Jones-Carter/410-786-7482/OFM/FSG/DMO

IV. TYPE (Check appropriate boxes for type of guidance)

	Audit Guide
X	Change Request
	HPMS
	Joint Signature Memorandum/Technical Director Letter
	Manual Transmittal/Non-Change Request
	State Medicaid Director Letters
	Other

V. STATUTORY OR REGULATORY AUTHORITY: [include the citation of what statute or regulation is being interpreted. If not applicable, indicate N/A]

Attachment – One-Time Notification

Pub. 100-20	Transmittal:	Date:	Change Request: 5873
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SUBJECT: Limitation of Recoupment - FISS Recoupment and Claims Adjustment Process

Effective Date: July 1, 2008

Implementation Date: July 7, 2008

I. GENERAL INFORMATION

A. Background: Section 1893(f)(2), added by Section 935(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), requires CMS to change the way Medicare recoups certain overpayments. Before the MMA was enacted, if a provider or supplier elected to appeal an overpayment determination, there was no effect on Medicare's ability to recover the debt. This MMA provision requires that if a provider of services or a supplier seeks a reconsideration by a qualified independent contractor (QIC) on an overpayment determination, CMS and its Medicare contractors may not recoup the overpayment until the date the decision on the reconsideration has been rendered. The QIC is the second level of appeal in the Medicare claims appeal process; the contractor redetermination is the first level of appeal. This provision does not apply to Part A cost report related overpayments. Section 1893(f)(2), the limitation on recoupment, also changed Medicare's obligation to pay interest to a provider or supplier whose appeal is successful at levels above the QIC.

On September 22, 2006, CMS published for public comment a proposed rule to implement Section 1893(f)(2). This proposed rule is not in effect and may be modified based on public comments received. However, certain features of the current claims adjustment process are incompatible with the limitation on recoupment and need to be changed to bring CMS into compliance with the final rule once published and in effect. Maximizing efficient adjustment processing of Medicare claims, the Fiscal Intermediary Standard System (FISS) currently adjusts a claim and if there are claims in the system, immediately recoups. Recovered amounts are included in the remittance advice to providers. For those Part A overpayments determined by a Medicare contractor and subject to 1893(f)(2), an alternate process is required which would enable the claims to be adjusted without immediate recoupment to allow the provider time to submit an appeal.

In addition, to the extent it is feasible and cost-effective to do so, certain new or revised overpayment recovery processes required to fully implement the limitation on recoupment should be automated. For planning and system design purposes, these changes should reflect the following approach. For Part A overpayments subject to 1893(f)(2), receipt of a timely and valid request for appeal (the contractor redetermination) triggers the limitation on recoupment. Once the contractor has determined the overpayment and adjusted the claim in the FISS system, the withholding of the overpayment will automatically be set to begin withholding 30 days from the determination date. When that day is current the withholding shall begin if the provider has not submitted an appeal for redetermination (first level of appeal). If an appeal was submitted by the provider within those 30 days the withholding will not begin. If the contractor redetermination results in a full or partial affirmation of the overpayment, contractors can begin or resume recoupment starting 60 days and no later than 75 day days after giving notice unless the provider appeals to the QIC in the interim. The contractor should cease or not begin recoupment if the QIC notifies the contractor that a valid and timely request for a reconsideration (second level appeal) has been received. Following final action by the QIC, the contractor can initiate or resume recoupment whether or not the provider subsequently appeals to the administrative law judge (ALJ) (third level of appeal). For a period of up to 60 days following final action by the QIC and resumption of recoupment, Medicare contractors should not issue a second demand letter, the intent to refer letter, nor proceed with referral

to the Department of Treasury. Interest will continue to accrue under current policies but will not be assessed when recoupment is stopped at either the redetermination or reconsideration (first and second level of appeals).

B. Policy: This CR does not constitute policy to implement the limitation on recoupment. It is one of a series of CRs that are being issued designed to fully implement section 1893(f)(2) and the final implementing regulation when published and in effect.

II. BUSINESS REQUIREMENTS TABLE

Use "Shall" to denote a mandatory requirement

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A / B M A C	D M E M A C	F I	C A R R I E R	R H I	Shared-System Maintainers				OTHER
						F I S S	M C S	V M S	C W F		
5873.1	The contractor shall identify the adjustment as applicable to the 935 process by entering a new value in a new field created by the FISS (Fiscal Intermediary Shared System) maintainers on the claim record that shall identify it as a 935 overpayment.	X		X		X					
5873.1.1	The RAC adjustment claims or other claims identified as applicable to the 935 process by the contractor are input in the core system by the contractor with the appropriate new field marked on the claim that shall identify the 935 adjustment. The claims shall finalize with the appropriate remark code and bypass timely filing edits.	X		X		X	X				
5873.2	The HIGLAS (Healthcare Integrated Ledger Accounting System) maintainers shall make separate changes to the HIGLAS system for users.										HIGLAS
5873.3	The FISS maintainer shall have a field on the claim record identifying it as a 935 adjustment and this field can be passed to HIGLAS if changes are made to the FISS/HIGLAS interface. The claims shall finalize with the appropriate remark code and bypass timely filing edits.						X				HIGLAS
5873.3.1	The 935 adjustment claim and the corresponding cancel claim shall process as normal through to the pay floor and finalize to the paid claim file.						X				
5873.4	FISS Financial System shall calculate the 935 receivable.						X				
5873.4.1	FISS shall calculate the receivable to be the difference between the original and the adjustment claims, if the original claim payment is greater than the adjustment claim.						X				
5873.4.2	The FISS financial shall create a 935 receivable based on the above determination, the receivable process shall include the HIC, DCN and DOS of the adjustment						X				

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A / B M A C	D M E M A C	F I	C A R R I E R	R H H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
	claim. If there are multiple adjustments for a provider during a single cycle separate receivables shall be created for each adjustment to accommodate the provider appealing specific claim(s).										
5873.5	The FISS maintainer shall allow for a file to be sent to the FISS ACS to create the demand letter to the provider and update the new 935 claims A/R tracking file with the demand date, HICN, DCN and claims DOS.						X				
5873.5.1	If there are multiple adjustments for a provider during a single cycle, only one demand letter shall be sent and reference all HICNs , DCNs and claims DOS.						X			HIGLAS	
5873.5.2	The FISS system shall search for all claims adjustments submitted and flagged with a reason/discovery code for all recovery audit contractor (RAC) claims adjustments and bypass the demand letter issuance to the provider (refer to CR 5494 requirement 5494.3) All other requirements shall be followed for these adjustments with the exception of the issuance of the demand letter through FISS.									HIGLAS	
5873.6	The FISS System shall process 935 adjustments through the net payment process like PIP claims (not included in the net payment calculation, provider payment).						X				
5873.6.1	An ANSI remark code shall be provided to inform the provider why payment is not being recouped during this cycle.						X				
5873.7	The FISS system shall allow for the 935 receivables to be housed under a new menu option within the Financial System Menu.						X				
5873.7.1	The new menu option shall be updated systematically for 935 adjustments and shall also allow for the manual addition of a receivable that is a result of a post-pay medical review based on statistics or other non-claim specific activity.						X				
5873.8	The contractor shall need to monitor the 935 Receivables, update the 935 tracking record with appeal date, etc.	X		X		X					
5873.9	The FISS system shall allow for when the receivable record is generated, the withholding shall automatically be set to begin withholding 30 days from the determination date. When that day is current, the withholding shall begin if an appeal date is not present						X				

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A / B M A C	D M E M A C	F I	C A R R I E R	R H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
	on the receivable tracking file. If an appeal date is present, the withholding shall not begin.										
5873.9.1	If the withholding begins and funds are withheld, then an appeal request is received, the receivables tracking file shall be updated by the contractor with the appeal date and the withholding shall automatically cease. The funds shall not be released. They shall be held until a final appeal determination unless both conditions below are met: <ul style="list-style-type: none"> a. the provider specifically requests this, and b. the contractor continued to recoup for an administratively unreasonable period of time after the date of receipt of the valid appeal request. 	X		X		X					
5873.9.2	If the receivable is being collected via withholding and for whatever reason, other than the appeal date, the contractor shall have the capability to stop the withholding activity manually.	X		X		X	X				
5873.10	The FISS system shall allow for additional demand letters to be sent as necessary based on data on the 935 A/R tracking file manually by the contractor.						X				
5873.10.1	For overpayments such as but not limited to post-pay medical review where extrapolation process includes funds not associated with a specific claim has been determined to exist current processes shall be followed to send a demand letter to the provider explaining the review and if applicable the statistical sampling methodology that was followed.						X				
5873.10.2	If during the post-pay medical review it is determined that specific claims require an adjustment, the adjustments shall be made by the contractor. Those adjustments shall follow the same process as the 935 adjustments described above. The new field on the claim record identifying the adjustment as a 935 will allow the same process to be utilized.	X		X		X					
5873.10.3	If the post-pay medical review is a result of a sampling or other method that is not based solely on specific claim activity, setting up the 935 receivable will be a manual process.	X		X		X					
5873.10.4	The demand letter process for post-pay medical reviews involving sampling shall remain a manual process since the complexity and the additional copies which may be required for other entities, such as but	X		X		X					

Number	Requirement	Responsibility (place an "X" in each applicable column)									
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							F I S S	M C S	V M S	C W F	
	not limited to CMS, RO, SME and the primary GTL may exclude them from the automated process.										
5873.11	The contractor shall create a 935 receivable which will create and update the 935 AR tracking record (new menu option) with the date of the demand letter so the withholding can begin 30 days from the date of the letter, when the demand letter is manually sent.	X		X		X					
5873.11.1	The same process shall be necessary with the post-pay as with the 935 claims in that the FI will need to monitor the 935 receivables, update the 935 tracking records with appeal dates, etc.	X		X		X					
5873.11.2	Once the receivable is generated the withholding will automatically be set to begin withholding 30 days from the determination date. When that day is current the withholding shall begin if an appeal date is not present on the receivable tracking file. If an appeal date is present the withholding will not begin.	X		X		X					
5873.11.3	If the withholding begins and funds are withheld, then an appeal request is received, the receivables tracking file shall be updated by the contractor with the appeal date and the withholding shall automatically cease. The funds shall not be released. They shall be held until a final appeal determination unless both conditions are met : <ul style="list-style-type: none"> a. the provider specifically requests this, and b. the contractor continued to recoup for an administratively unreasonable period of time after the date of receipt of the valid appeal request. 	X		X		X					
5873.11.4	If the receivable is being collected via withholding and for whatever reason, other than the appeal date, the contractor shall have the capability to stop the withholding activity.	X		X		X					
5873.12	The contractor shall send additional demand letters as necessary based on data on the 935 A/R tracking file.	X		X		X					
5873.13	The contractor shall suspend recoupment at the the first two (2) levels when notified of an appeal. It is possible for a 935 overpayment to be appealed by the first two (2) levels which are the contractor redetermination and qualified independent contractor (QIC) level.	X		X		X					
5873.13.1	At the third level, the administrative law judge (ALJ), recoupment continues without suspension	X		X		X	X				
5873.13.2	Level 1 contractor redetermination	X		X		X	X				

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							F I S S	M C S	V M S	C W F	
	<ul style="list-style-type: none"> • FISS shall send automated demand letter (excluding RAC submitted claims) • FISS shall systematically set up recoupment 30 days after the demand letter is sent if no appeal is requested and shall start accruing interest. • Notice to appeal is received; contractor shall enter date on 935 tracking record to stop recouping and allow interest to keep accruing (if more than 30 days after demand letter sent) • Notice to appeal is received; contractor shall enter date on 935 tracking record if less than 30 days from demand letter to ensure no recoupment will start. • Notification of appeal decision (upheld or partially affirmed date of notice of recalculated amount); contractor shall enter date on the 935 tracking record to start recouping again in 60 days no longer than 75 days after giving notice unless the provider appeals to the QIC in the interim. • Notification of appeal decision (overturned); contractor shall perform an adjustment to stay in line with the appeal decision, will be indicated as a 935 appeal adjustment and difference between the credit debit pair will offset the receivable. Only contractor initiated adjustments (TOB frequency = alpha) shall be allowed to adjust a 935 adjustment. If a balance is left, allow for recoupment to begin. If monies are due the provider, the contractor shall calculate interest and reimburse provider. The contractor shall need to offset any interest accrued. 										
5873.13.2.1	<p>Level 2 QIC Reconsideration</p> <ul style="list-style-type: none"> • Notice to appeal to QIC is received; stop recouping keep accruing interest • Notification of appeal decision (upheld) start recouping again 30-45 days (date entered by the contractor). 	X		X		X	X				

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							F I S S	M C S	V M S	C W F		
	<ul style="list-style-type: none"> Notification of appeal decision (overturned) contractor shall perform an adjustment to uphold appeal decision, do not show as a 935 adjustment but allow the difference between the credit debit pair offset the receivable. Only contractor initiated adjustments (TOB frequency = alpha) shall be allowed to adjust a 935 adjustment. If a balance is left, allow for recoupment to begin. If monies due the provider, the contractor shall calculate interest and reimburse provider. The contractor shall need to offset any interest accrued. 											
5873.13.2.2	<p>Level 3 ALJ</p> <ul style="list-style-type: none"> Notice to appeal to ALJ is received; the contractor shall continue recoupment and keep accruing interest. Notification of appeal decision (upheld) continue recouping funds and keep accruing interest. Notification of appeal decision (overturned) contractor shall perform an adjustment to stay in line with the appeal decision, do not show as a 935 adjustment but allow the difference between the credit debit pair offset the receivable. Only contractor initiated adjustments (TOB frequency = alpha) shall be allowed to adjust a 935 adjustment. If a balance is left, allow for recoupment to begin. If monies due the provider, the contractor shall calculate interest and reimburse provider. The contractor shall need to offset any interest accrued. 	X		X		X	X					
5873.14	The FISS maintainer shall create new field on the claim record to identify the adjustment as a 935 adjustment or a reversal based on a 935 appeal.						X					
5873.15	The FISS maintainer shall create new reason code for validity of new field values.						X					HIGLAS
5873.16	The FISS maintainer shall make changes to claims inquire/update screens to identify as a 935 adjustment.						X					
5873.17	The FISS maintainer shall add new fields to the FSSFPDCL to identify claim as a 935 adjustment and shall require changes in the FISS HIGLAS interface programs.						X					HIGLAS
5873.18	The FISS maintainer shall allow ECPS or other mass adjustment utilities to be modified to require input into						X					HIGLAS

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							F I S S	M C S	V M S	C W F	
	the new field on the claim record identifying it as a 935 overpayment.										
5873.19	The FISS maintainer shall modify operator control file for the new financial 935 menu and screens to allow read only or add/update capability for security purposes.						X				HIGLAS
5873.20	The FISS maintainer shall bypass time filing edits for all adjustments applicable to the 935 process.						X				HIGLAS
5873.21	This FISS system shall accommodate the 935 process by implementing a new batch process to allow for automated demand letters to be generated and ensure that if multiple adjustments are performed for a provider in a single cycle only one letter is sent. All the HICNs and DCNs shall be reported either in the letter or as an attachment, depending on the number of 935 adjustment claims per provider.						X				HIGLAS
5873.21.1	The new 935 A/R demand letter batch file created in the financial cycle shall be read into a new process to actually produce the 935 demand letters. The CMS shall provide detail verbiage as well requirements of data to be included in each demand letter.						X				HIGLAS
5873.22	The FISS maintainer shall add a new section to the Financial System Menu (option M) for 935 Account Receivables Menu. This new selection menu will have new options that will be set up similar to the claims account receivables.						X				HIGLAS
5873.23	The FISS maintainer shall add an option under the Financial Master Menu (for 935 Account Receivable inquiries).						X				HIGLAS
5873.23.1	The FISS maintainer shall modify the current financial cycle for 935 adjustments by determining if adjustment is a 935 adjustment and create a new 935 accounts receivable if an overpayment. A new record will also be created in the tracking file.						X				HIGLAS
5873.23.2	The FISS maintainer shall modify the current financial cycle for 935 adjustments by creating a process to handle overpayments or underpayments based on the final appeal decision.						X				HIGLAS
5873.23.3	The FISS maintainer shall modify the current financial cycle for 935 adjustments by modifying net payment process to accommodate the 'new' 935 receivables for						X				HIGLAS

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A / B M A C	D M E M A C	F I	C A R R I E R	R H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
	delayed recoupment.										
5873.23.4	The FISS maintainer shall modify the current financial cycle for 935 adjustments by updating the current withholding hierarchy process to reflect a new hierarchy for the 935 receivable.						X			HIGLA S	
5873.23.5	The FISS maintainer shall modify the current financial cycle for 935 adjustments by recouping the 935 A/R depending on hierarchy established in the intermediary control record. Each 935 receivable with outstanding balance will be interrogated to determine if recoupment is allowed. The new 935 A/R tracking file will contain the dates needed to make the recoupment determination, and if interest is to be accrued.						X			HIGLA S	
5873.23.6	The FISS maintainer shall modify the current financial cycle for 935 adjustments by developing a new process to create a 'new' batch file to interface with the ACS to create Demand Letters for new 935 accounts receivables.						X				
5873.23.7	The FISS maintainer shall modify the current financial cycle for 935 adjustments by developing a backup process for the new 935 A/R .						X				
5873.23.8	The FISS maintainer shall modify the current financial cycle for 935 adjustments by developing a purge process for new 935 A/R files.						X				
5873.23.9	The FISS maintainer shall modify the current financial cycle for 935 adjustments by modifying any previously developed 935 status processes in CR5397 to be compatible with the new 935 design.						X				
5873.23.10	The FISS maintainer shall modify the current financial cycle for 935 adjustments by developing new reports in the financial cycle for the 935 A/R.						X				
5873.24	The FISS maintainer shall create new fields and values for the remittance advice (RA).						X			HIGLA S	
5873.24.1	Electronic remittance advice (ERA) segment PLB03 composite PLB03-2 which is the reference identification will require a new value to report 935 data. A value of "935" would allow for all 935 activities						X			HIGLA S	
5873.24.2	The FISS maintainer shall modify the SPR as follows: 935 Payments (Under Payment) 935 Payments (Under Provider payment recap) 935 Withholding (Under Withhold from payment)						X			HIGLA S	
5873.25	The FISS maintainer shall supply the CMS with						X			HIGLA	

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		A / B M A C	D M E M A C	F I	C A R R I E R	R H H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
	several separate monthly reports which include: a. Value of claims b. Number of appealed claims (on all levels) c. Appeal results (on all levels)										S

III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A / B M A C	D M E M A C	F I	C A R R I E R	R H H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
	None.										

IV. SUPPORTING INFORMATION

A. For any recommendations and supporting information associated with listed requirements, use the box below:

Use "Should" to denote a recommendation.

X-Ref Requirement Number	Recommendations or other supporting information:

B. For all other recommendations and supporting information, use this space:

V. CONTACTS

Pre-Implementation Contact(s):

Theresa S. Jones-Carter
theresa.jones-carter@cms.hhs.gov
410-786-7482

Post-Implementation Contact(s):

Theresa S. Jones-Carter
theresa.jones-carter@cms.hhs.gov
410-786-7482

VI. FUNDING

Section A: For *Fiscal Intermediaries (FIs), Carriers, and Regional Home Health Carriers (RHHs)*:

No additional funding will be provided by CMS; contractor activities are to be carried out within their operating budgets.

Section B: For *Medicare Administrative Contractors (MACs)*:

The Medicare administrative contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the contracting officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the contracting officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.