

# Medicare Financial Management Manual

## Chapter 3 - Overpayments

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**NOTE:** Revision 3 includes a cross reference to the source sections in current manuals. The manual is identified by A1, A2, A3, or A4 for Intermediary Manual Parts 1 through 4; or by B1, B2, B3 or B4 for Carriers Manual Parts 1 through 4. This indicator is followed by a dash and the related section number.

## **10 - Overpayments Determined by the FI or Carrier**

**(Rev. 29, 01-02-04)**

Overpayments are Medicare payments a provider or beneficiary has received in excess of amounts due and payable under the statute and regulations. Once a determination of an overpayment has been made, the amount is a debt owed by the debtor to the United States Government.

Under the Federal Claims Collection Act of 1966, as amended, each agency of the Federal Government (pursuant to regulations jointly promulgated by the Attorney General and the Comptroller General of the U.S.) must attempt collection of claims of the Federal Government for money arising out of the activities of the agency. The FI or carrier will not be liable for overpayments it makes to debtors in the absence of fraud or gross negligence on its part, however once an intermediary or carrier determines an overpayment has been made it must attempt recovery of overpayments in accordance with CMS regulations.

The Federal Claims Collection Act requires timely and aggressive efforts to recover overpayments, including efforts to locate the debtor where necessary, demands for repayment, and establishment of repayment schedules, suspension of interim payments by intermediaries to institutional providers, and recoupment or setoff, where appropriate.

In addition, The Debt Collection Improvement Act of 1996 requires Federal agencies to refer eligible delinquent debt to a Treasury designated Debt Collection Center (DCC) for cross servicing and offset. CMS is mandated to refer all eligible debt over 180 days delinquent for cross servicing and offset.

This chapter deals with two general types of overpayments.

Aggregate overpayments involve a group or all of a Part A provider's claims, e.g., overpayments discovered at cost-report settlement time or change of FI, overpayments resulting from a pattern of improper application of Medicare coverage provisions, overpayments resulting from a periodic interim payment adjustment, situations involving provider failure to file a cost report, or occasions of fraud or program abuse. Aggregate overpayments are described in §10.1, §20 and §30 of this chapter and Chapter 4, Debt Collection.

Individual overpayments refer to incorrect claims payment for services under Part A or Part B. Individual overpayments are described in §10.2, §80ff and Chapter 4, Debt Collection. Medicare Secondary Payer (MSP) instructions can be found in the Medicare Secondary Payer Manual, CMS Publication 100-5.

### **10.1 - Aggregate Overpayments**

**(Rev. 29, 01-02-04)**

#### **A. Stitutional Providers Serviced By Fis**

Aggregate overpayments to providers (overpayments arising in other than individual cases) may occur by:

- A pattern of furnishing and billing for excessive or noncovered services (see Program Integrity Manual);
- Inclusion of non-allowable or excessive costs in the provider's cost report;
- Excessive interim payments made to the provider;
- Failure to repay accelerated payments;
- Failure to file cost reports (Chapter 3, §30);or
- Determination of amounts due upon filing the cost report, during desk review, final settlement and reopening of the cost report.

### **10.2 - Individual Overpayments**

**(Rev. 29, 01-02-04)**

An individual overpayment is an incorrect payment for provider or physician services made under title XVIII.

Examples of individual overpayment cases are:

- Payment for provider, supplier or physician services after benefits have been exhausted, or where the individual was not entitled to benefits.
- Incorrect application of the deductible or coinsurance.
- Payment for noncovered items and services, including medically unnecessary services or custodial care furnished an individual.
- Payment based on a charge that exceeds the reasonable charge.
- Duplicate processing of charges/claims.
- Payment to a physician on a non-assigned claim or to a beneficiary on an assigned claim. (Payment made to wrong payee.)
- Primary payment for items or services for which another entity is the primary payer
- Payment for items or services rendered during a period of non-entitlement.

## **20 - Recovery of Cost Report Overpayments- Cost Report Filed** **(Rev. 29, 01-02-04)**

Providers of services under Part A of the Medicare program are normally required to submit a cost report. A cost report must be submitted for each cost reporting year or upon termination of the Medicare agreement.

### **20.1 - Part A Provider is Participating in Medicare and Medicaid** **(Rev. 29, 01-02-04)**

When the provider files a cost report indicating an overpayment, a final determination is deemed to have occurred if the cost report is not accompanied by payment in full. Where the provider does not remit the overpayment in full, the FI sends the first demand letter notifying the provider that it will reduce or suspend interim payments in 15 days if the provider does not make repayment arrangements.

If an overpayment is determined as a result of a tentative settlement, final settlement, interim rate adjustment, or reopening the FI sends the first demand letter within 7 calendar days. (See Chapter 4, §20)

When the Notice of Program Reimbursement (NPR), which is sent at the conclusion of an audit, results in an overpayment a first demand letter must also be sent. The NPR and the first demand letter may be sent simultaneously, the first demand letter may be sent as a separate document or the first demand letter may be incorporated into the NPR. If the issuance of the NPR changes the facts as stated in prior demand letters, the FI shall include in the NPR an explanation of the revised overpayment amount.

See Chapter 4, §40 to determine if the overpayment requires a withhold of payments.

If the provider does not respond within 30 days after the date of the first demand letter, the FI sends a second demand letter notifying the provider of the FI's intent to recoup the overpayment from interim payments. (If the current percentage of withhold is less than 100%, the demand letter shall state that interim payments will be withhold at 100% in 30 days if repayment arrangements are not made.) If appropriate, the FI shall advise the provider that action to withhold its Federal share of Medicaid payments has been requested. The FI shall attempt to make personal (or telephone contact) with the provider, 15 days after sending the second demand letter to encourage either a lump-sum refund or a request for an extended repayment plan. It shall document each contact. (See Chapter 4, §10-20)

If there is no response or if the overpayment is still outstanding 30 days after the date of the second demand letter the FI shall send a third demand letter. If eligible, the third demand letter shall include notification of the intent to refer the entire debt to the Department of Treasury for additional collection action. (See Chapter 4, §20)

## **20.2 - Provider is No Longer Participating in Medicare and Not Participating in Medicaid** (Rev. 29, 01-02-04)

If the FI becomes aware that there is an imminent likelihood that a provider will be terminating from the Medicare program it shall contact the RO with regard to future collection efforts.

If the FI discovers an overpayment upon the filing of a cost report, or on determination of program reimbursement, with respect to a provider no longer participating in Medicare, it shall immediately contact the terminated provider to obtain a refund in a lump-sum, if it has not been made.

The first demand letter shall be sent and all subsequent collection activities performed as specified in §20.1 and Chapter 4, §10-20.

If the terminated provider has sold the entity to a participating provider refer to Chapter 3, §130 for change of ownership instructions.

## **20.3 - Provider is No Longer Participating in Medicare But Is Participating in Medicaid** (Rev. 29, 01-02-04)

If the FI discovers an overpayment upon the filing of a cost report, or on determination of the amount of program reimbursement for a former Medicare provider that is still participating in Medicaid, it shall immediately contact the provider to obtain a refund in a lump sum, if it has not been made.

The first demand letter shall be sent and all subsequent collection activities performed as specified in §20.1 and Chapter 4, §10-20.

The first demand letter must provide notice (See Chapter 4, §10-20 and §60) that action to withhold its Federal share of Medicaid payments will be requested if repayment arrangements are not made within 15 days of the date of this notice. The second demand letter must provide notice that action to withhold its Federal share of Medicaid payments has been requested and will be initiated if repayment arrangements are not made. The FI shall send the third demand letter 30 days following the second where the provider has not responded, even though procedures for withholding the Federal share of payments in title XIX have been initiated, so that if recoupment efforts and withholding of Medicaid funds are not effective, the case will be ready for referral to the Department of Treasury.

If the terminated provider has sold the entity to a participating provider refer to Chapter 3, §130 for change of ownership instructions.

## **30 - Recovery of Cost Report Overpayments - Overdue Cost Report** (Rev. 29, 01-02-04)

When a provider fails to submit a cost report by the due date the FI shall take recovery action to notify the provider that submission of the cost report is required and that additional collection action will continue until an acceptable cost report is submitted.

### **30.1 - Provider is Participating in Medicare and Medicaid** (Rev. 29, 01-02-04)

#### **A. General**

For a participating provider, the cost report required for each cost report period is due on or before the last day of the fifth month following the end of that particular cost report period. For cost reports ending on a day other than the last day of the month, cost reports are due 150 days after the last day of the cost reporting period.

If no cost report has been received by the seventh day after the due date (including extensions), the FI must send the first demand letter in Chapter 4, §20. (The seven-day timeframe allows for processing and mail

time.) In addition the FI must initiate 100% suspension of all Medicare payments on day seven if the cost report has not been received, an extension request has not been received and approved or a reduction in the rate of suspension has not been approved. (See Chapter, )

If the provider does not respond within 30 days of the first demand letter, the FI shall send the second demand letter. (See Chapter 4, §20)

**The FI shall make a personal (or telephone) contact with the provider 15 days after mailing the second demand letter. It shall determine any problems the provider might be having in preparing the cost report, and if, and when, the provider expects to complete and submit it. It shall document the provider's response.**

If the provider does not respond within 30 days of the second demand letter, the FI shall send the third demand letter. (See Chapter 4, §20)

### **30.2.-.Provider is No Longer Participating in Medicare and Not Participating in Medicaid**

### **30.3 - Provider is No Longer Participating in Medicare But is Participating in Medicaid: One or More Cost Reports Not Filed**

(Rev. 29, 01-02-04)

**Where a provider's agreement under title XVIII has terminated and one or more cost reports have not been submitted the FI shall send the first demand letter. Requirements for this letter are in Chapter 4, §20. Since this situation involves not only a terminated provider but a provider that has failed to meet the basic obligation (submission of a cost report) for the period when it did participate, the first demand letter provides notice that initiation of the procedure for withholding the Federal share of Medicaid payments will begin in 15 days if the FI does not receive the cost report.**

The FI shall continue sending demand letters to the provider. (Chapter 4, §20 for the requirements for the second and third demand letters) The demand letters must be sent at 30-day intervals where the provider has not responded even though the procedures for withholding the Federal share of Medicaid payments have been initiated.) This must be done so that if recoupment efforts and the withholding of Medicaid payments are not effective, the case will be ready for referral to the Department of Treasury.

## **40 – Recovery of Claims Accounts Receivables from the Provider - FI**

(Rev. 29, 01-02-04)

Intermediary claims A/R arises from adjustments in the intermediary's claim processing systems (this type of adjustment may also be referred to as a carryover adjustment). Some of the reasons these adjustments occur include the duplicative processing of a claim, payment of a claim at the wrong Diagnostic Related Group (DRG) rate, a request from a provider, a determination by the intermediary that an adjustment was required, or an adjustment created from a credit balance report, CMS-838. These adjustments are normally recovered through the recoupment of future claims and the recovered amounts are included in the remittance advices to the providers. For additional information see Chapter 4, §70.15.2.

### **40.1 – Demand Letter Contents**

(Rev. 29, 01-02-04)

The FI will demand an overpayment resulting from a claims adjustment if the claims adjustment has had no recoupment in the past 60 days.

The demand letter must include the following information:

- That an overpayment was made;
- That interest will begin to accrue if the overpayment is not paid in full within 30 days;
- The name and HI number of the beneficiary involved;
- The dates and types of services for which the overpayment was made to include sufficient information for the provider to identify the overpayment;



- How the overpayment was calculated;
- Why it is liable for recovery of overpayment (i.e., the reasons for finding the provider at fault);
- That recoupment of the overpayment from all available payments is occurring;
- A reference to the Appeals rights in the remittance advice;

**40.2- Sample Demand Letter for Claims Accounts Receivables**  
**(Rev. 41, 04-30-04)**

Below is a sample demand letter that FIs may use when demanding Claims Accounts Receivables. The Extended Repayment Plan enclosure can be found at Chapter 4, §20, Exhibit 2.

Date

Certified Mail

Name/Address

Re: Provider Number  
 Claims Accounts Receivable

Dear \_\_\_\_\_:

On \_\_\_\_\_, a claim adjustment was entered in our system under provider \_\_\_\_\_ for \$\_\_\_\_\_. Since then, adjustments were made to the claim and a balance in the amount of \$\_\_\_\_\_ has been outstanding for 60 days. As this amount has not been recouped through claims submission, the purpose of our letter is to request that this amount be repaid to our office. For your reference, a copy of the Claims Accounts Receivable Transaction Summary is enclosed. (Insert the name of the detailed summary report enclosed. This report should include sufficient information needed by the provider to identify the overpayment).

Submit your check payable to \_\_\_\_\_, to the following address:

In order to ensure that your check is credited to this overpayment, please enclose a copy of this letter with your payment.

Until payment in full is received or an acceptable extended repayment request is received all payments due to you are being withheld. (This includes claims, settlement amounts, or interim payments.) If you have reason to believe that withhold should cease you must notify our office before \_\_\_\_\_ and provide documentation as to why this withholding action should not continue. We will review your documentation, but will not delay recoupment during the review process. This is not an appeal of the overpayment determination.

In addition, in accordance with 42 C.F.R. §405.378, simple interest at the rate of \_\_\_\_% will be charged on the unpaid balance of the overpayment, beginning on the 31<sup>st</sup> day. Interest is calculated in 30-day periods and is assessed for each full 30-day period that payment is not made on time. Thus, if payment is received 31 days from the date of this letter, one 30-day period of interest will be charged. Each payment will be applied first to accrued interest and the remaining amount to principal.

Additional interest of \$\_\_\_ will be assessed against the principal balance on \_\_\_\_\_ and will continue to assess at the rate of \_\_\_\_% a year for each 30-day period the principal amount remains unpaid. In addition, please note that Medicare rules require that payment be either received in our office by \_\_\_ or United States Postal Service postmarked by that date in order for the payment to be considered timely. A metered mail postmark received in our office after \_\_\_ will cause an additional month's interest to be assessed on the debt.

We request that you refund this amount in full. If you are unable to make refund of the entire amount at this time, please advise our office immediately so that we may determine if you are eligible for a repayment schedule (See enclosure for details). Any repayment schedule (where one is approved) would run from the date of this letter. If we do not hear from you, your interim payments will continue to be withheld and applied towards the outstanding overpayment balance. Any amount withheld will not be refunded.

If you feel you have reason to appeal this adjustment, please refer to the original remittance advice dated \_\_\_\_\_ for additional instruction.

If you have filed a bankruptcy petition or are involved in a bankruptcy proceeding, Medicare financial obligations will be resolved in accordance with the applicable bankruptcy process. Accordingly, we request that you immediately notify us about this bankruptcy so that we may coordinate with both the Centers for Medicare & Medicaid Services and the Department of Justice so as to assure that we handle your situation properly. If possible, when notifying us about the bankruptcy, please include the name the bankruptcy was filed under and the district where the bankruptcy is filed.

If you have a question regarding why these adjustments were made, please contact our \_\_\_\_\_ at \_\_\_\_\_. If we can assist you further in the resolution of this matter, we will be glad to do so. We look forward to hearing from you shortly.

Sincerely,

(name and title)

## **50 - Recovery of Overpayments When a Provider Changes Its FI- FI Only** **(Rev. 29, 01-02-04)**

Where CMS approves a change of FI, the change is effective on the first day following the close of the fiscal year in which the provider gave timely notice. (See Medicare Claims Processing, Chapter 1, General Billing Requirements.)

### **50.1 Action By Outgoing FI**

**(Rev. 29, 01-02-04)**

The outgoing FI is responsible for effectuating final settlement for the cost report periods during which it serviced the provider. It issues the reminder letter to ensure the timely receipt of the cost report as well as any NPRs and demand letters. The outgoing FI is also responsible for assuring that the incoming FI is aware of the outstanding overpayment and that recoupment is initiated by the withholding of interim payments, if necessary. If the overpayment remains uncollected, the outgoing FI is responsible for initiating the withholding of Title XIX payments (Medicaid) and for referring the overpayment to the Department of Treasury. The outgoing FI must copy the incoming FI on all correspondence with the provider to ensure a timely collection process.

#### **A. Notification to Incoming FI**

**When the outgoing FI is notified by the RO that the provider's request for a change of FI has been approved, it shall notify the incoming FI in writing of all outstanding program overpayments. It shall include:**

- The cost reporting period;
- The date the overpayment was determined;
- Explanation of the type of overpayment, e.g., cost report overpayment - desk review, cost report overpayment - audit;

- The current status of collection action, including any withhold that is currently in place to recoup the overpayment; and
- The original balance of the overpayment and the current principal and interest balance of the overpayment.

The outgoing FI should also notify the incoming FI of future settlements that will be occurring and of any unfiled cost reports.

#### **B. Notice of Intent to Suspend Interim Payments**

If at the time of the change of FI the outgoing FI is recouping an overpayment by the withholding of interim payments the incoming FI will continue the withhold. The outgoing FI must notify the provider that the withhold will be continued by the incoming FI until the overpayment is liquidated or an acceptable ERS is approved. In addition, the outgoing FI must notify the incoming FI of the details of the withhold.

If after the change of FI occurs the outgoing FI determines that an overpayment exists the outgoing FI must notify the provider in accordance with normal procedures. The current FI should receive a copy of all NPRs and demand letters. The outgoing FI must contact the current FI to make sure that recoupment begins when necessary.

### **50.2 – Action by Incoming FI (Rev. 29, 01-02-04)**

The incoming FI is responsible for effectuating final settlements for the cost report periods after the change of FI becomes effective. If the FI receives a cost report from a prior period it should forward it to the outgoing FI to make the final settlement. If the outgoing FI is no longer participating in the Medicare program, the incoming FI shall contact the RO for further instructions.

After the outgoing FI has completed its review of the cost report, it notifies the incoming FI whether the cost report is acceptable, and the final settlement. The incoming FI, in accordance with Ch. 4, §40, disposes of funds withheld during the suspension of interim payments (for an unfiled cost report) and initiates recoupment by the withhold of interim payments if necessary.

While overpayments are outstanding at the outgoing FI, the incoming FI must keep the outgoing FI up to date regarding the provider's location and participation in the Medicare program. If the incoming FI learns of a provider's termination from the Medicare program it must notify the outgoing FI so that it may act accordingly.

#### **A. Reduction of Outstanding Overpayment**

Any actions taken by the incoming FI which reduce or eliminate the overpayment made by the outgoing FI shall be communicated, in writing, to the outgoing FI within 5 working days after the month in which the actions occurred. In addition, unless the provider indicates to the contrary, any collections or payment are applied first to the earliest overpayment. See Chapter 5, Financial Reporting for instructions on transferring any payment(s) between FIs.

### **60 - Interim Rate Adjustments and Periodic Interim Payment Adjustments – FI only (Rev. 29, 01-02-04)**

The interest provisions of Chapter 4, §30 do not apply to FI overpayments or underpayments determined as a result of interim rate and periodic interim payment (PIP) adjustments or utilization reviews. If necessary, an interim rate or periodic interim payment adjustment shall occur prior to the end of the cost reporting year. When this occurs, the interim rate or periodic interim rate is adjusted for the remainder of the cost reporting year in order to have aggregate payments approximate total allowable costs. This adjustment is based on

any overpayment or underpayment determined as a result of the interim review. Since payments are adjusted, this overpayment or underpayment should not exist at the end of the cost reporting year.

If the adjustment of the payments would provide a hardship to the provider and an extended repayment plan is requested instead, interest shall accrue on the overpayment. The interest rate charged shall be the rate in effect on the date the notice of payment adjustment was sent to the provider unless a specific instruction is issued as in the case of Interim Payment System (IPS) recoveries for FY 1998 & 1999 (Transmittal A-99-47). This is true for any entity that is reimbursed in such a way that interim rate adjustments and/or periodic interim payment adjustments are required.

If the review is completed after the end of the cost reporting year or after the cost report is filed, adjustments to the interim or periodic rate are not possible. In this case any determined overpayment or underpayment shall be considered in conjunction with the final settlement. By taking the overpayment or underpayment into consideration with the tentative or final settlement the FI will issue a tentative settlement payment, tentative settlement demand letter, or Notice of Program Reimbursement. When a demand letter or Notice of Program Reimbursement is issued, interest will be assessed if necessary, and the provider will be notified of its appeal rights. Any determined overpayment shall then be recouped.

## **70 – Determining Liability and Waiver of Recovery for Overpayments**

**(Rev. 294, Issued: 10-06-17, Effective: 07-03-17, Implementation: 07-03-17)**

The Medicare law contains three provisions (§1870, §1879 and §1842(1)) dealing with liability for, and recovery of, individual overpayments. These provisions do not cover cost report overpayments. These provisions are reflected below and, for a more extensive treatment, in Medicare Claims Processing Manual, Publication 100-04, Chapter 31, Financial Liability Protections.

The contractor shall determine whether the provider, physician, or beneficiary is liable for the overpayment. Most contractor payments for provider services are made to providers on behalf of the beneficiaries who received the services. If payment is made directly to the beneficiary, liability always lies with the beneficiary unless recovery is waived under the limitation of liability provision. Where the provider or physician has been overpaid, it is liable for the overpayment unless the contractor determines that it was without fault with respect to the overpayment.

If the contractor determines that an overpaid provider or physician was without fault and therefore not liable for the overpayment, it relieves the provider of liability for the overpayment. The beneficiary automatically becomes liable, whether or not the beneficiary was at fault.

However, recovery from the beneficiary may be waived if you determine the beneficiary is without fault and recovery would defeat the purposes of Title II or Title XVIII or would be against equity and good conscience.

### **70.1- 1879 Determination – Limitation of Liability**

**(Rev. 294, Issued: 10-06-17, Effective: 07-03-17, Implementation: 07-03-17)**

Section 1879 of the Social Security Act (the Act) provides financial relief to beneficiaries, providers, practitioners, and other suppliers who acted in good faith in accepting or providing services found to be not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member, or to constitute custodial care. The provision applies to all Part A/Part B claims decisions where claims are denied or reduced (prepay or postpay) under §1862(a) (9) and §1879 (e) and (g) of the Act.

Contractors must make an individualized determination for each claim that is denied as not reasonable and necessary. (See Medicare Program Integrity Manual (PIM), Publication 100-08, Exhibits, §14.1)

#### **A. Limitation on Liability – Indemnification Procedures for Claims Filed under Part B**

Section 1879(b) of the Act provides that, when a physician/supplier is held liable for the payment of expenses incurred by a beneficiary for items or services determined to be excluded and such physician/supplier requests and received payment from the beneficiary or any person(s) who assumed financial responsibility for payment of expenses, the Medicare program will indemnify the beneficiary or other person(s) for any payments made to the liable physician/supplier (including deductible and coinsurance payments). Further, any such indemnification payments are considered overpayments to the physician/supplier. (See PIM Exhibits, §14.1.)

### **B. Limitation on Liability Where Physician and Beneficiary Did Not Have Prior Knowledge With Respect to Services Found To Be Not Reasonable And Necessary Services (§1879 of Act)**

When both the physician and the beneficiary did not have prior knowledge with respect to services found to be not reasonable and necessary, permit Medicare payment to be made under the limitation on liability provision. (See Medicare Program Integrity Manual (PIM), Publication 100-08, Exhibits, §14.1) An overpayment does not exist if a determination is made that the limitation of liability provision applies. The claim decision must incorporate a limitation of liability determination.

### **70.2 - 1842(l) Determination**

**(Rev. 294, Issued: 10-06-17, Effective: 07-03-17, Implementation: 07-03-17)**

For denials of nonassigned claims based on §1862(a)(1) involving physician services, the contractor must make a determination under §1842(l) of the Act regarding whether the physician or supplier must refund any payment collected from the beneficiary. This should be done for initial determinations (prepay) and for postpayment denials. (See Medicare Program Integrity Manual (PIM), Publication 100-08, Exhibits, §14.3)

### **70.3 - 1870 Determination – Waiver of Recovery of an Overpayment**

**(Rev. 294, Issued: 10-06-17, Effective: 07-03-17, Implementation: 07-03-17)**

Once the contractor has concluded that an overpayment exists (that is, a finding that payment cannot be made under the waiver of liability provisions) it makes a §1870(b) determination regarding whether the provider/beneficiary was without fault with respect to the overpayment. Once this determination has been made, then waiver of recovery of the overpayment from the provider/beneficiary should be considered per §1870(c).

The contractors make a §1870 determination for all assigned and non-assigned claims, however, §1870 (b) or (c) of the Act, does not apply to the provider on non-assigned post-payment §1862(a)(1) denied claims. However, it can apply to the beneficiary meaning that the beneficiary was not at fault in causing the overpayment. The provider may have a refund obligation to the beneficiary, but the provider did not receive an overpayment from the Medicare program.

Section 1870 is not limited to claims denied under §1862(a)(1) of the Act for not being reasonable and necessary. Section 1870 is the framework for determining who is liable for the overpayment and whether the overpayment recovery can be waived. For providers taking assignment, waiving recovery of an overpayment is appropriate where the provider was without fault with respect to causing the overpayment. Where recovery from the provider is waived per 1870(c), the overpayment becomes an overpayment to the beneficiary. However, if the provider was “at fault” in causing the overpayment, recovery of the overpayment from the provider must proceed. Section 1870 waiver of recovery determinations also must be made where the provider mistakenly receives direct payment on an unassigned claim and this is the basis for the overpayment.

**Examples of §1870 determinations:**

### **A. Overpaid Provider or Physician Not Liable Because It Was Without Fault (§1870(b) of the Act.)**

If a provider was without fault with respect to an overpayment it received (or is deemed without fault, in the absence of evidence to the contrary, because the overpayment was discovered subsequent to the fifth calendar year after the year of payment) it is not liable for the overpayment; therefore, it is not responsible for refunding the amount involved. The contractor makes these determinations.

### **B. Beneficiary Liable for Overpayments to Provider That Was Without Fault With Respect to the Overpayment (§§1870(a) and (b) of the Act)**

If an overpaid provider was without fault, or is deemed without fault and therefore not liable for refund, liability shifts to the beneficiary. If the overpayment involves services that are not reasonable and necessary, you should have made a §1879 determination regarding the beneficiary's liability for the overpayment. If the overpayment does not involve medically unnecessary services, then limitation on liability does not apply.

### **C. Contractor Waiver of Recovery from Beneficiary (§1870(c) of the Act)**

If a beneficiary is liable for an incorrect payment, recovery may be waived if the beneficiary was without fault with respect to the overpayment and recovery would defeat the purposes of title II or title XVIII of the Social Security Act (i.e., cause financial hardship) or would be against equity and good conscience. (Where an overpayment is discovered subsequent to the fifth calendar year after the year the payment was made, recovery is deemed against equity and good conscience if the beneficiary was without fault.)

If §1879 of the Act is applicable, then §1879 determination is made first since an overpayment does not exist if payment can be made under §1879 because there was lack of knowledge by both the beneficiary and the provider.

## **80 – Individual Overpayments Discovered Subsequent to the Fifth Year**

**(Rev. 294, Issued: 10-06-17, Effective: 07-03-17, Implementation: 07-03-17)**

There are special rules that apply when an overpayment is discovered subsequent to the fifth year following the year in which notice was sent that the amount was paid. Ordinarily, the provider or beneficiary will be considered without fault unless there is evidence to the contrary. In the absence of evidence to the contrary, the contractor will not demand and recover the determined overpayment. (One example of evidence to the contrary would be a pattern of billing errors. See Medicare Program Integrity Manual, Publication (PIM) 100-08, Chapter 3.)

**EXAMPLE 1:** On May 9, 2016 Dr. A is notified that he has been paid \$1005.00 for services provided to Mr. Smith, beneficiary. On January 6, 2022 the contractor determines that Dr. A was overpaid for the services to Mr. Smith, beneficiary. The contractor will not recover this overpayment as long as there is no evidence to the contrary because it was determined subsequent to the fifth year after notification of payment. (Any determination date on or after Jan. 1, 2022 will not be recovered.) (If evidence to the contrary existed, recoupment may be initiated. The PIM should be referenced and if necessary the appropriate Benefits Integrity unit at the contractor for guidance.)

**EXAMPLE 2:** On May 9, 2016 Dr. A is notified that he has been paid \$1005.00 for services provided to Mr. Smith, beneficiary. On September 20, 2019 the contractor determines that Dr. A was overpaid for the services to Mr. Smith, beneficiary. The contractor will attempt recovery of the overpayment. (Any determination dates up to and including Dec. 31, 2021 will be recovered.)

### **80.1 – How to Determine the Fifth Calendar Year after the Year the Payment Was Approved**

**(Rev. 294, Issued: 10-06-17, Effective: 07-03-17, Implementation: 07-03-17)**

Only the year of the payment and the year it was found to be an overpayment enter into the determination of the 5-calendar year period. The day and the month are irrelevant. With respect to payments made in 2016, the fifth calendar year thereafter is 2021. For payments made in 2017, the fifth calendar year thereafter is 2022, etc. Thus, the rules apply to payments made in 2016 and discovered to be overpayments after 2021, to payments made in 2017 and discovered to be overpayments after 2022, etc.

Where an overpayment to a provider, or a physician assignee for medically unnecessary services or custodial care is discovered (i.e., demanded) subsequent to the fifth calendar year after the year in which the payment was approved, the provider or physician assignee is prohibited from charging the beneficiary or any other person for the services notwithstanding the fact that the provider or physician assignee has refunded the overpayment if:

- The provider or physician assignee was at fault with respect to the overpayment; and
- The beneficiary was without fault with respect to the overpayment. (Where the overpayment is discovered in, or before, the fifth calendar year, an "at fault" provider or physician assignee is not prohibited from charging the beneficiary for the overpayment if it has refunded it. However, a without fault beneficiary who pays an at fault provider's or physician assignee's bill for medically unnecessary services or custodial care, can be indemnified in accordance with Medicare Claims Processing Manual, Publication 100-04, Chapter 30, Financial Liability Protections.

Reopenings (See Medicare Claims Processing Manual, Publication 100-04, Chapter 29 Appeals of Claims Decisions for additional information)

Your initial, or review determination or a decision by a Hearing Officer may be reopened under the following conditions:

Within 12 months after the date of the determination or decision it may be reopened for any reason;

After such 12-month period, but within 4 years after the date of the initial determination, it may be reopened for good cause; or

At any time, if:

- Such initial or review determination was procured by fraud or similar fault of the beneficiary or some other person.

If an overpayment is determined based on a reopening outside of the above parameters, the contractor will not recover the overpayment.

## **80.2 - Recovery of Overpayment Due to Overdue Cost Report (Rev. 294, Issued: 10-06-17, Effective: 07-03-17, Implementation: 07-03-17)**

Where CMS approves a change of contractor, the change is effective on the first day following the close of the fiscal year in which the provider gave timely notice. (See Pub 100-04, Medicare Claims Processing Manual, Publication 100-04, Chapter 1, General Billing Requirements.)

### **A. Reminder Letter**

The outgoing contractor is responsible for effecting final settlement for the cost report periods during which it serviced the provider. It issues the reminder letter required under §30.1 to ensure the timely receipt of the cost report.

### **B. First Demand Letter**

If no cost report has been filed by the first day after the due date of the cost report (including extensions), the outgoing contractor sends the first demand letter in Medicare Financial Management Manual, Publication 100-06, Chapter 4, Debt Collection, §20.2, Exhibit 1, Column B. It sends copies of the reminder letter and the first demand letter to the RO and incoming contractor. Upon receipt of its copy of the letter, the incoming contractor suspends the interim payment.

### **C. Second Demand Letter**

The outgoing contractor is responsible for personal contact with the provider, issuing the second demand letter, and notifying the RO if appropriate. The contractor shall issue a “modified Intent to Refer (ITR) Letter for Unfiled Cost Reports,” if the provider has not filed the cost report and the overpayment balance has not been paid. (See Medicare Financial Management Manual, Publication 100-06, Chapter 4, §20.2 Exhibit 7 for a sample intent letter)

### **D. Receipt of Delinquent Cost Report**

If the delinquent cost report is sent to the incoming contractor, it sends the cost report to the outgoing contractor to make the final settlement.

After the outgoing contractor has completed its review of the delinquent cost report, it notifies the incoming contractor whether the cost report is acceptable, and the final settlement. The incoming contractor, in accordance with Medicare Financial Management Manual, Publication 100-06, Chapter 4, §40.1, disposes of funds withheld during the suspension of interim payments.

## **90 - Provider, Physician, or Other Supplier Liability**

**(Rev. 275, Issued: 11-18-16, Effective: 02-21-17, Implementation: 02-21-17)**

A provider, physician, or other supplier is liable for overpayments it received unless it is found to be without fault. The contractor, as applicable, makes this determination.

The contractor considers a provider, physician, or other supplier without fault, if it exercised reasonable care in billing for, and accepting, the payment; i.e.,

- It made full disclosure of all material facts; and
- On the basis of the information available to it, including, but not limited to, the Medicare instructions and regulations, it had a reasonable basis for assuming that the payment was correct, or, if it had reason to question the payment; it promptly brought the question to the contractor’s attention.

Normally, it will be clear from the circumstances whether the provider, physician, or other supplier was without fault in causing the overpayment. Where it is not clear, the contractor shall develop the issue.

### **90.1 - Examples of Situations in Which Provider, Physician, or Other Supplier Is Liable**

**(Rev. 275, Issued: 11-18-16, Effective: 02-21-17, Implementation: 02-21-17)**

In accordance with §90 the following are examples of situations in which the provider, physician, or other supplier is liable for an overpayment it received.

#### **A. The Provider, Physician, or Other Supplier Furnished Erroneous Information or Failed to Disclose Facts That It Knew or Should Have Known, Were Relevant to Payment of the Benefit.**

This includes, among others, situations in which a provider, physician, or other supplier failed to report any additional payments he may have received from the beneficiary and situations in which a provider, physician, or other supplier failed to request applicable information from the beneficiary including, but not



limited to, information needed by the contractor to identify cases in which Medicare may be secondary payer, or if it did request such information, it failed to annotate the billing form.

(Providers, **Physician, or Other Supplier** are instructed to ask beneficiaries for, and to annotate the claims form with, information needed to help the contractor identify cases in which Medicare may be secondary payer, e.g., information about the circumstances of the illness or injury and the availability of benefits under an insurance policy or plan.) (See Medicare Claims Processing, chapter 29, Coordination With Medigap Insurers.)

**EXAMPLE:** A provider, physician, or other supplier submitted an assigned claim showing total fees of \$600. The provider, physician, or other supplier did not indicate on the CMS-1500 that any portion of the bill had been paid. After the deductible and coinsurance you determined the amount owed to the provider, physician, or other supplier was \$480 on the assumption that the provider, physician, or other supplier had received no other payment. You later learned that the beneficiary had paid the provider, physician, or other supplier \$200 before the provider, physician, or other supplier submitted his claim. Thus, the payment should have been split; i.e., \$400 should have been paid to the provider, physician, or other supplier and \$80 to the beneficiary. The provider, physician, or other supplier was at fault in causing the \$80 overpayment since he failed to inform you of the amount he had received from the beneficiary.

## **B. Provider, Physician, or Other Supplier Receives Duplicate Payments.**

This includes the following situations:

- Provider, physician, or other supplier is overpaid because the contractor processed the provider's, physician's, or other supplier's claim more than once. If an overpayment to a provider, physician, or other supplier is caused by multiple processing of the same charge (e.g., through overlapping or duplicate bills), the provider, physician, or other supplier does not have a reasonable basis for assuming that the total payment the provider, physician, or other supplier received was correct and thus should have questioned it. The provider, physician, or other supplier is, therefore, at fault and liable for the overpayment.
- Provider, physician, or other supplier received payment from Medicare on the basis of an assignment and a beneficiary received payment on an itemized bill and turned the beneficiary payment over to the provider, physician, or other supplier. The provider, physician, or other supplier is liable for only the portion of the total amount paid in excess of the provider's, physician's, or other supplier's portion of the allowable amount. The beneficiary is liable for the balance of the overpayment. However, if the beneficiary paid any portion of the coinsurance to the provider, physician, or other supplier, the provider, physician, or other supplier is liable for that amount also. If the provider, physician, or other supplier protests recovery of the overpayment on the grounds that the provider, physician, or other supplier applied all or part of the check received from the beneficiary to amounts the beneficiary owed the provider, physician, or other supplier for other services, the beneficiary, rather than the provider, physician, or other supplier, is liable for refunding such amounts.

**EXAMPLE:** Dr. A and Mr. B each received duplicate payments of \$300 based on reasonable charges of \$375. Mr. B turned his \$300 over to Dr. A. Thus, Dr. A received a total of \$600. Mr. B did not owe money to Dr. A for other services. Dr. A is liable for \$225, which is the amount he received in excess of the reasonable charge. Mr. B is liable for the remaining \$75 of the duplicate payment. If Mr. B had previously paid Dr. A the \$75 coinsurance, Dr. A is liable for the entire \$300 overpayment.

- Provider, physician, or other supplier receives duplicate payments from Medicare and another insurer or plan (directly or through the beneficiary) which is the primary payer, i.e., an automobile medical or no-fault insurer, a liability insurer, a WC insurer, or, under certain circumstances, an EGHP. (See Medicare Claims Processing, Chapter 29, Coordination With Medigap Insurers.) The provider, physician, or other supplier is liable for the portion of the Medicare payment in excess of the amount Medicare is obligated to pay as secondary payer. (See Medicare Claims Processing, Chapter 29,

Coordination With Medigap Insurers and/or Medicare Secondary Payer Manual.) However, if the provider, physician, or other supplier turns the other insurance payment over to the beneficiary, the beneficiary is liable.

**C. The Overpayment Resulted Through Misapplication of the Deductible or Coinsurance Requirement or Payment After Exhaustion of Benefits and the Provider, Physician, or Other Supplier Could Have Known From Its Own Records the Beneficiary's Utilization Status**

Part A provider, physician, or other supplier is considered liable if it received a remittance record within the 60 days preceding billing indicating deductible and benefit status. This condition is considered met where, within the 60-day period preceding the admission that gave rise to the overpayment, the beneficiary had been a patient in the same institution or the provider, physician, or other supplier could have known the beneficiary's utilization status from its own records.

The provider, physician, or other supplier is expected to ask the beneficiary, or the person acting on the beneficiary's behalf, at the time of admission if the beneficiary received inpatient services in a hospital or SNF within the past 60 days, and note the response on its records.

**EXAMPLE:** John Doe entered University Hospital on January 10, 2000. After using all of his benefit days, including lifetime reserve days, he returned home, but reentered the same hospital in fewer than 60 days and stayed an additional 30 days. University Hospital neglected to check its records and billed the contractor for 30 days of inpatient hospital care. The contractor made payment. Subsequently, the overpayment was discovered. Since the hospital should have known from its own records that Mr. Doe had exhausted his benefit days, the contractor shall seek recovery from the hospital.

If the previous stay had been in a different hospital, or if more than 60 days had elapsed between the end of the first stay and the start of the second stay but the benefit period had remained unbroken because John had been in an SNF or a different hospital, the contractor would consider University Hospital "without fault." In this latter situation, the hospital would not have been able to ascertain from its own records that benefit days had been exhausted. The contractor would seek recovery from the beneficiary.

**D. The Overpayment Was Due to a Mathematical or Clerical Error.**

Examples:

- Error in calculation by the contractor in calculating reimbursement;
- Error by the provider, physician, or other supplier in calculating charges, or
- Overlapping or duplicate bills.

Mathematical error does not include a failure to properly assess the coinsurance and/or deductible. The contractor would determine the liability for coinsurance and deductible overpayments in accordance with D. above. Where payment to a provider, physician, or other supplier was based on a deductible amount, the provider, physician, or other supplier is without fault. Seek recovery from the beneficiary.

**E. The Provider, Physician, or Other Supplier Does Not Submit Documentation to Substantiate That Services Billed to the Program Were Covered.**

**F. The Provider, Physician, or Other Supplier Does Not Submit Documentation to Substantiate That It Performed the Services Billed to the Program Where There Is a Question as to Whether the Services Were Performed.**

(See the Program Integrity Manual, which can be found at the following Internet address:

<https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs.html>, if fraud is suspected.)

### **G. The Beneficiary Was Not Entitled to Part A Benefits and the Provider, Physician, or Other Supplier Had Reason to Believe That the Beneficiary Was Not Entitled to Such Benefits.**

For example, the Social Security Office notified the hospital that the individual was not entitled to hospital insurance benefits.

### **H. The Provider, Physician, or Other Supplier Billed, or Medicare Paid the Provider, Physician, or Other Supplier for Services that the Provider, Physician, or Other Supplier Should Have Known Were Noncovered.**

1. Services Other Than Medically Unnecessary or Custodial Services, e.g., skilled physical therapy services furnished by a nonqualified physical therapist, or services rendered pursuant to an authorization from the VA. (See Medicare Benefit Policy, Chapter 17, Exclusions.)

In general, the provider, physician, or other supplier should have known about a policy or rule, if:

- The policy or rule is in the provider, physician, or other supplier manual or in Federal regulations;
- CMS or a CMS contractor provided general notice to the medical community concerning the policy or rule;
- CMS, a CMS contractor, or the OIG gave written notice of the policy or rule to the particular provider, physician, or other supplier;
- The provider, physician, or other supplier was previously investigated or audited as a result of not following the policy or rule;
- The provider, physician, or other supplier previously agreed to a Corporate Integrity Agreement as a result of not following the policy or rule;
- The provider, physician, or other supplier was previously informed that its claims had been reviewed/denied as a result of the claims not meeting certain Medicare requirements, which are related to the policy or rule; or
- The provider, physician, or other supplier previously received documented training/outreach from CMS or one its contractors related to the same policy or rule.

Generally, a provider's, physician's, or other supplier's allegation that it was not at fault with respect to payment for noncovered services because it was not aware of the Medicare coverage provisions is not a basis for finding it without fault if any of the above conditions is met. However, there may be other circumstances that justify a finding that the provider, physician, or other supplier was not at fault. The contractor shall consider all of the circumstances, including such factors as whether and to what extent a coverage rule is spelled out in regulations, instructions, or in a CMS notice, and whether a contractor misinformed the provider, physician, or other supplier about the rule; in deciding whether a provider, physician, or other supplier acted reasonably in billing for and accepting payment for noncovered services.

### **2. Medically Unnecessary or Custodial Services.**

The contractor shall apply the criteria in Medicare Claims Processing, Chapter 30, Financial Liability Protection in determining whether the provider, physician, or other supplier should have known that the services were not covered.

### **I. The Overpayment Resulted From Services Rendered in a Nonparticipating Portion of the Facility or in a Bed Certified for a Type of Care Other Than That Furnished.**

## **J. The Physician Was Paid but Did Not Accept Assignment.**

**The physician is liable whether or not the beneficiary had also been paid.**

## **K. Overpayment Was for Rental of Durable Medical Equipment and Supplier Billed Under the One-Time Authorization Procedure.**

Pursuant to Medicare Claims Processing, Chapter 20, suppliers of durable medical equipment who have accepted assignment may be reimbursed for rental items on the basis of a one-time authorization by the beneficiary; i.e., without the need to obtain the beneficiary's signature each month. A supplier using the procedure must have filed with the carrier a statement that it assumes unconditional responsibility for rental overpayments for periods after the beneficiary's death or while he was institutionalized or while he no longer needed or used the equipment.

## **L. Items or Services Were Furnished by Practitioner or Supplier not Qualified for Medicare Reimbursement**

Two examples of such services are:

- A laboratory test performed by a nonqualified independent laboratory, or
- Services rendered by a naturopath.

## **90.2 - Provider, Physician, or Other Supplier Protests Its Liability (Rev. 275, Issued: 11-18-16, Effective: 02-21-17, Implementation: 02-21-17)**

A provider's, physician's, or other supplier's reply to a notification that the provider, physician, or other supplier is liable for an overpayment may indicate dissatisfaction with some aspect of the overpayment decision. Such a protest shall be considered a request for an appeal. In most instances, this will be a redetermination which is the first level of appeal for an overpayment determination. However, if the overpayment is identified during the course of the redetermination, the contractor shall consider the provider's, physician's, or other supplier's protest as a request for reconsideration by the qualified independent contractor (QIC). In conducting the appeal, the contractor shall consider whether

- a. There was an overpayment;
- b. The amount of the overpayment was correctly calculated; and whether,

The provider, physician, or other supplier is liable for repayment.

## **100 - Beneficiary Liability (Rev. 29, 01-02-04)**

A beneficiary is liable for:

- Overpayments made to a provider that was without fault with the exception of overpayments for medically unnecessary services or custodial care where the beneficiary, as well as the provider, was without fault. (See Medicare Claims Processing, Chapter 30, Limitation on Liability.)
- Situations in which Medicare pays a provider, and a WC carrier, automobile medical, or no-fault insurer or any liability insurer; or EGHP pays primary benefits to the beneficiary for the same services. (See Medicare Secondary Payer Manual)
- Overpayments made to the beneficiary.

## **110 - Recovery Where the Beneficiary Is Liable for the Overpayment (Rev. 29, 01-02-04)**

When the FI or carrier has determined the beneficiary to be liable for the overpayment, it shall initiate recovery efforts in accordance with the following sections, as appropriate. The chart below is meant to be a guide. The actual sections shall be reviewed for additional guidance.

<b>MEDICARE BENEFICIARY NON-MSP OVERPAYMENTS</b>			
<b><u>O/P Amount</u></b>	<b><u>Overpayment Notice</u></b>	<b><u>Level of Pursuit</u></b>	<b><u>Waiver Requests</u></b>
\$0-\$49.99	No- refer to Ch. 3 §110.2	None	N/A
\$50-\$999.99	Yes, See Ch. 3 §110	Attempt collection following Ch. 3 §110.2. If case is in offset status for one year with no collection activity, refer case to RO with a recommendation to terminate collection action.	Review all waiver requests and make a decision to approve or deny the waiver based on Ch. 3 §70.
\$1000-\$19999.99	Yes, See Ch. 3 §110	Attempt collection following Ch. 3 §110.2. Attempt to refer the case to SSA if applicable.	Review all waiver requests and make a decision to approve or deny the waiver based on Ch. 3 §70.
\$20000 and over	Yes, See Ch. 3 §110	Attempt collection following Ch. 3 §110.2. Attempt to refer the case to SSA if applicable.	Review all waiver requests and make a recommendation to approve or deny the waiver based on Ch. 3 §70. If the recommendation is for approval, refer the waiver request to the Regional Office for concurrence.

**110.1 - Recovery Where the Beneficiary Is Covered Under Medicaid or Another Health Insurance Plan, Private or Governmental**  
**(Rev. 29, 01-02-04)**

When the FI or carrier determines the beneficiary is liable, and the beneficiary carries supplemental health insurance or is covered by another Government health benefits program such as Medicaid, TRICARE, CHAMPVA, or the Federal Employees Health Benefits Program, it may be possible to recover the overpayment from the other plan or program. Payments of deductible or coinsurance amounts and payment for services rendered persons who are not entitled to Medicare are the payments most likely to be recoverable.

If, based on the circumstances of the overpayment and FI or carrier knowledge of the other plan or program, the FI or carrier believes there is a possibility that the other plan will refund the overpayment, it shall attempt to recover from the other plan or program. In this connection, it may be necessary to ask the

beneficiary for their policy number or other information concerning their non-Medicare coverage. (See Medicare Claims Processing , Chapter 28, Coordination With Medigap, Medicaid, and Other Complementary Insurers, for procedures to follow where the overpayment is for services that should have been paid for by a WC carrier.)

To facilitate recovery of the Medicare overpayments to the extent possible, where another plan or program is involved, the FI or carrier shall attempt to work out mutually satisfactory arrangements with the other carrier(s). In negotiations with Medicaid agencies or carriers, it may be helpful for the FI or carrier to point out that Medicare will refund directly to Medicaid agencies overpayments for services reimbursed on a charge basis.

The methods listed below have been used successfully. The FI or carrier shall use any one or a combination, as it finds appropriate. The most desirable method in a given situation depends upon the particular circumstances, and the provisions of the other plan or program.

- The FI or carrier shall arrange with the other plan or program for direct refund of overpayments to it. If the FI or carrier is also the carrier under the other plan or program, a transfer of funds is the most convenient method of recovering. If another insurance carrier is involved, the FI or carrier shall send the other insurance carrier a letter requesting refund of the overpayment. The letter should explain how the overpayment occurred and how it was calculated. The FI or carrier shall follow up in 30 days with another letter or a phone call if payment or a letter of explanation has not been received. If this does not bring a meaningful response, it shall write to the President or Chief Administrative Officer of the other carrier.
- If the FI or carrier does not use the above method for provider overpayments, it shall arrange with the other plan or program to make payment to overpaid provider upon the FI's or carrier's request, (even though the provider has not billed the other plan or program) and to notify the FI or carrier of the payment. Upon receiving such a notice, the FI or carrier shall recover the Medicare overpayment from the provider.
- Where neither of the above methods is possible, the FI or carrier shall ask the provider if it would be willing to refund the overpayment and to bill the other plan or program, with the understanding that if it is unable to obtain payment, the FI or carrier will refund the amount recovered to the provider. If the provider does not agree to refund the overpayment before collecting from the other plan or program, the FI or carrier shall ask it to bill the other plan or program and to use the payment to refund the overpayment. If the FI or carrier receives notice that a provider (or a beneficiary) plans to file a claim with another plan or program, it shall suspend recovery efforts for a reasonable period.

If the FI or carrier has questions concerning the proper approach in recovering from a welfare agency, or another insurance plan, it should contact its RO.

If efforts to recover the overpayment are not successful, or if the FI or carrier is certain that the other plan or program will not refund a particular overpayment, it shall seek recovery from the beneficiary in accordance with §110.2. It shall explain in the notice to the beneficiary that the other plan or program will not make payment directly to it. However, if the beneficiary is a Medicaid recipient, the FI or carrier shall not attempt recovery from the beneficiary.

## **110.2 - Recovery From the Beneficiary**

**(Rev. 29, 01-02-04)**

To recover a Non-MSP overpayment from a beneficiary, follow the recovery procedure below. If the beneficiary protests following the receipt of a notification of overpayment, handle the protest in accordance with §110.9.

### **A. Non-MSP Overpayment Is Less Than \$50**

Take no further recovery action. Do not send a recovery letter, or attempt recoupment. Also do not refer case to CMS for further collection efforts. See §160.2 for termination of collection procedures.

### **B. Non-MSP Overpayment Amount Is \$50 or More**

Upon discovering an overpayment of \$50 or more, send the beneficiary a recovery letter containing the information in §110.4.

If there is no response within 30 days after sending the initial recovery letter and none of the conditions in §110.3 are present:

1. Send a follow-up letter to the beneficiary, and
2. Arrange to begin recoupment of the overpayment against any Medicare payments that become due the beneficiary on day 60.

### C. Referral to SSA

To be considered for SSA referral the overpayment amount must be \$1000 or more and the beneficiary must be in current pay status. If, within 90 days of sending the initial demand letter, the overpayment has not been recovered and the individual has not requested a reconsideration, hearing or waiver (see §110.9) Prepare the case for referral to SSA for possible recovery from the individual's social security benefits.

However, if the HI number has a T or M suffix, do not refer the case to SSA since those beneficiaries are not entitled to monthly social security benefits. Offset should be continued in the case of beneficiaries whose HI number ends in T or M. If appropriate, the instructions for termination of collection action (See 110.3D for additional instructions.) should be followed.

The FI or carrier should not refer an overpayment to SSA if it has knowledge that the beneficiary is deceased.

When preparing the case for referral to SSA the following must be included in the case file:

- Referral Form- contains the address of the referring agency (The Centers for Medicare and Medicaid Services (CMS) Central Office, CMS Regional Office, or the Medicare Contractor and information pertaining to the case; and
- Return Notice- for SSA use in recording information for crediting the CMS Trust Fund; and
- Waiver Determination- if the Medicare Contractor or CMS RO determines the beneficiary was at fault for the overpayment.

**NOTE:** The contractor's file must contain all overpayment notification letters and correspondence from the beneficiary and/or representative. Contractors may retrieve copies of the relevant forms from the servicing regional office or by accessing SSA's Program Operations Manual System at <http://policy.ssa.gov/poms.nsf/poms>. Access the HI section for Health Insurance and then the section number HI 022 titled Medicare Overpayments. Then access HI 02201 - Methods of Recovery for Title XVIII Overpayments and finally HI 02201.015 titled Appeal Requests and Refunds. The Beneficiary Overpayment Referral Notice is Exhibit A.

When an individual or his/her authorized representative receives notice from SSA that a Medicare overpayment will be withheld from title II benefits and protests the withholding, the protest applies only to the deduction from his/her title II benefits. It does not apply to the Medicare overpayment because the Medicare contractor has determined that the overpayment must be recovered.

If SSA receives an appeal and/or waiver request, they must stop the process of recovery. If the Medicare Contractor, CMS RO, or the Administrative Law Judge has previously denied a waiver request, SSA will then process the overpayment in accordance with current operating procedures. If the individual has not requested waiver with the contractor but files a waiver request with SSA, then SSA must return the overpayment package to the appropriate contractor for processing.

When an individual or his/her representative goes to SSA to request a waiver and/or an appeal of the Medicare Overpayment withholding, SSA must complete the following forms, depending on the request:

- Waiver-  
Form 632-BK (Request for Waiver of Overpayment and Recovery of Change in Repayment Rate)
- Appeal of  
Withholding – SSA-795 (Statement of Claimant or Other Person) since the rate of the

withholding is not an initial determination, does not use the SSA-561 (Request for Reconsideration) or HA-501 (Request for Hearing).

**NOTE:** The referral of a Non-MSP beneficiary debt to SSA occurs regardless of the classification of the debt for financial reporting. Thus, a referral to SSA should occur even if the debt has been reclassified to Currently Not Collectible(CNC).

#### D. Beneficiary “Write-Off” between \$50- \$999.99

If there has been “No Activity”(i.e. no recoupment) within a 12 month period of a beneficiary Non-MSP overpayment that is between \$50-\$999.99, verify that no collections are being made on any other older debts for the same beneficiary before you make a recommendation for write-off to the Regional Office. At the end of each Quarter compile a list of all beneficiary Non-MSP overpayments between \$50-\$999.99 to the Regional Office for Write-Off.

Submit this information, including the status of probate, if applicable, with an explanation

for the

<b>Example:</b>			
Region # xx	Carrier # xxxxxx	Bene. Hic # xxxxxxxxxxx	Claim # xxxxxxxxxxxxxxxxxxx
Claim paid date xxxxxxxx	Demand letter date xxxxxxxx	Det. date. xxxxxxxx	\$ amt. xxxx

beneficiary Non-MSP overpayment Write-off.

The regional office will be responsible for approval or denial of all recommendations for “write-off”, based on the information submitted by Carrier.

**NOTE:** The write off of a Non-MSP beneficiary debt between \$50-\$999.99 occurs regardless of the classification of the debt for financial reporting. Thus, a request to write off Non-MSP beneficiary debt between \$50-\$999.99 should occur even if the debt has been reclassified to Currently Not Collectible (CNC).

**NOTE:** Beneficiary overpayments that are greater than \$1000 may be recommended for write-off following the above instructions if the Medicare contractor has verified from SSA that the beneficiary is not in a current pay status.

### 110.3 - When to Suspend Efforts to Recover From the Beneficiary Following the Initial Demand Letter

(Rev. 29, 01-02-04)

Efforts to recover from the beneficiary should be suspended if any of the following conditions exist:

#### A. The Beneficiary Requests Administrative Appeal, or Questions the Overpayment Decision

The FI or carrier shall make no further recovery efforts until it disposes of the appeal request. (See §110.9.)

#### B. The Beneficiary Requests That Recovery be Waived or States Conditions that Might Qualify the Beneficiary for Waiver of Recovery

#### C. The Beneficiary Is Receiving Welfare Benefits

If the beneficiary is receiving welfare benefits, i.e., cash benefits or Medicaid, the FI or carrier shall ascertain whether the welfare agency will reimburse Medicare for all, or part of, the overpayment. (See §110.1.) If the welfare agency does not refund the overpayment in full, the FI or carrier shall not attempt recovery from the beneficiary, unless it is apparent that the beneficiary knew or should have known that the payment was incorrect.

**NOTE:** If a beneficiary requests an appeal or a waiver after the overpayment has been referred to the SSA for collection from Title II benefits, the SSA processing center will return the overpayment to the Medicare contractor to review the waiver and/or appeal.

### 110.4 - Content of Demand Letter to Beneficiary

(Rev. 29, 01-02-04)



Any correspondence with a beneficiary concerning an overpayment must contain a clear and complete explanation of the overpayment. An overpayment which is not clearly explained is less likely to be refunded. Furthermore, lack of clarity may deprive the individual of sufficient information to decide whether there is a basis for questioning the carrier's determination. Clarity is also important because the letter may eventually be used by CMS for further recovery attempts.

The following is the minimum information which shall be included in all overpayment refund letters sent to a beneficiary:

- A. Name and address of physician, date and type of service, charges, date of check, amount of check, and name of payee.
- B. A clear explanation of why the payment was not correct.
- C. The amount of the overpayment and how it was calculated.
- D. The beneficiary is required to refund the overpayment.
- E. The refund should be by check or money order, and how it should be made out (enclose a pre-addressed envelope).
- F. The refund can be made by installments. (See §110.8.)
- G. Unless a refund is made, the overpayment may be withheld from other Medicare benefits payable to the beneficiary, and may be referred to the Social Security Administration for further recovery action.
- H. Possible recovery from other insurance (if applicable).
- I. An explanation of the beneficiary's right to a review or hearing as appropriate.
- J. An explanation of the CMS/SSA waiver of recovery provisions. (See §170.3.)

## **110.5 - Sample Demand Letter to Beneficiary**

**(Rev. 29, 01-02-04)**

**The FI or carrier may use or adapt the following model letter for requesting refunds of overpayments from beneficiaries:**

"Dear Mr. \_\_\_\_\_:

### **A. Opening Paragraph:**

"In (month and year) we paid (provider's, physician's, supplier's name and location) (you) \$\_\_\_\_\_ more than was due for services furnished by \_\_\_\_\_ on \_\_\_\_\_ (from \_\_\_\_\_ through \_\_\_\_\_) (on \_\_\_\_\_). We have reviewed the payment and determined that it was incorrect. The correct payment should have been \$\_\_\_\_\_."

The FI or carrier shall include a clear and complete explanation of how the overpayment arose and how it was calculated.)

It shall add if applicable: "We have recovered \$\_\_\_\_\_ from (specify source). Thus, the total remaining overpayment is \$\_\_\_\_\_."

### **B. Liability of Beneficiary When Payment Made to Physician or Supplier**

If payment was made to the physician, add the following:

"Under the Medicare law, you are responsible for overpayments made on your behalf if the provider of services was not at fault in causing the overpayment. In this case, (provider's, physician's, supplier's name) was not at fault. Therefore, you are liable for the \$\_\_\_\_\_ incorrectly paid for the services you received."

### **C. Request for Refund**

"Please send us a check or money order for \$\_\_\_\_\_, within 30 days. Make the check or money order payable to (FI or carrier name), and mail it in the enclosed self-addressed envelope."

### **D. Possible Offset**

“If other Medicare benefits become payable to you and you have not refunded the incorrect payment we will withhold the amount you owe from those benefits.” (In the initial letter the FI or carrier shall add: “beginning 60 days from the date of this letter.”)

#### **E. Possible Referral to Social Security Administration**

If the overpayment is over \$1000, add the following:

“If you do not repay this amount, this overpayment may be referred to the Social Security Administration (or Railroad Retirement Board) for further recovery action that, among other actions, may result in the overpayment being deducted from any monthly social security (or railroad retirement) benefits to which you may be entitled.”

#### **F. Installment Payments**

"If you are unable to refund this amount in one payment, you may make regular installments. To refund in installments, you are required to pay a minimum of \$\_\_\_\_\_each month for \_\_\_ months. However, we urge you to pay more each month so that this matter can be settled as soon as possible. If you prefer to repay this overpayment through installments, please notify us promptly how much you are able to pay and how often."

#### **G. Possible Recovery from Other Insurance**

(The FI or carrier shall not use this paragraph where it has determined that the private insurer will not pay.)

"If you carry private health insurance to supplement your Medicare benefits, you may be able to recover the amount of this overpayment by claiming benefits from the other plan, or (name of provider or physician) may be able to submit such a claim on your behalf. If you plan to file a claim with a supplemental plan and use the proceeds to refund this overpayment, please let us know. If you need help in filing such a claim, please contact any Social Security office."

#### **H. Notification of Appeal Rights**

The notification of appeal rights must be in accordance with the reopening rules in Medicare Claims Processing, Chapter 29 – Appeals of Claims Decisions.

**NOTE:** If the overpayment was for medically unnecessary services or for custodial care, The FI or carrier shall begin the first sentence of the appeals paragraph:

"If you believe that this determination is not correct, or if you did not know that Medicare does not pay for these services."

#### **I. Notification of Waiver of Recovery Provision**

"The law requires that you must repay an overpayment of Medicare benefits unless you meet both of the following conditions:

- You were without fault in causing the overpayment in that the information you furnished in connection with the claim was correct and complete to the best of your knowledge, and you had a reasonable basis for believing that the payment was correct, and
- Paying back the overpayment would keep you from meeting your ordinary and necessary living expenses or would be unfair.

If you claim that repayment will cause you serious financial hardship, it will be necessary to submit a statement to the Social Security Administration regarding your income, assets, and expenses.

If you believe that both conditions for waiver of this overpayment apply in your case, please let us know, giving a brief statement of your reasons. You may contact your Social Security office. You will be notified if recovery of this overpayment is waived. If waiver cannot be granted, you will have the opportunity to present your case at a personal conference. The conference will be conducted by an employee of the Social Security Administration who did not participate in the initial waiver determination."

### **110.6 - Optional Paragraphs for Inclusion in Demand Letters** (Rev. 29, 01-02-04)

The FI or carrier should use or adapt the following paragraphs in explaining how the overpayment occurred.

## **A. Inpatient Hospital Deductible or Coinsurance Not Properly Assessed - FI**

### **1. General - FI**

“Medicare pays all costs of covered services furnished during the first 60 days of hospitalization except for the first \$\_\_\_\_\_ (the inpatient deductible). For the 61st through the 90th days Medicare pays all costs except for a coinsurance of \$\_\_\_\_\_ per day. After 90 days of benefits have been used, an additional 60 lifetime reserve days are available. There is \$\_\_\_\_\_ per day coinsurance for each lifetime reserve day used.

### **2. Deductible Overpayment**

“Our records show that the claim for the inpatient services you received at (provider's name) was improperly processed. Benefits were mistakenly paid for \_\_\_\_\_ days in full. However, since these were the first inpatient hospital services furnished in this benefit period you are responsible for the deductible and the \$\_\_\_\_\_ inpatient hospital deductible should have been subtracted from the reimbursement paid (provider's name) on your behalf. Thus (provider's name) was overpaid by \$\_\_\_\_\_.”

### **3. Coinsurance Overpayment**

“Our records show that the claim for the inpatient services you received at (provider's name and address) was improperly processed. Benefits were mistakenly paid for \_\_\_\_\_ full days (less the \$\_\_\_\_\_ deductible). However, since you had previously been hospitalized for \_\_\_\_\_ days at (name of provider where previously hospitalized) during that benefit period, your claim should have been processed as \_\_\_\_\_ full days and \_\_\_\_\_ coinsurance days (and/or lifetime reserve days). Therefore (provider's name) has been overpaid on your behalf for \_\_\_\_\_ coinsurance days at \$\_\_\_\_\_ per day and/or lifetime reserve days at \$\_\_\_\_\_ per day) (less \$\_\_\_\_\_ for the inpatient hospital deductible which was improperly applied to your claim). The total overpayment is \$\_\_\_\_\_.”

## **B. Deductible Not Properly Assessed -Carrier**

“Under Part B of Medicare, no reimbursement may be made for the first \$100 of approved charges incurred by a beneficiary in each calendar year.” (If pertinent, add: “This is true even if you were covered under Medicare for only part of the year.”) In these cases explain the computation of the overpayment.

## **C. Payment Made Under Workers' Compensation Law**

We paid \$\_\_\_\_\_ in benefits for services furnished you by (provider's, physician's or supplier's name and location) on (dates). However, these payments were in error since these services were covered under the (State) workers' compensation law and Medicare may not pay for services that are covered under workers' compensation. Since (provider's, physician's, supplier's name) was not at fault in causing this overpayment, you are required to refund the \$\_\_\_\_\_ Medicare paid on your behalf. You may wish to submit the bill for these services to your employer or his workers' compensation carrier for payment under the State workers' compensation provisions.”

## **D. Beneficiary Not Entitled to Medicare Benefits**

"The Social Security Administration's records show that you were not entitled to (specify Part A hospital insurance and/or Part B medical insurance) benefits when these services (item(s)) were furnished. Your Medicare Handbook explains the difference between Part A (hospital) and Part B (medical) insurance. The decision that you were not entitled to these benefits was made by the Social Security Administration, and not by (FI or carrier name). Therefore, if you disagree with this decision, or if you have any questions about your entitlement to Medicare benefits, contact your Social Security office. If you go to the Social Security office, take this letter with you.”

## **110.7 - Recovery Where Beneficiary Is Deceased**

**(Rev. 29, 01-02-04)**

Where a beneficiary who is liable for an overpayment dies, the FI or carrier shall attempt to recover from such sources as State welfare agencies, or private insurance plans (see §110.1), or withhold the overpayment from any underpayments due the beneficiary's estate or due a surviving relative. (See 42 CFR 424.60)

If the entire overpayment cannot be recovered by the above methods, it shall send a letter (see sample below) addressed to the estate of the deceased at the address of the legal representative if known, or to the last known address of the deceased. It shall include the basic information in §110.5, but shall not mention the possibility of installment payments or the possibility of offset against monthly benefits.

The FI or carrier shall not direct recovery efforts against a person who answered a recovery letter concerning an overpayment unless it is known that the individual represents the beneficiary's estate. It shall not recover by offset against underpayments payable to a provider of services or to a person (other than the beneficiary's estate) who paid the bill.

Model Refund Request to Estate of Deceased Beneficiary (FI or carrier shall adapt to Fit the Situation)  
Estate of (deceased beneficiary) (or, if known, "Representative of the Estate of (deceased beneficiary)).

Dear Sir (or Dear M. \_\_\_\_\_ if estate representative's name is known).

On (date) we paid (provider's, physician's, or supplier's name and location)(deceased beneficiary, if applicable) \$ \_\_\_\_\_ more than was due for services furnished by (\_\_\_\_\_) on \_\_\_\_ (from \_\_\_\_\_ through \_\_\_\_\_)."

(This paragraph should include a clear and complete explanation of how the overpayment arose, the amount of the overpayment, how it was calculated, and why the payment was not correct.)

The FI or carrier shall add if applicable:

"We have recovered \$ \_\_\_\_\_ from (specify source). Thus, the total remaining overpayment is \$ \_\_\_\_\_.

"If other Medicare benefits become payable to the estate and you have not refunded the incorrect payment, we will withhold the amount owed from those benefits.

If payment was made to the physician, add the following:

Under the Medicare law, the beneficiary is responsible for overpayments made on his behalf if the (provider, physician) was not at fault in causing the overpayment. In this case ((provider, physician) name) was not at fault. Therefore, the estate of (deceased beneficiary) is liable for the \$ \_\_\_\_\_ incorrectly paid to ((provider, physician) name) for the services it furnished (deceased beneficiary).

"Please send us a check or money order in the amount of \$ \_\_\_\_\_ payable to (FI or carrier name) in the enclosed, self-addressed envelope within 30 days.

**NOTE:** The FI or carrier shall undertake notification of appeal rights in accordance with the reopening rules in Medicare Claims Processing, Chapter 29, Appeals of Claims Decisions.

"If you believe that (deceased beneficiary) was without fault in causing this overpayment and that recovery of the overpayment would be unfair, you may request that recovery of the overpayment be waived. Your request should include a brief statement of your reasons for requesting waiver."

## **110.8 - Beneficiary Wishes to Refund in Installments**

**(Rev. 29, 01-02-04)**

### **A. General**

If an overpaid beneficiary states that they are unable to refund the full amount of an overpayment at one time, regular monthly installment payments are acceptable. The amount and frequency of the installments should be in reasonable relationship to the amount of the overpayment.

Normally, the installments should be large enough to effect recovery within 3 years; however, the FI or carrier shall allow a longer installment period if the beneficiary is willing to refund at least \$50 per month. In notifying a beneficiary that they can refund an overpayment by installments, the FI or carrier shall specify the amount (not less than \$10) and the number of monthly installments necessary to recovery the overpayment.

**NOTE:** These provisions for repayment in installments do not apply to overpayments for which providers are liable.

The FI or carrier shall exercise care in distinguishing between a request for repayment in installments, and a request for waiver. Where a beneficiary states that they cannot afford an installment of at least \$10 per month, or that they can afford installments of \$10 to \$50 per month but the overpayment is so large that recovery would take substantially more than 3 years, the FI or carrier shall treat such statement as a request for waiver. (See §110.9)

**B. Notification of Installment Schedule**

When agreement is reached with a beneficiary for refund by installments, the FI or carrier shall notify the beneficiary of the installment schedule. Request the beneficiary to sign an installment agreement such as the one in paragraph C below. It shall give one copy of the agreement to the beneficiary, and retain the other.

**C. Suggested Installment Agreement**

\_\_\_\_\_                                      \_\_\_\_\_  
 Name of Overpaid Beneficiary                      Health Insurance Claim Number

Beneficiary's Address

I hereby agree to repay my Medicare overpayment totaling \$ \_\_\_\_\_ to (FI or carrier name), which will receive the payments on behalf of the Centers for Medicare and Medicaid Services. My payments will be made as follows:

DATE PAYMENT DUE (Month, Day, Year)	Amount of Payment
_____	_____
_____	_____
_____	_____

\_\_\_\_\_  
 Signature of Beneficiary

\_\_\_\_\_  
 Date

**D. Beneficiary Fails to Remit Installments**

If the beneficiary fails to remit two consecutive installments, or after remitting the overdue installments, fails to remit any subsequent installments, the FI or carrier shall ask the beneficiary the reason for the lapse. If it does not receive a response within 30 days, or is informed that the beneficiary is unable to continue paying any installments the statement should be treated as a waiver request. If the FI or carrier learns that the beneficiary is deceased, see §110.7.

**E. Beneficiary Can No Longer Afford Installment Amount But Can Afford a Lesser Amount**

If the beneficiary notifies the FI or carrier that they can no longer afford to pay the agreed-upon installments but can afford a lesser amount, the FI or carrier shall set up a new agreement, provided the new installment is at least \$10 per month, and large enough to effect recovery of the remainder of the overpayment within approximately 3 years after the date of the new installment agreement.

**110.9 - Beneficiary Protests**  
 (Rev. 29, 01-02-04)

A beneficiary's reply to a notification of overpayment or request for refund may constitute a request for waiver, or request for appeal, i.e., reconsideration, review, carrier fair hearing, or ALJ hearing as applicable, or a request for both waiver and appeal.

## **A. Protests To Treat As Requests Administrative Appeal**

The FI or carrier shall consider a beneficiary's reply a request for administrative appeal (Part A reconsideration, Part B review, Part B fair hearing, or ALJ hearing (both A & B), as applicable) if the beneficiary protests the existence of an overpayment, the amount of the overpayment, or if the nature of the protest is unclear. (See B below for which protests the FI or carrier shall consider requests for waiver.) It shall take no further recovery action in such cases until the administrative appeal process is completed. (See Pub. 100-4, Medicare Claims Processing, Chapter 29, Appeals of Claims Decisions.) The FI or carrier shall tell the beneficiary that the request is being considered (or has been forwarded to the Office of Hearings and Appeals, if a hearing request) and that no action is necessary until further notice. If the overpayment case has been referred to SSA, the FI or carrier shall inform SSA of the appeal so that recovery action by SSA may be suspended pending the results of the appeal.

If the appeal determination is that the beneficiary is liable for an overpayment, the FI or carrier shall send the beneficiary another request for refund of the overpayment (including all information in §110.5), unless the beneficiary has also requested waiver. In that event, see B below.

## **B. Protests To Treat As Requests for Waiver**

If an overpaid beneficiary protests on the grounds of hardship, or that recovery would be inequitable, the FI or carrier shall treat the protest as a request for waiver even if it is filed on a form ordinarily used for requesting administrative appeal. Discontinue collection efforts and make a waiver determination if necessary. If the beneficiary offers evidence of financial condition, the FI or carrier shall include it, but shall not solicit such evidence. It shall tell the beneficiary that the overpayment case will be forwarded to the Social Security Administration and that no action is necessary until further notice.

**NOTE:** If the beneficiary has also requested appeal, the FI or carrier shall conduct the appeal prior to the waiver determination.

## **110.10 - When the FI or Carrier Does Not Take Recovery Action in Beneficiary Cases but Considers Whether Waiver of Recovery is Applicable (Rev. 29, 01-02-04)**

The FI or carrier shall consider whether waiver of recovery from the beneficiary is applicable. If the beneficiary is liable and the criteria for waiver of recovery from the beneficiary are likely to be met, i.e., it appears from the circumstances that the beneficiary was without fault and that recovery is against equity and good conscience or defeats the purpose of the Medicare program (i.e., would cause the individual financial hardship), the FI or carrier makes a waiver determination.

The FI or carrier shall first determine if the beneficiary was without fault see §70.3. If it appears that the beneficiary was without fault the FI or carrier shall then determine if recovery would be against equity and good conscience or if recovery would defeat the purpose of title II or title XVIII of the Social Security Act.

- For recovery to be against equity and good conscience an individual must have changed his or her position for the worse or relinquished a valuable right because of reliance upon a notice that a payment would be made or because of the overpayment itself. (See 20 CFR §404.509)
- For recovery to defeat the purpose of title II or title XVIII of the Social Security Act the beneficiary must need all of his or her current income to meet ordinary and necessary living expenses. (See 20 CFR §405.508)

The FI or carrier shall make waiver of recovery determinations for individual Non-MSP overpayments up to \$20,000. If an individual Non-MSP overpayment is greater than \$20,000, and the FI or carrier believes that the waiver of recovery is appropriate the FI or carrier shall make a recommendation to the regional office for approval to waive the recovery. If there is a situation that involves several beneficiaries where the aggregate total of all waiver determinations exceeds \$40,000, the regional office shall be notified. The regional office shall provide guidance as to who shall approve the waiver of recovery determinations.

If the FI or carrier decides that the information available does not justify waiver, it proceeds with normal recovery efforts from the beneficiary.

**NOTE:** If a beneficiary requests an appeal or a waiver after the overpayment has been referred to the SSA for collection from Title II benefits, the SSA processing center will return the overpayment to the Medicare contractor to review the waiver and/or appeal.

### **110.11 – Recording Overpayment Cases in Which the Provider is Not Liable—FI Only (Rev. 29, 01-02-04)**

If a provider is relieved of liability for refunding an overpayment, and an adjustment bill is required in accordance with Medicare Bill Processing, Chapter 1, General Billing Requirements, the FI shall treat the charges involved in the year-end cost report as though they were covered; i.e., make provision to assure that the overpaid amount is not recovered from the provider at the time of final cost settlement.

If the FI has a system capable of preventing year-end recovery from the provider, where it was relieved of liability for refunding an overpayment, it need not maintain an additional record of the case.

### **120 - Referral to the Department of Justice (DOJ) (Rev. 29, 01-02-04)**

If the FI/Carrier's attempts to recover an overpayment are unsuccessful and the FI/Carrier believes that the overpayment may be recovered through litigation the FI/Carrier should informally refer the overpayment to the RO to explore the possibility of litigation. If the RO, in conjunction with the Office of General Counsel, believes litigation is necessary it will request the FI/Carrier to prepare the case file for referral to the DOJ. The RO will inform the FI/Carrier of all elements to include in the case file.

#### **A. General**

The DOJ requires the submittal of a Claims Collection Litigation Report (CCLR) for overpayment litigation of claims. The CCLR is a checklist of all administrative collection actions. If need be the RO can assist the FI/Carrier in obtaining a copy of the CCLR. The FI/Carrier will follow the advice received by their RO's OGC in completing the CCLR.

In addition to completing the sections of the CCLR as much as possible the FI/Carrier must provide any relevant information to help DOJ. If applicable, the FI/Carrier must notify DOJ if there has been a change of ownership, if there have been any bankruptcy proceedings, and all necessary information concerning the identification of any outstanding overpayments regardless of the determination date. The following guidelines exist for providing information relevant to the identification of overpayments. However, the RO may request additional documents if they are relevant to the overpayment and/or provider.

#### Identification of Overpayment(s)

The FI/Carrier shall clearly identify the overpayment(s). Cost report overpayments should be identified for each cost reporting period, by total overpayment amount and each individual overpayment amount if multiple overpayments have occurred (tentative and final settlements, interim rate adjustments...). It shall show any partial payments made by the debtor and clearly distinguish between principal and interest. It shall include documentation to support the overpayment determination. This includes copies of the cost reports, audits, and reviews, copies of all correspondence, and any other information relevant to the overpayment.

#### Refund Requests

The FI/Carrier shall include a copy of the demand letter(s) to the provider. Where demand letters were returned by the postal service, the FI/Carrier shall document other attempts to secure the address of the debtor(s).

#### Recovery Efforts

The following are required:

- The FI/Carrier's internal communications relative to recovery efforts;

- Detailed reports of all conferences the FI/Carrier held with the provider relative to the overpayment; and
- A detailed narrative of the current situation with the FI/Carrier's evaluation of the cause of the incorrect payment, including setoff against any payments that may have been due the provider.

#### Provider's Ability to Refund

The FI/Carrier shall include its evaluation of the provider's ability to pay. It shall include, if possible, an examination of a statement showing assets and liabilities and other relevant financial documents. It shall include:

- Corporate financial statement;
- Statement by the debtor showing assets and liabilities;
- Income and expenses (signed by the debtor under penalty of perjury);
- Any other financial data necessary including the age and health of the debtor, potential future income, and the possibility that the debtor concealed or improperly transferred assets.

### **120.1 - Communication on Cases Sent to RO for DOJ Referral (Rev. 29, 01-02-04)**

If the FI/Carrier receives any funds, bills for current services, cost report (where one had not been filed), compromise offers, etc., after sending the case for referral to DOJ, it shall notify the RO. It will be advised by the RO as to how to respond to the provider's actions.

When a case is referred to the DOJ, the RO notifies the FI/Carrier, who will take no further collection actions except for withheld amounts that may become available. The FI/Carrier shall forward any communications received from the provider to the RO.

### **120.2 - Cases Referred to DOJ for Possible Litigation (Rev. 29, 01-02-04)**

After a provider overpayment case has been referred to DOJ, the FI/Carrier shall not contact or negotiate with the provider, unless authorized to do so by the DOJ or the U.S. Attorney handling the case. Submit all requests for negotiation to the RO.

To avoid extensive legal proceedings and costs by both parties, compromise offers may be made by the provider or the DOJ. If the DOJ contacts the RO with such a request, the RO forwards the information to the FI/Carrier for provider notification. If the provider offers a compromise, the FI/Carrier shall notify the RO and submit the following information:

- Relevant documentation relating to the offer to compromise including, but not limited to, the name, title, and position of the party making the offer, the amount of the compromise offer to settle or otherwise dispose of the overpayment, and the financial standing of the debtors; and
- Recommendations of the U. S. Attorney, if any.

The FI/Carrier shall forward the offer of compromise to the CMS Claims Collection Officer (CCO) through the RO.

In most cases, the U.S. Attorney assigned the Medicare overpayment case will not be fully familiar with Medicare procedures, laws, regulations, or reimbursement. The FI/Carrier may be requested to provide technical information to supplement the U. S. Attorney's knowledge. As cases are readied for litigation, the RO may contact the FI/Carrier for assistance in documenting the administrative record, e.g., a list of FI potential witnesses and technical advisors.

### **130 – Change of Ownership (CHOW) (Rev. 29, 01-02-04)**

When a provider undergoes a CHOW, the provider agreement is automatically assigned to the new owner unless the new owner rejects assignment of the provider agreement. The paragraphs below describe the impact of assignment on overpayment recovery.



### Assignment of Medicare Provider Agreement:

Automatic assignment of the existing provider agreement to the new owner means the new owner is subject to all the terms and conditions under which the existing agreement was issued. (See State Operations Manual, §3210) With assignment, the new owner assumes all penalties and sanctions under the Medicare program, including the repayment of any accrued overpayments, regardless of who had ownership of the Medicare agreement at the time the overpayment was discovered unless fraud was involved. In addition, the new owner receives benefits of assuming the Medicare provider agreement, such as receiving underpayments discovered after the CHOW.

When a provider undergoes a CHOW where the new provider accepts assignment of the previous owner's Medicare agreement, the responsibility for repaying any outstanding and future overpayments resides with the new owner. Exception: If any of the overpayments determined for a fiscal year when the previous owner had assignment were discovered due to fraud the responsibility for the repayment of the overpayments does not shift to the new provider. It stays with the old provider.

A sales agreement stipulating that the new owner is not liable for the overpayments made to the previous owner is not evidence enough for recovery from the new owner to not occur. Medicare was not a part of the sales agreement. That is a civil matter and it would be up to the new owner to enforce the sales agreement. If the new owner assumes assignment of the Medicare agreement, Medicare will attempt to recover from the new/current owner regardless of the sales agreement.

The intermediary should attempt collection from the new owner. If this is not successful and the FI/Carrier has reasonable evidence that the previous owner can repay the overpayment it should refer the case to the regional office. The regional office will then confer with the regional OGC and decide if this case warrants collection from the previous owner. This should be completed before the debt is transferred to the Department of Treasury.

### Nonassignment of a Medicare provider agreement:

If the new owner refuses to accept assignment of the Medicare agreement, the new owner must enter into its own Medicare agreement. In this case there would be no CHOW of the Medicare agreement and the previous owner would still be responsible for any outstanding overpayments.

## **140 - Bankruptcy**

**(Rev. 227, Issued: 09 17-13, Effective: 10-04-13, Implementation: 10-04-13)**

This section contains actions that the contractors must take to safeguard the Medicare Trust Funds when a provider files for bankruptcy. This section does not address bankruptcy issues involving debts arising under the Medicare Secondary Payer (MSP) provisions. (Although this chapter will usually use the term "provider," its provisions also apply to suppliers, including physicians). However, use of the term "provider" does not mean that the Medicare program considers suppliers and physicians to be providers. It also explains how to report accurately the Centers for Medicare & Medicaid Services' (CMS) accounts receivable balances and support CMS's efforts to effectively evaluate and manage bankruptcy cases.

This chapter will guide contractor staff through the initial stages of a provider bankruptcy. It is not intended to be, and cannot be, a step by step process from beginning to end. Bankruptcy is litigation. Bankruptcy law and the bankruptcy court affect all the actions CMS and its contractors take concerning a bankrupt Medicare provider. Therefore, contractor staff shall consult closely with the Regional Office (RO) before taking, omitting, continuing or discontinuing actions regarding a bankrupt provider. In some cases, attorneys from the Department of Justice (DOJ) in Washington, D.C. or United States Attorney's offices will work directly with RO staff. However, in most cases, the RO will be in contact with regional counsel.

### **140.1 - Bankruptcy Forms**

**(Rev. 227, Issued: 09 17-13, Effective: 10-04-13, Implementation: 10-04-13)**

#### **EXHIBIT 1**

**REFERRAL CHECKLIST**  
**(CMS Pub. 100-06, Chapter 3, §140)**  
**REFERRALS WILL NOT BE ACCEPTED WITHOUT A COPY OF THE 855**

Contractor Name \_\_\_\_\_ Date Prepared: \_\_\_\_\_

Contractor NPI that O/P is reported under: \_\_\_\_\_.

Contractor NPI that O/P is reported under on Accounts Receivable Report (751): \_\_\_\_\_

**I. Provider & Overpayment Information**

A. Provider Name \_\_\_\_\_ B. Provider No. \_\_\_\_\_

C. Cost Report Period \_\_\_\_\_

**D. Responsible Individual(s) (Most Current)**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_ Telephone: \_\_\_\_\_

**E. Overpayment Information (List information for each outstanding overpayment)**

\*\*Original Amount \_\_\_\_\_ \*\*Interest Assessed \_\_\_\_\_ /Rate

\*Principal Recouped \_\_\_\_\_ \*Interest Recouped \_\_\_\_\_

Principal Referred \_\_\_\_\_ Interest Referred \_\_\_\_\_

Through Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

F. Overpayment Type \_\_\_\_\_ G. Determination Date \_\_\_\_\_

**H.** Contractor Control # \_\_\_\_\_

**I.** Cause of Overpayment \_\_\_\_\_

NOTE: If unfiled cost report is the overpayment type, indicate the date unfiled cost report is (was) due to be filed, as well as the interim payments.

\*Attach detailed information with case regarding recoupments, include dates applied.

\*\*Include copies of the screens from either the share systems or HIGLAS SCREENS for the HIGLAS users, for both principal and interest.

Page 2  
Part A Referral Checklist

**EXHIBIT 2**

II. Accounts Receivable Reporting

(All information reported in I.E. must reconcile with amounts reported on the Accounts Receivable Report (H751)) (N/A is not acceptable)

	<u>Line</u>	<u>Amount</u>
A. HI Principal Reported on H751 Part A as transferred to RO	_____	_____
Line Reported on	_____	
HI Interest Reported on H751 Part A as transferred to RO	_____	_____
Line Reported on	_____	
SMI Principal Reported on H751 Part B as transferred to RO	_____	_____
Line Reported on	_____	
SMI Interest Reported on H751 Part B as transferred to RO	_____	_____
Line Reported on	_____	
<b>Total</b>		_____
 B. Indicate quarter information was reported on the H751		 ____ / ____ / ____

III. Collection Efforts

(For items III A-C, unless there is a post-petition demand letter, this information would not be relevant to recovering in bankruptcy).

- A. Include copies of the Initial and Intent to Refer demand letters (Ref. CMS Pub. 13-2, § 2222). If full series of letters was not sent, explain why.
- B. Include copies of all correspondence, telephone contacts, etc. pertinent to this transfer.
- C. List additional actions you have taken to recoup overpayment and include copies of all; (e.g., attempts to locate through directory assistance, AMA, post office forwarding addresses; disconnected phones, flags against other legal entities
- D. The contractor must establish whether or not a particular provider is participating in the Medicaid Program so that the Federal Share of Medicaid payments can be withheld, if appropriate, in accordance with CMS Pub. 13-2, § 2226ff.

PARTICIPATING: Yes \_\_\_\_ No \_\_\_\_

Medicaid Number/State: \_\_\_\_\_  
(If Yes, Medicaid # and State must be included)

- E. Is the provider listed in the Fraud Investigation Data Base? (FID) Yes \_\_\_\_ No \_\_\_\_

Page 3  
Part A Referral Checklist

**EXHIBIT 2 cont.**

IV. Ownership

Check the appropriate ownership affiliation:

- A.  INCORPORATED  
Chain Organization Yes  No   
If yes, who is the Medicare Part A contractor: \_\_\_\_\_  
Incorporation Date \_\_\_\_\_  
EIN # \_\_\_\_\_
- B.  PARTNERSHIP  
EIN # \_\_\_\_\_

1) If partnership, list names and SS#s of all partners.

\_\_\_\_\_  
\_\_\_\_\_

2) If Corporation, list names and addresses of officers.

\_\_\_\_\_  
\_\_\_\_\_

3) If Chain organization, list other provider names, addresses, and provider numbers.

\_\_\_\_\_

B. Is "Responsible Individual(s)" information the most current? Yes  No

Provide alternate contact(s), Name, Title, Address and Telephone Number:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Are claims for services still being submitted? Yes  No

If yes, why is referral being made: \_\_\_\_\_  
\_\_\_\_\_

D. Has there been a change of ownership? Yes  No   
If yes, what is the date? \_\_\_\_\_

Has the new owner assumed the previous owner's provider agreement? Yes  No   
(Provide copy of sales agreement.)

E. Has recoupment from new owner been attempted? Yes  No

Page 4  
Part A Referral Checklist

**EXHIBIT 2 cont.**

V. General

A. Is the provider still participating in the Medicare program? Yes \_\_\_\_\_ No \_\_\_\_\_

Note: If the provider is still participating in the program and claims recoupments are being made, do not transfer case to the RO.

B. Are you aware of any bankruptcy proceedings planned or commenced on behalf of the provider transferred? Yes \_\_\_\_\_ No \_\_\_\_\_

Copies of pertinent court documents should be submitted. Take the following program safeguard actions when a bankruptcy situation is identified:

- Adjust interim payment calculation to ensure that no overpayment is made
- Consult the CMS RO before applying any disposition regarding cost report underpayments
- Expedite cost report desk reviews and audit settlements
- Tentative settlements should not be made in bankruptcy cases
- Consult the CMS RO regarding any cost reports pending submission and the expected dates of submission.

C. Did the provider request an extended repayment schedule (ERS)? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, was it approved? Yes \_\_\_\_\_ No \_\_\_\_\_ Length of ERS \_\_\_\_\_

Number of payments made \_\_\_\_\_

Attach any financial documentation submitted.

D. Did provider request an Appeal, Yes \_\_\_\_\_ No \_\_\_\_\_ or PRRB hearing? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, do not transfer unless the decisions have been rendered. Submit all pertinent information.

Cases pending a Reopening, Bankruptcy, Appeal Review, or PRRB Decision, should not be transferred to the CMS-RO until judgment has been rendered. Copies of all decisions must be included.

**INSTRUCTIONS:** If you do not provide any requested information, you must give a detailed explanation of why you cannot secure the information. We will return incomplete forms with the entire case.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

Date: \_\_\_\_\_



**PART B PHYSICIAN/SUPPLIER OVERPAYMENT  
Referral CHECKLIST  
(CMS Pub. 100-06 chapters 4 & 5)**

**REFERRALS WILL NOT BE ACCEPTED WITHOUT A COPY OF THE 855**

Medicare Contractor Name \_\_\_\_\_ Date Prepared: \_\_\_\_\_

Contractor Jurisdiction that the overpayment is reported under: \_\_\_\_\_

Contractor Jurisdiction and/or ID No. that overpayment is reported under on Accounts Receivable Report (751): \_\_\_\_\_

**I. Physician/Supplier Overpayment Information**

A. Phy/Supp. Name

B. Phy/Supp No. \_\_\_\_\_

UPIN \_\_\_\_\_

C. Responsible Individual(s)

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_ Telephone: \_\_\_\_\_

**D. Overpayment Information**

\*\*Original Amount \_\_\_\_\_ \*\*Interest Assessed \_\_\_\_\_ /Rate

\*Principal Recouped \_\_\_\_\_ \*Interest Recouped \_\_\_\_\_

Principal Referred \_\_\_\_\_ Interest Referred \_\_\_\_\_

Through date \_\_\_\_\_

Query if overpayment is based on fraud.

\*Attach detailed information with case regarding recoupments, include dates applied.

\*\*Include a copy of the Master screen from the share system and/or from the HIGLAS SCREENS when applicable.

Information requested in E though L is needed for all claims involved in overpayment.

E. Discovery Date \_\_\_\_\_

F. Determination Date \_\_\_\_\_

G. DCN \_\_\_\_\_

H. Cause of OP \_\_\_\_\_

I. Claim Number \_\_\_\_\_

J. Claim Paid Date \_\_\_\_\_

K. Beneficiary Name \_\_\_\_\_

L. HI Claim No. \_\_\_\_\_

Page 2  
Part B Referral Checklist

**EXHIBIT 4 - cont.**

**II. Accounts Receivable Reporting**

(All information reported in I.D. must reconcile with amounts reported on the Accounts Receivable Report (H751)) (N/A is not acceptable)

Line                      Amount

A. SMI Principal Reported on H751 Part B as transferred to RO \_\_\_\_\_  
Line Reported on \_\_\_\_\_  
SMI Interest Reported on H751 Part B as transferred to RO \_\_\_\_\_  
Line Reported on \_\_\_\_\_

B. Indicate quarter information was reported on the H751 \_\_\_\_\_

C. Is this Overpayment reported on the M751                      Yes \_\_\_\_\_ No \_\_\_\_\_

**III. Collection Efforts**

A. Include copies of the Initial and Intent to Refer demand letters (Ref. CMS Pub. 14-3, Sec. 7142).  
If full series of letters was not sent, explain why. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Include copies of all correspondence, telephone contacts, etc. pertinent to this transfer.

C. List additional actions you have taken to recoup overpayment and include copies of all, (e.g., attempts to locate through directory assistance, AMA, post office forwarding addresses; disconnected phones, flags against other numbers, etc.).

D. The Contractor must establish whether or not a particular provider is participating in the Medicaid program so that the Federal Share of Medicaid payments can be withheld, if appropriate, in accordance with CMS Pub. 14-3,  
PARTICIPATING: Yes \_\_\_\_\_ No \_\_\_\_\_

Medicaid Number/State: \_\_\_\_\_  
(If Yes, Medicaid # and State must be included)



Page 3  
Part B Referral Checklist

**EXHIBIT 4 - cont.**

IV. Ownership

Check the appropriate ownership affiliation:

- A.  INDIVIDUAL  
Tax ID # \_\_\_\_\_  
SS # \_\_\_\_\_
- B.  INCORPORATED  
Chain Organization Yes  No   
Incorporation Date \_\_\_\_\_  
TIN # \_\_\_\_\_
- C.  PARTNERSHIP TIN # \_\_\_\_\_

- D. Is A Responsible Individual(s) information the most current? Yes \_\_\_\_\_ No \_\_\_\_\_  
Provide alternate contact(s), Name, Title, Address and Telephone Number

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- E. Is recovery due from the beneficiary or other 3rd party payor? Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, why was recovery not made (enclose copies of letters and replies).

- F. Are claims for services still being submitted? Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, why is referral being made:

- G. Are claims for services/supplies being submitted under another physician/supplier number?  
Yes \_\_\_\_\_ No \_\_\_\_\_ If Yes, provide alternate number \_\_\_\_\_.

Is the tax identification, or social security number the same as debtor's? If yes, recoupment should be attempted.

- H. Has there been a change of ownership? Yes \_\_\_\_\_ No \_\_\_\_\_  
If Yes, Has the new owner assumed any of the previous owner's liabilities? Yes \_\_\_\_\_ No \_\_\_\_\_  
(Provide copy of sales agreement.)

Page 4  
Part B Referral Checklist

**EXHIBIT 4 - cont.**

V. General

- A. Is the physician/supplier still participating in the Medicare program? Yes \_\_\_\_\_ No \_\_\_\_\_
- B. Are you aware of any bankruptcy proceedings planned or commenced on behalf of the provider transferred? Yes \_\_\_\_\_ No \_\_\_\_\_ Please provide copies of pertinent court documents.
- C. Did the physician/supplier request an extended repayment schedule (ERS)?  
Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, was it approved? Yes \_\_\_\_\_ No \_\_\_\_\_ Length of ERS \_\_\_\_\_  
Number of payments made \_\_\_\_\_  
Attach any financial documentation submitted.
- D. Did the physician/supplier request a Fair Hearing or ALJ Hearing?  
Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, do not transfer unless the both fair hearing and ALJ decisions have been rendered. Submit all pertinent documentation.

**THIS FORM MUST BE COMPLETE. IF ANY REQUESTED INFORMATION IS NOT PROVIDED, A DETAILED EXPLANATION MUST BE GIVEN AS TO WHY THE INFORMATION CANNOT BE SECURED. INCOMPLETE FORMS WILL BE RETURNED WITH THE ENTIRE CASE.**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
  
Date: \_\_\_\_\_



## **EXHIBIT 6**

### **CONTRACTOR BANKRUPTCY CHECKLIST**

- Send the following information to the RO upon learning that a provider has or may soon file for bankruptcy:
- Provider Name
- Provider Medicare Number
- Provider Address
- Provider Tax Identification Number
- Overpayment Determination Date
- Original Overpayment, Amounts Recouped, Current Balance Reported on the CMS 750/751 reports of principal and interest outstanding balances. Date the receivable was included on the CMS 750/751.
- Overpayment Type
- Fraud and Abuse Overpayments or Investigations
- For Part A Contractor, the Cost Report Year
- For Part A Contractor, the Cost Reports Settlements Pending In-house with Expected Completion Dates
- For Part A Contractor , the Cost Reports Pending Submission with Expected Dates
- For Part A Contractor, Interim Rate Information by Cost Year for Previous Three Years
- For Part A Contractor , Overpayment History by Cost Year for Previous Three Years
- For Part B Contractor, the Claim Numbers Relating to Overpayments
- For Part B Contractor , the Dates of Service for Related Claims
- For Part B Contractor , the Dates of Payment for Related Claims
- Medicare Review Overpayments or Reviews
- Anticipated Reopenings

#### **140.2 - Basic Bankruptcy Terms and Definitions**

**(Rev. 12, 10-18-02)**

##### **140.2.1 - Bankruptcy is Litigation**

**(Rev. 12, 10-18-02)**

An individual or company declares bankruptcy by filing a petition for bankruptcy in a United States Bankruptcy Court. The Bankruptcy Court then opens a bankruptcy case. The Bankruptcy Court closely monitors the affairs of the individual or company (the debtor) including the creditors' treatment of the debtor. Bankruptcy may appear to be "business as usual" for a debtor, but it is not. You should not take any action for or against a debtor until you consult the Regional Office who will consult with the Regional attorney handling the bankruptcy. Do not share any information about bankruptcy strategy or activities with the bankrupt provider.

##### **140.2.2 - Types of Bankruptcies**

**(Rev. 12, 10-18-02)**

Title 11 of the United States Code (the Bankruptcy Code) identifies four types of bankruptcies that may involve Medicare providers: Chapter 7, 9, 11 and 13. We briefly describe each type here to familiarize you

with these types of bankruptcy. However, these general descriptions do not replace your attorney's specific advice in a particular bankruptcy case.

1. Chapter 7 - Debtors file Chapter 7 bankruptcies to obtain discharge of their debts. Companies that file under Chapter 7 generally close. A court-appointed trustee accumulates the assets of the debtor, sells them, and distributes the money among those whom the debtor owes (the creditors).

2. Chapter 9 - Chapter 9 bankruptcies involve municipalities such as a hospital district. Chapter 9 provides for reorganization, much like Chapter 11.

3. Chapter 11 - Debtors file Chapter 11 to reorganize the debtor individual or business. To emerge from Chapter 11, the debtor in possession submits a Plan of Reorganization ("Plan"). The Plan indicates the amount and schedule for payments to creditors. Creditors vote on the Plan, and the Court must confirm it. Recovery amounts vary. The Bankruptcy Code provides for discharge of the remainder of the debt.

4. Chapter 13 - Chapter 13 bankruptcies adjust the debts of individuals (including sole proprietorships) with a regular income. Generally, debtors must file a debt adjustment plan within 15 days after filing.

### **140.2.3 - Filing Bankruptcy Draws a Line in the Sand** (Rev. 222, Issued: 06-14-13, Effective: 07-17-13, Implementation: 07-17-13)

The petition date (i.e., the date the debtor files its petition in bankruptcy with the Bankruptcy Court) draws a line in the sand between prepetition and postpetition actions. Events that occur before the petition date are prepetition. Events that occur on or after the petition date are postpetition. The automatic stay governs many actions that contractors may take concerning a debtor postpetition. Contractors shall therefore consult with the RO before taking action concerning the debtor postpetition.

Medicare's right to recover overpayments can depend on whether they are prepetition or postpetition. The RO shall direct contractors on how to treat payments for prepetition services (prepetition payments) and payments for postpetition services (postpetition payments) to maximize Medicare's recovery.

### **140.2.4 Bankruptcy Affects Nearly All Medicare Operations** (Rev. 12, 10-18-02)

Bankruptcy can affect every aspect of the interaction between the Medicare program and a debtor. Each contractor staff member who may come in contact with a debtor, is effectively a part of the Medicare "bankruptcy team" for that case. You, as contractor point of contact, must ensure that all potential bankruptcy team members alert you if they anticipate actions concerning the debtor, and that they then coordinate those actions with you and with the RO and Regional Counsel. In bankruptcy, both inaction and inappropriate action hurt Medicare's chances of recovery. Some commonly affected areas are:

#### **1. Overpayment Recovery**

Medicare's right to recover prepetition and postpetition overpayments also varies by federal jurisdiction. (See discussion on set-off and recoupment in section F below). If you have overpaid a debtor, you must consult the RO, then take appropriate action to maximize recovery of Medicare overpayments from debtors. Contractor overpayment staff should not send any letters to the debtor until the RO approves them for release.

#### **2. Fraud and Abuse**

Ensure that you consult with CMS Program Integrity staff and the RO before you suspend an entity for fraud and/or abuse, recover fraud overpayments, or continue suspensions. If you have evidence that the provider filed for bankruptcy because of fraud it committed, advise the RO handling the bankruptcy.

#### **3. Reimbursement**

Contractor reimbursement staff must notify the RO before suspending payments to a debtor for failure to file a cost report or a credit balance report. DO NOT issue tentative settlement payments in bankruptcy cases unless explicitly requested by the RO.

Unless otherwise directed, contractor reimbursement staff should continue to review and audit cost reports as usual. However, the contractor must submit notices of program reimbursement to the RO for review and obtain approval before issuing them.

The CMS will advise the contractor reimbursement staff about stipulations and settlements that affect audit and/or reimbursement. In making global settlements decisions CMS will consider the cost and benefits of auditing cost reports in cases where recovery is unlikely and direct contractor staff accordingly.

#### **4. Payment**

Contractor payment staff must receive approval from the RO before taking any action that changes the amounts payable or owed by a debtor.

#### **5. Appeals**

Contractor staff will be asked about recent and current Administrative Law Judge, Provider Reimbursement Review Board and Department Appeal Board appeals involving a provider in bankruptcy.

#### **6. Changes of Ownership**

A debtor may attempt to transfer provider agreements so that both parties may avoid overpayment recovery. DMSO staff will notify other regional office staff when a debtor provider files for a CHOW, and immediately notify the Regional Counsel who is handling the bankruptcy. The CHOW will not be processed until the regional office obtains the concurrence of the Regional Counsel who is handling the bankruptcy.

### **140.2.5 - Recoupment and Set-off (see also §140.6.4) - (Rev. 12, 10-18-02)**

Recoupment and set-off are two of Medicare's strongest tools for recovering overpayments to debtor providers. Jurisdictions vary in their decisions about how Medicare can use these tools. Some jurisdictions consider the Medicare part A provider agreement one contract /transaction and allow it to be the basis for broad powers of recoupment. Other jurisdictions consider each cost report year as a distinct contract and restrict recoupment to periods within a particular cost report year. Your RO/Regional Counsel can advise you whether current law in a given jurisdiction permits recoupment.

#### **1. Recoupment**

Recoupment permits a party to reduce current payments to account for prior overpayments made under the same contract or transaction. Recoupment permits adjustment across the petition date and does not require approval of the bankruptcy court. Therefore, Medicare should recoup in any jurisdiction where it is permitted. Do not begin, continue or discontinue recoupment without approval of the RO.

#### **2. Set-off**

If recoupment is not permitted, set-off will be considered. Medicare must take quick action to recover overpayments using set-off. Set-off should not take place without specific instructions by the RO.

Set-off permits making similar adjustments in situations involving one or more contracts or transactions. For example, suppose B owes A \$40.00 under one contract and A owes B \$50.00 under another contract. If set-off is allowed then A can take her \$40 from the \$50 she is holding for B (A would only pay B \$10.00).

Generally, parties can request court permission to set-off. If allowed, parties can set-off prepetition claims against prepetition payments or postpetition claims against postpetition payments. They cannot set-off prepetition claims against postpetition claims.

### **3. Administrative Freeze**

Once it is discovered that a provider is in bankruptcy, Medicare can enact a temporary administrative freeze. An administrative freeze (sometimes called a Strumpf freeze, named after a Supreme Court case) will allow time for Medicare to determine if there are any overpayments and to ask the bankruptcy court to allow set-off. Speed is essential because courts do not permit set-off across the petition date. A pre-petition overpayment can only be set-off against a pre-petition claim.

#### **140.2.6 - Time is of the Essence - (Rev. 12, 10-18-02)**

Do not wait for formal notice of a bankruptcy and do not assume that someone else has notified the appropriate party. Medicare does not always receive timely and proper notice. By waiting, we may lose the opportunity to recover Medicare overpayments. Notify the RO/regional counsel immediately when you get credible information that a bankruptcy is about to occur. Good sources to obtain early information about bankruptcies include the Internet; newspapers, trade journals, and business magazines are good sources. Each individual item listed below should be relayed to the RO as soon as you receive it:

Name and address(s) of the individual or entity,

Type and timing of Medicare reimbursement the provider receives,

Amounts and types of outstanding overpayments,

Date of pending or planned reopening,

Status of any unsettled cost report years (expected settlement date and expected results); remember, DO NOT make tentative settlement payments to an individual or entity in bankruptcy, and make final settlement payments only after obtaining the RO's concurrence.

Dates and amounts of next Medicare payments if possible,

The name of the court and jurisdiction, case number, phone number of the debtor's attorney in the matter, and

Any current changes of ownership or quality of care issues).

#### **140.2.7 - Definitions - (Rev. 12, 10-18-02)**

You may encounter the terms listed below. The definitions are provided to give a general understanding. Specific terms may apply differently based upon the circumstances of a particular bankruptcy case.

Adversary Proceeding is litigation in bankruptcy court to recover money or property; determine the validity, priority or ranking of an interest in property; get approval for selling an estate's property interest; revoke a discharge or an order of confirmation; and obtain declaratory judgments related to matters of the bankruptcy estate. Litigation against CMS to turn over recouped monies is an example of an adversary proceeding.

Affirmative Recovery Actions is debtor's assumption of its executory contract (its provider agreement).

Automatic Stay is an injunction that automatically springs into effect concurrent with the filing of the bankruptcy petition. The automatic stay protects the assets of the estate from lawsuits, foreclosures, garnishments, and any other collection activities that are not specifically exempt from the stay by statute or specifically approved by the bankruptcy court. The automatic stay applies to Medicare overpayment letters that demand repayment, assess interest or otherwise attempt to gain possession of property of the bankruptcy estate.

Bankruptcy Trustee is a private individual or corporation appointed to represent the interests of the bankruptcy estate and the debtor's creditors.

Bar Date is the deadline for filing a proof of claim. In general the bar date for government agencies such as CMS is 180 days after the date of the order for relief (usually, the date the provider files for bankruptcy). In some bankruptcies, however, the court may set a different date.

Claim is the creditor's right to payment or equitable relief creating a right to payment from a debtor or the debtor's property whether or not that right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. The date a claim arises determines whether it is prepetition or postpetition. In Medicare, the date of service is the date of the claim.

Confirmation is bankruptcy court approval of a plan of reorganization.

Contingent Claim is a claim that may be owed by the debtor under certain circumstances, for example, where the debtor is a co-signer on another person's loan and that person has not yet defaulted, but may fail to pay.

Creditor is a person or a business to which the debtor owes money or which claims to be owed money by the debtor.

Debtor is a person or business who has filed a bankruptcy petition.

Discharge is a release of a debtor from liability for certain dischargeable debts. It prevents the creditors that are owed those debts from taking any action to collect those debts from the debtor or the debtor's property. Prohibited actions include making telephone calls, sending letters, and having contact that is intended to induce the debtor to pay the debt.

Dischargeable Debt is a debt for which the Bankruptcy Code allows the debtor's personal liability to be eliminated.

Dismiss does not release a debtor from liability on any debts. It does not prevent creditors that are owed those debts from taking appropriate action to collect those debts from the debtor or the debtor's property. When a case is dismissed it is as if the debtor never filed. Therefore, you may proceed with actions that include making telephone calls, sending demand letters, and having contact that is intended to induce the debtor to pay the debt.

Estate is the name for the Debtor's property interests overseen by the bankruptcy court. Filing a petition in bankruptcy creates an estate consisting of all legal and equitable interests the Debtor has. In general, a legal interest is a direct ownership of property. In contrast, an equitable interest typically is indirect and may require court involvement to obtain control or exercise the property rights.

Executory Contract is a contract under which the parties to an agreement have duties remaining to be performed. A Medicare Part A provider agreement is treated as an executory contract.

Exemption is property that the Bankruptcy Code or applicable state law permits a debtor to keep from creditors.



Fraudulent Transfer is a knowing and fraudulent transfer or concealment of property by the debtor with intent to defeat the provisions of the Bankruptcy Code.

Lien is a recorded claim upon specific property in order to secure payment of a specific debt or performance of an obligation. Medicare does not have a lien on overpayments.

Liquidation is the conversion of the debtor's property into cash with the proceeds to be used for the benefit of creditors.

Liquidated Claim is a creditor's claim for a fixed amount of money.

Motion to Lift the Automatic Stay is a request by a creditor to allow the creditor to take an action against a debtor or the debtor's property that would otherwise be prohibited by the automatic stay.

Non-Dischargeable Debt is a debt that cannot be eliminated in bankruptcy. Overpayments resulting from fraud are non-dischargeable. A complaint to determine dischargeability must be filed in the bankruptcy court. See Adversarial Proceeding, above.

Plan of Reorganization is a debtor's detailed description of how the debtor proposes to pay creditors' claims over a fixed period of time.

Priority is the Bankruptcy Code's statutory ranking of unsecured claims. It determines the order in which unsecured claims will be paid if there is not enough money to pay all unsecured claims in full.

Priority Claim is an unsecured claim that is entitled to be paid ahead of other unsecured claims that are not entitled to priority status. Administrative expenses for preserving the estate (e.g., certain accounting fees or postpetition Medicare overpayments) are considered priority claims.

Secured Debt is a debt backed by a mortgage, pledged collateral, or other lien. The creditor that has a secured debt has the right to pursue specific pledged property upon default. See lien above.

Schedule is a list submitted by the debtor along with the petition (or shortly thereafter) showing the debtor's assets, liabilities, and other financial information. (There are official forms a debtor must use.)

Settlement Agreement is an agreement settling a dispute between two or more parties.

Stipulation is an agreement between parties respecting the conduct of legal proceedings approved by the Bankruptcy Court. With appropriate approval, Medicare may enter a stipulation agreement to facilitate a change of ownership or to resolve an overpayment earlier than could be expected by litigation.

United States Trustee is an officer of the Department of Justice responsible for supervising the administration of bankruptcy cases, estates, and trustees, monitoring plans and disclosure statements, monitoring creditors' committees, monitoring fee applications, and performing other statutory duties.

Unsecured debt is one that is not backed by property or collateral. Medicare's claims are generally unsecured.

### **140.3 - Contractor's Establishment of Relationships to Ensure Effective Actions Regarding Providers in Bankruptcy (Rev. 12, 10-18-02)**

### **140.3.1 - Contractor Staff Must Establish Relationships to Ensure That the RO and Regional Counsel Receive Prompt Notice of Provider Bankruptcies, so That Medicare Can Take Quick Action** (Rev. 12, 10-18-02)

The contractor may receive notice of a bankruptcy from many sources including the provider, other fiscal intermediaries or carriers, the State, the regional office certification staff, or regional counsel. It is imperative that contractor staff act quickly when a provider files for bankruptcy in order to meet filing deadlines in the bankruptcy court. Therefore, contractor staff must establish relationships to ensure that they receive information promptly about provider bankruptcies.

### **140.3.2 - Contractors Must Recognize and Advise RO Staff About Potential Provider Bankruptcies** (Rev. 12, 10-18-02)

Contractor staff must be alert to news or notices of bankruptcy and notify RO staff immediately. Contractor staff should alert the RO to all potential bankruptcies via a telephone call, an e-mail, or a fax.

Bankruptcy warning signs for contractors (indications that a provider is experiencing financial difficulty, and may file for bankruptcy):

1. Frequent unfiled or late-filed cost reports.
2. Failure to make timely payments on an extended repayment plan schedule.
3. Frequent changes of ownership.
4. Litigation
5. Voluntary or involuntary termination from the Medicare Program.
6. Provider has difficulty meeting payroll.
7. History of significant overpayment determinations.
8. Significant decline in Medicare and/or total patient census.

### **140.3.3 - Contractor Staff Will Establish a Relationship With the RO That has Jurisdiction Over the Bankruptcy** (Rev. 12, 10-18-02)

Contractors will proactively establish and maintain ongoing communications with the RO that has jurisdiction over a particular bankruptcy case. This is important because bankruptcy law may differ significantly from one jurisdiction to another, due to the structure of the federal court system.

In the federal system, a party may appeal lower level court decisions to a higher court, which has the power to affirm or reverse the lower court. In order of increasing rank and authority, the federal system is comprised of Bankruptcy Courts, District Courts, Courts of Appeals, and the Supreme Court. Each court in this list generally hears appeals from the court immediately preceding it. Although the Supreme Court has the final word, it hears a highly limited number of cases each year. This permits conflicts between lower court decisions to continue for many years until they are resolved by the Supreme Court.

As a result, absent a Supreme Court decision, the most authoritative precedents that may exist (and which may conflict with one another) are issued by the Courts of Appeals. There are 11 Courts of Appeals (known as Circuits) covering various States, plus a District of Columbia Circuit. The decision of each Court of Appeals is controlling within the States covered by that Circuit.

As discussed in greater detail below, CMS may want to take different actions in a bankruptcy case for different providers, including suspending payments, or recouping overpayments. In addition, CMS may have taken such actions before the provider filed for bankruptcy. Whether CMS can legally take or leave in place such actions may well depend on where the provider filed for bankruptcy, and the existing legal precedents within that Circuit.

For example, at the time of this writing there is conflict in the Circuits about whether CMS may recoup prepetition overpayments from postpetition payments without first obtaining relief from the automatic stay. The Third Circuit (covering Pennsylvania, New Jersey, Delaware and the Virgin Islands) forbids recoupment over different fiscal years without such relief. By contrast, the Ninth Circuit (Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon and Washington) and the District of Columbia Circuit permit such recoupment. No other Court of Appeals has decided the issue. There are various District Court decisions going both ways.

There are also conflicting decisions by District Courts on whether CMS may continue to suspend payments due to suspected fraud when the provider files for bankruptcy. For these reasons, the contractors should neither initiate nor discontinue significant action affecting payment without first contacting Regional Counsel.

#### **140.3.4 - RO Jurisdiction Generally Parallels the Bankruptcy Court Where Case is Filed** (Rev. 12, 10-18-02)

In most cases, the RO which has jurisdiction over a bankruptcy case is the one which has jurisdiction over the State in which the debtor files for bankruptcy (bankruptcy is filed in federal court). This RO will usually be the lead RO. The RO will contact the contractor.

The ROs will review each bankruptcy, even when no current overpayments exist, since the possibility of overpayment determinations remains until the FI settles all cost reports. Medicare is an unsecured creditor in bankruptcy, and is among the last creditors to receive a distribution of funds, unless it takes proactive steps to protect Medicare's interests.

#### **140.3.5 - Contractor and Regional Office Bankruptcy Point of Contact Staff Member-** (Rev. 12, 10-18-02)

The contractors should contact their home RO to determine which RO will have responsibility for the bankruptcy case. The RO point of contact may be at the RO level or the Consortium level in keeping with Consortium agreements. The RO point of contact will consolidate information and manage, report, and coordinate ongoing communication and activities among the appropriate involved parties (e.g., contractors, other ROs, Chief Counsels, and Central Office) regarding bankruptcies. The RO will communicate the name, phone number, fax and e-mail address of the point of contact in writing or via e-mail to the Accounting Management Group, Regional Counsel, and the affected Associate Regional Administrators for Financial Management and respective contractors.

#### **140.4 - Actions to Take When a Provider Files for Bankruptcy** (Rev. 12, 10-18-02)

##### **140.4.1 - Establish Effective Lines of Communications With** (Rev. 12, 10-18-02)

As soon as the contractor learns that a provider has filed for bankruptcy, it must immediately notify the following partners:

RO, Division of Financial Management Staff  
Program Integrity Staff.

Obtain the name of individual(s) whom you should contact to obtain information quickly and to communicate information about the bankrupt Medicare provider.

#### **140.4.2 - Respond to RO Requests for Information (Rev. 12, 10-18-02)**

1. For Part A bankruptcies, provide overpayment information using the Part A Referral Checklist (see Attachment A).

Contractor staff must divide the overpayment information into prepetition and postpetition amounts.

The contractor will report the following overpayment information to the RO using the Referral Checklist as a reference when the contractor is seeking technical advice:

*a.* Provider Information:

- 1.* Provider Number
- 2.* Provider Name
- 3.* Provider Address
- 4.* Tax Identification Number (TIN)

*b.* Information about each overpayment:

- 1.* Cost year end
- 2.* Determination date
- 3.* Original overpayment
- 4.* Whether overpayment is based on a tentative or final settlement
- 5.* Notice of Program Reimbursement containing overpayment determination
- 6.* Amounts Recouped
- 7.* CMS 750/751 Line 7 reports a total ending balance for region. The intermediary would need to provide specific information on specific bankrupt providers, which are reflected on Line 7.
- 8.* The date of the CMS 750/751 report on which the receivable was reported
- 9.* Overpayment type

*c.* Information to Estimate Potential Future Overpayments:

- 1.* Cost Reports in-house pending settlement with expected completion date
- 2.* Cost Reports pending submission with expected dates
- 3.* Cost Reports, which are overdue, and total amount of payments made for those cost years
- 4.* Interim Rate Information by Cost Year for Previous three years
- 5.* Overpayment History by Cost Year for Previous three years
- 6.* Medical Review Overpayments or Fraud and Abuse Overpayments or Investigations. You should also include these in the totals above.

**NOTE:** If the bankruptcy involves a provider with an audit and claims intermediary, (e.g., hospital with a provider-based home health agency or hospice), the RO will establish guidelines for obtaining information through the audit intermediary or establish direct communication with both intermediaries.

2. For Part B Bankruptcies, carriers and/or DMERCs will provide overpayment information using the Referral Checklist (see Attachment A) as a reference when the contractor is seeking technical advice from the RO:

Provider Information:

1. Provider Number
2. Provider Name
3. Provider Address
4. Tax Identification Number (TIN)

a. Overpayment Information:

1. Claim numbers related to the overpayment
2. Dates of service for related claims (check with Regional Counsel on the need for this)
3. Dates of payment for related claims (check with Regional Counsel on the need for this)
4. Determination date of original overpayment
5. Correspondence notifying provider of overpayment
6. Original overpayment
7. Amounts recouped
8. CMS 750/751 Line 7 reflects outstanding receivable balance totals for entire region (both principal and interest)-You must request specific outstanding balances from FI carried for specific providers
9. The date of the CMS 750/751 report on which the receivable was reported
10. Overpayment Type
11. Medical Review overpayments
12. Fraud and Abuse overpayments or investigations

3. Inform the RO of any underpayments owed to providers. Ascertain whether any prepetition or postpetition underpayments have been determined. Do not release such funds until you have received RO approval.

#### 140.4.3 - Immediate Contractor Directives From the RO (Rev. 12, 10-18-02)

The RO will give the contractors the following guidance as soon as a provider files for bankruptcy.

1. The RO will notify the Contractor of Provider Bankruptcy/Litigation.

a. Bankruptcy Filed

The RO will inform the contractor that the RO has opened a bankruptcy case. RO will inform the contractor that it should clear any future actions concerning the bankrupt provider(s) through the RO.

b. Bankruptcy Filing Date.

The RO will notify the contractor of the bankruptcy filing date, since it impacts on actions that the contractor can take and the evaluation of whether payments are prepetition or postpetition.

c. Immediate response to requests.

Since bankruptcy has court imposed deadlines, the contractor must take immediate action whenever the RO or Regional Counsel makes a request.

d. Obtain approval of all correspondence to provider.

The contractor must submit all correspondence addressed to the provider to the RO for approval prior to release. The RO will inform Part B Carriers/DMERCs that they should write a notification letter to replace the system generated demand letter.

e. Lead RO

If another RO has the lead on the bankruptcy, the RO will provide the contractor with a contact name and telephone number. The regional office that supervises the contractor may need to continue to assist the contractor in an advisory role.

2. The RO Will Notify Contractor of Immediate Actions It Must Take.

a. Interim Rate Adjustment.

After consultation with regional counsel, RO will direct the intermediary to immediately perform an interim rate adjustment to ensure that payments are accurate and that no future overpayments occur. (Medicare Intermediary Manual §2760.1(C). 42 CFR §413.64(i).

b. Recoupment.

RO will inform the contractor (after discussion with regional counsel) whether it should continue or cease any current recovery action.

c. Administrative Freeze.

RO will inform the contractor (after discussion with Regional Counsel) whether or not it should place payments in administrative freeze.

3. Actions The Contractor Must Take on an Ongoing Basis.

a. Expedite Cost Report Settlement

RO will tell the FI to expedite the settlement of any open cost reports. RO will caution the FI not to perform any tentative settlements unless explicitly requested by the RO (in consultation with Regional Counsel) and not to issue any final settlements to the provider without first obtaining permission from the RO (in consultation with Regional Counsel).

b. Contractors should suspend payments if provider does not timely file cost report.

If the bankrupt provider fails to submit a timely, acceptable cost report, immediately notify the RO and Regional Counsel prior to placing the provider in 100% withhold and immediately notify the RO and Regional Counsel that you have done so. When the provider submits an acceptable cost report consult with the RO and the Regional Counsel prior to release of the withheld funds.

c. **Part B - Tracking Overpayments and Refunds**

The carrier or DMERC may need to track overpayments and voluntary refunds for a bankrupt provider. The RO will work with Regional Counsel to determine what information Regional Counsel needs. The contractor should be aware of the impact on beneficiary deductibles and coinsurance in a Part B bankruptcy.

d. **Contractors should check with RO before making other payments to provider.**

It is important that intermediaries, carriers, and DMERCs establish a process to ensure they do not make payments (e.g., underpayments, lump sum payments, or payments resulting from appeals) to bankrupt providers who have outstanding overpayments unless the RO (in consultation with regional counsel) so directs. This is especially critical for intermediaries who must continue to settle open cost reports.

4. **Contractors Will Track and Report Information to RO.**

a. **Cost Report Settlements and Claims Processed**

Contractor staff should notify the RO promptly of any and all proposed cost report settlements, changes in the amount of determined overpayments or underpayments, and claims processed.

b. **Appeals**

If a bankrupt provider files an appeal on an overpayment, contractor staff must keep RO staff informed on the outcome of the appeal. Appeals may take place at the contractor location, with an Administrative Law Judge, or at any Office of Hearings and Appeals, at the Provider Reimbursement Review Board, or at Federal District Court. If the appeal is favorable to the provider, it may require CMS to amend its proof of claim because the provider would have a smaller overpayment. Alternatively, in some cases, the RO may direct the contractor to freeze any outgoing funds. The contractor will keep the RO and Regional Counsel updated on the status of appeals.

5. **Record-Keeping.**

a. **Interest**

The RO will advise the contractor whether or not it should continue to calculate interest for overpayments. Medicare's ability to assess interest varies based on the circumstances of the case. RO will consult with the Regional Counsel before determining whether the contractor should make an adjustment. If the bankruptcy is in a district where interest should stop accruing on the petition filing date, the contractor must make an adjustment to remove the interest.

The contractor should post these adjustments to the contractors' internal systems, the Provider Overpayment Reporting System (PORS) and the Physician Supplier Overpayment Report (PSOR) within ten (10) days of notice of transaction. The PORS reflects interest assessed and the PSOR reflects interest collected. It should also post the adjustments to the CMS 750/751 reports.

b. **PORS/PSOR Update**

RO will instruct the contractor to update the PORS/PSOR with appropriate bankruptcy status codes.

c. **Bankruptcy Case At Contractor's Location.**

RO will inform the contractor that they may not refer bankruptcy cases to the Debt Collection Center for collection under the Debt Collection Improvement Act. If the contractor has already referred a case to DCC and no recovery action has begun, the RO will take steps to retrieve the case. The overpayment case will remain at the contractor location for financial reporting

purposes until the case is ready for termination write-off, or until the RO advises the contractor otherwise.

#### **140.4.4 - Tracking Debts/CO Communications** (Rev. 12, 10-18-02)

Financial Reporting. While the lead RO is responsible for managing the bankruptcy case, all bankruptcy debt will remain at the contractor location for financial reporting purposes on the CMS 750/751 report. RO staff must work with contractor staff to ensure proper reporting on CMS 751 reports throughout the bankruptcy.

#### **140.5 - Chain Bankruptcies** (Rev. 12, 10-18-02)

##### **140.5.1 - Chain Providers** (Rev. 12, 10-18-02)

A chain provider is one that is owned by the same entity that owns another provider or providers. Chain affiliates may include facilities that are public, private, charitable, or proprietary. They may also include subsidiary organizations and holding corporations. Provider-based facilities, such as hospital-based clinics, are not chain affiliates (MFMM § 2760.1).

As set forth in §140.3.4, the lead RO for a bankruptcy is generally the office with jurisdiction over the state in which the provider files for bankruptcy. Nevertheless, Central Office staff may assign a chain bankruptcy to a specific region, or the Regional Counsel may request that a specific RO take the lead in a specific chain bankruptcy.

When a chain files bankruptcy, there may be multiple contractors involved in processing payments for the chain. If the bankruptcy involves other ROs and their contractors, the lead RO will work directly with the contractors, after informing their home RO(s) that they will be communicating directly with their contractor on the bankruptcy case. The lead RO and Regional Counsel are responsible for making all decisions. However, the lead RO should keep the contractor's home RO informed about its contractor's workload in connection with the bankruptcy.

##### **140.5.2 - Single Providers Serviced by a National Contractor** (Rev. 12, 10-18-02)

When a single provider who is serviced by a national contractor files for bankruptcy, the same principle for processing a bankruptcy of a chain provider will apply. The location where the bankruptcy is filed will determine the lead RO. The lead RO will work directly with the national contractor staff on the bankruptcy case. The lead RO will keep the home RO of the national contractor informed in all issues related to the case (e.g., a provider within the jurisdiction of the San Francisco RO files for bankruptcy and their contractor is Mutual of Omaha). The San Francisco RO will assume lead responsibilities and will keep the Kansas City RO informed of all issues related to this case.

#### **140.6 - Affirmative Recovery Actions** (Rev. 12, 10-18-02)

##### **140.6.1 - Working With the RO and Regional Counsel's Office** (Rev. 12, 10-18-02)

The contractor will notify the RO/Regional Counsel's office immediately after it receives information that a provider has filed for bankruptcy. It is essential that you obtain information on all Part A, Part B, or DME entities involved in the bankruptcy, including Medicare identifying information, such as provider and



supplier numbers. If the contractor has difficulty obtaining this information, it will consult with the RO/Regional Counsel. After gathering the information described in §140.4.2 , it will send it to the RO.

The contractor will discuss with RO/Regional Counsel whether it should put payments in administrative freeze (a holding account) until Medicare has time to assess its position in the bankruptcy. Also, during initial discussions with Regional Counsel, the RO will determine when the proof of claim is due and whether the Regional Counsel or the RO will need additional information to prepare the proof of claim. The contractor shall share all new information regarding the provider's overpayments and underpayments, cost report settlements, etc. with RO/Regional Counsel. The contractor will not take any further steps without obtaining the advice of RO/Regional Counsel. For example, the contractor should not send any overpayment letters to the debtor without RO/Regional Counsel approval. In addition, the contractor should not initiate new withholding or discontinue withholding without RO/Regional Counsel approval.

As the bankruptcy progresses, the Regional Counsel may ask the contractor to expedite settlement of cost reports, update the Regional Counsel on provider overpayments or underpayments, and provide Counsel with assistance on all aspects of the bankruptcy. As bankruptcy cases often have short deadlines for filing pleadings and other documents, requests from RO/Regional Counsel must have the highest priority in the workload, in order to protect Trust Fund assets.

### **140.6.2 - Assumption of the Medicare Provider Agreement (Rev. 12, 10-18-02)**

The Medicare Part A Provider Agreement is considered an executory contract for purposes of bankruptcy. Bankruptcy law permits a debtor to affirm ("assume") or reject each of its executory contracts. The debtor must first get the formal approval of the bankruptcy court.

If the debtor formally assumes the Medicare provider agreement, and the Bankruptcy Court approves that assumption, the relationship between the provider and Medicare will generally return to the ordinary course of business. The RO will inform the contractor if the provider assumes the Provider Agreement.

If the debtor rejects the Provider Agreement, the rejection is a voluntary termination of the Provider Agreement. The RO will inform the contractor if the provider terminates its provider agreement in this way. The contractor should not reimburse the provider for services it performs after the date it rejects/terminates the Provider Agreement.

If the bankrupt provider sells a facility to another entity and that entity assumes the debtor's provider agreement, any outstanding Medicare underpayments or overpayments regarding that facility should be transferred to the new owner (the purchaser) when the new owner assumes the provider agreement. Although the debtor and the new owner may have a private agreement regarding who is responsible for refunding Medicare overpayments and who should receive any Medicare underpayments, CMS is not bound by such agreements.

The contractor shall calculate net amounts that may be due to or owing from the debtor.

### **140.6.3 - Settlement Agreements or Stipulations (Rev. 12, 10-18-02)**

During the course of a bankruptcy, the RO and the Regional Counsel, working with DOJ, may negotiate a settlement agreement or stipulation with the debtor's attorney. Once a settlement agreement or stipulation goes into effect, the RO will advise all affected contractors, ROs, and the Office of Financial Management, CO. The contractors will consult with the lead RO to ensure that they conform to the conditions established in the settlement agreement or stipulation.

### **140.6.4 - Recoupment (Rev. 12, 10-18-02)**

Generally, bankruptcy law prohibits recovery of prepetition debt (debt arising prior to the filing of the bankruptcy petition) from postpetition payments. However, Medicare Part A payments require adjustments of ongoing payments to a provider to account for overpayments previously made to that provider. 42 U.S.C. §1395g(a); §1395x(v)(1)(A). Most courts recognize this method of adjusting payments as recoupment, which is permitted in bankruptcy, and is not subject to the automatic stay. Alternatively, they recognize that bankruptcy law does not alter the adjustment of payments that the Medicare statute requires. Thus, in most jurisdictions recoupment is appropriate. Nevertheless, the contractor should always consult RO/Regional Counsel's office about the adjustment (or recoupment) of any payments to a bankrupt provider before you take, omit, continue or discontinue any action. (See also, discussion of Recoupment in §140.2.5).

Some courts do not agree that Medicare can recoup overpayments (without first obtaining relief from the automatic stay), unless the provider incurred the overpayments in the current fiscal year. For instance, in bankruptcy cases filed in Pennsylvania, New Jersey, Delaware and the Virgin Islands, Medicare cannot recoup overpayments across fiscal years unless the debtor assumes the Medicare provider agreement or Regional Counsel obtains permission from the court. RO/Regional Counsel will advise the contractor whether it can recoup overpayments in these jurisdictions. Again, the contractor must consult RO/Regional Counsel before adjusting or recouping payments to a bankrupt provider.

### **140.6.5 - Administrative Freeze/Set-off - (Rev. 12, 10-18-02)**

Medicare can ask the court's permission to set-off prepetition debts against prepetition payments (payments for prepetition services, even if made postpetition) and postpetition debts against postpetition payments (payments for postpetition services). Regional Counsel, through DOJ will file a motion requesting permission to set-off.

Bankruptcy law allows a creditor like Medicare to freeze payments if it thinks it has the right to set-off those payments. Generally, in the Part A context, the first 2-3 weeks of Medicare payments after a debtor files for bankruptcy result from prepetition services. Therefore, the RO and Regional Counsel might decide to freeze all payments for prepetition services and then request bankruptcy court permission to set-off those payments against prepetition overpayments. Because there is such a short period during which there might be prepetition payments available to set-off available to freeze for set-off, it is critical to find out about the bankruptcy and the provider's overpayments quickly.

Other prepetition payments, such as underpayments or payments delayed because of medical review may be available to set-off against prepetition overpayments. It is important to notify the RO and Regional Counsel of any such underpayments or delayed payments.

Finally, because the U.S. Government is considered one creditor in bankruptcy, a contractor may be asked to freeze prepetition payments to recover the debts owed by the provider to other government agencies. However, we must use prepetition payments to recover Medicare overpayments before applying them to debts owed to other agencies.

### **140.7 - Preparing and Filing Proof of Claim (Rev. 12, 10-18-02)**

We provide a working definition of the term "claim" in §140.2.7. The proof of claim form alerts the court to the existence of Medicare's claim. While exceptions exist, the general rule of thumb is that in order to share in the bankruptcy estate Medicare must file a proof of claim. Regional Counsel will file the proof of claim. It is critical that contractors produce accurate and detailed overpayment data to the RO and Regional Counsel when requested so that Regional Counsel can file a timely proof of claim.

In Chapter 7 and Chapter 13 bankruptcies, the deadline ("bar date") for the Government to file a proof of claim is 180 days after the bankruptcy court's order granting relief from creditors (usually the date the provider files for bankruptcy). The bankruptcy court establishes the bar date by court order in Chapter 9 and Chapter 11 bankruptcies. In order to meet the bar date the Government must:

1. Get notice of the bankruptcy;
2. Direct that notice to the appropriate agency and appropriate personnel;
3. Determine exactly how many payment agreements the entity in bankruptcy has with Medicare (i.e., do they owe Medicare and if so how much);
4. Determine the status of each payment agreement
5. Prepare the proof of claim form;
6. Get Regional Counsel approval;
7. Sign it; and
8. File it in the bankruptcy court.

Because the time to finalize a proof of claim can be short, contractors should update overpayment information on an ongoing basis.

## **140.8 - Closure of Bankruptcy Cases and Treatment Of Overpayment Reporting Systems at End of Bankruptcy** (Rev. 12, 10-18-02)

### **140.8.1 - Closing the Bankruptcy Case** (Rev. 12, 10-18-02)

After a bankruptcy case is fully administered and the bankruptcy court has discharged the trustee (if there was one), the bankruptcy court closes the case. RO/Regional Counsel will provide guidance to the contractor regarding any required further actions.

Once the debtor has emerged from bankruptcy it resumes business as usual. A Chapter 11 bankruptcy ordinarily ends with the debtor emerging from Chapter 11 with a confirmed plan of reorganization. The ordinary course of business typically begins on the "effective date" of the plan of reorganization. In the case of a Chapter 7, the bankruptcy typically ends when the Trustee has dissolved the corporation, shut down operations, and distributed assets to pay creditors. RO/Regional Counsel will provide specific guidance to the contractor.

When a bankruptcy case closes, whether a Chapter 7, a Chapter 11, or a proceeding under some other chapter of the bankruptcy code, the contractor must modify its financial records to reflect the outcome of the bankruptcy. In general, amounts that bankruptcy law does not require the provider to repay are considered "discharged," and Medicare must release the provider from liability for the debt.

All of the contractor's debt information, including the POR, PSOR, CMS-750, CMS-751, and Schedule 9 of contractor's financial statement, must incorporate the bankruptcy outcome by writing off or adjusting the amounts owed in accordance with applicable bankruptcy orders. This frequently will require you to remove line items and include new line items on affected reports. You must maintain detailed support for all revisions, as well as for any extended repayment arrangements. Detailed documentation related to principal, interest charges and immediate payments and extended repayment plans without interest are especially important in global settlement adjustments which are common in chain bankruptcy situations. These amounts may need to be modified based on the global settlement. In global settlements which may cut across providers in a chain, existing amounts may be removed from the provider listing and the new amount(s) substituted in accordance with the bankruptcy documents. This will require close coordination among the Regional Counsel, the RO, CO and affected contractor staff. Coordination and immediate action is especially important if you discover that a bankruptcy discharge for a provider has occurred in a previously unknown bankruptcy proceeding.

Occasionally, the court dismisses a bankruptcy because the debtor does not qualify for bankruptcy or for some other reason. When there is a dismissal, with the advice of Regional Counsel, the RO and contractor can usually treat the case as if the bankruptcy had never occurred and continue the normal recovery process, which might include an "intent to refer" letter and subsequent transfer to the Debt Collection Center. Contractors and ROs must ensure that their internal processing systems and financial reports no longer reflect the case as one under bankruptcy, and interest should be reassessed.

Always contact the RO/Regional Counsel for guidance on the closure of a bankruptcy. There is no formula for closing a bankruptcy, as it all depends upon the nature of the proceedings and the court orders in the case. The closure could be preceded by a successful reorganization under Chapter 11, a conversion to Chapter 7, or the result of a settlement agreement or stipulation. In all cases, obtain approval from the RO/Regional Counsel before closing the bankruptcy.

### **140.8.2 - Debt Located at the Debt Collection Center or Department of the Treasury (Rev. 12, 10-18-02)**

If a debt is at the Debt Collection Center (DCC) and the provider files for bankruptcy, the certifier of the debt (contractor or RO) must immediately notify the Central Office Division of Financial Reporting and Debt Referral (DFRDR). The certifier must request that Central Office recall this debt from DCC as debts in bankruptcy status are ineligible for crossservicing and offset.

**NOTE:** Debts for unfiled cost reports are not reported on the H751 and/or R751, therefore, if these debts become "bankrupt," you will record no transaction on these forms.

If the debt is active (less than two years old), the DFRDR, Central Office will recall the debt, update the POR/PSOR to reflect a bankruptcy status, and change the location back to the contractor location. DCB will send an email or fax of the location change to the RO.

If the DCC or Department of Treasury receives the initial notification of a bankruptcy filing while servicing a debt, they will notify CMS Central Office, who, in turn, will notify the RO of the bankruptcy.

### **140.8.3 - Managing Bankruptcy Debt at the Contractor Location (Rev. 12, 10-18-02)**

All bankruptcy debts will remain at the contractor location throughout the life of the debt. The lead RO will assume full ownership and the responsibility for managing the debt at the respective contractor site. The contractor, will help the RO establish communication procedures and will ensure that contractor staff follow them.

When chain providers are involved, the lead RO will contact the appropriate contractor and RO staff and establish dialogue procedures that will provide timely and accurate transfer of required information.

The lead RO is responsible for management of the debt from the initial filing of the Proof of Claim until the closure of the Bankruptcy. The Associate Regional Administrator for the Division of Financial Management will have the authority to terminate collection activity for cases that meet the criteria for being written off at the Associate Regional Administrator level.

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**NOTE:** Some of the files on this page are available only in Adobe Acrobat - Portable Document Format (PDF). To view PDF files, you must have the Adobe Acrobat Reader (minimum version 4, version 5 suggested). You can [check here](#) to see if you have the Acrobat Reader installed on your computer. If you do not already have the Acrobat Reader installed, please go to Adobe's [Acrobat download page](#) now.

### **150 - ACCELERATED PAYMENTS- FI ONLY (Rev. 29, 01-02-04)**

An accelerated payment may be issued where there is:

- A delay in payment by the FI for covered services rendered to beneficiaries and this delay has caused financial difficulties for the provider,
- In highly exceptional situations where a provider has incurred a temporary delay in its bill processing beyond the provider's normal billing cycle, or
- In highly exceptional situations where CMS deems an accelerated payment is appropriate.

A request for an accelerated payment shall not be approved unless the provider meets all eligibility requirements, including an assurance that recoupment of the payment will be made on a timely basis. The amount of the accelerated payment is computed as a percentage (sufficient to alleviate the impaired cash position but in no case to exceed 70 percent) of the amount of net reimbursement represented by unbilled discharges or unpaid bills applicable to covered services rendered to beneficiaries.

Accelerated payments shall be approved by the FI and the appropriate regional office. The regional office will review each request for an accelerated payment to assure that the accelerated payment provisions are being correctly and consistently applied and to provide the Administration with timely information concerning provider and FI bill processing.

### **150.1 - Eligibility for Accelerated Payment (Rev. 29, 01-02-04)**

Provider eligibility for accelerated payments is contingent on the provider meeting all of the following conditions;

- A shortage of cash exists whereby the provider cannot meet current financial obligations; and
- The impaired cash position described in "A" is due to abnormal delays in claims processing and/or payment by the FI. However, request for accelerated payments based on isolated temporary provider billing delays may also be approved where the delay is for a period of time beyond the provider's normal billing cycle. In this instance, the provider must assure and demonstrate that the causes of its billing delays are being corrected and are not chronic; and
- The provider's impaired cash position would not be alleviated by receipts anticipated within 30 days which would enable the provider to meet current financial obligations; and
- The basis for financial difficulty is due to a lag in Medicare billing and/or payments and not to other third-party payers or private patients; and
- The FI is assured that recovery of the payment can be accomplished according to the instructions in §150.4.

**NOTE:** Each FI is cautioned that neither the revision of the current financing regulations nor the recovery of current financing payments is a basis for justifying a provider's request for an accelerated payment.

### **150.2- Computation of the Accelerated Payment**

(Rev. 29, 01-02-04)

To compute the accelerated payment on account:

1. Determine the amount of the interim reimbursement for unbilled and unpaid claims;

2. Subtract the deductibles and coinsurance amounts, and
3. Multiply by 70% to determine the net reimbursable amount which can be paid to the provider.

**150.3 - Recoupment of the Accelerated Payment**  
**(Rev. 227, Issued: 09 17-13, Effective: 10-04-13, Implementation: 10-04-13)**

The Medicare Contractor shall attempt to recover any accelerated payment within 90 days after it is issued. To the extent that a delay in the provider's billing process is the basis for the accelerated payment, recoupment is made by a 100 percent withhold against the provider's bills processed by the (Part A) contractor or other monies due the provider after the date of issuance of the accelerated payment. Any remainder is recovered by direct payment by the provider not later than 90 days after issuance of the accelerated payment.

If the payment is necessitated by abnormal delays in claims processing and/or payment by the contractor, recovery by recoupment will be reasonably scheduled to coincide with improvement in the contractor's bill processing situation and such recoupment will not impair the provider's cash position. In this situation, recoupment shall be completed within 90 days of the contractor processing the provider's claims.

If recovery is not complete 90 days after the accelerated payment is issued or 90 days after the contractor begins processing claims, the accelerated payment is considered delinquent. The contractor shall immediately send out an initial demand letter. This letter shall state that 100 percent recoupment by withhold of all payments is in effect and that the recoupment will remain so until the debt is paid in full or acceptable payment arrangements are made.

Contractors shall include the "Intent to Refer" language required to refer the debt to the Treasury Department. (See Chapter 4, §70) Interest shall begin to accrue on the 31<sup>st</sup> day after the date of the demand letter at the prevailing rate set by the Treasury Department. If the contractor does not hear from the provider within 15 days from the date of the demand letter, the contractor shall attempt to contact the provider by telephone. If the demand letter is returned undeliverable the contractor shall attempt to locate the provider using some of the guidelines set forth in Chapter 4, §10. If the contractor does not hear from the provider within 60 days of the date of the demand letter, the contractor shall input the debt into the Debt Collection System for referral to the Treasury Department for additional collection activity.

**SAMPLE FORMAT FOR PROVIDER REQUEST FOR ACCLERATED PAYMENT:**

1. Provider: \_\_\_\_\_ Provider Number: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

2. Contractor: \_\_\_\_\_

3. Check (a) or (b) if applicable:

Cash balance is seriously impaired due to:

- (a) Abnormal delay in Title XVIII claims processing and/or payment by the health insurance Contractor.
- (b) Delay in provider billing process of an isolated temporary nature beyond the provider's normal billing cycle and not attributable to other third party payers or private patients.

Note: If 3b is checked the provider should also include a narrative explaining the nature of the problem, how it will be fixed, and the expected duration of the delay.

- |       |   |          |
|-------|---|----------|
| 4. a. | General fund cash position for provider as of _____   | \$ _____ |
| b.    | Anticipated receipts from all sources (exclusive of accelerated payments) in the next 30 days | \$ _____ |
| c.    | Anticipated expenditures in next 30 days  | \$ _____ |
| d.    | Indicated cash position in next 30 days<br>(a + b – c)  | \$ _____ |

## **160 - Termination of Collection Action**

**(Rev. 294, Issued: 10-06-17, Effective: 07-03-17, Implementation: 07-03-17)**

The contractor can request termination of collection action for any debt. In addition, a contractor's accounting system will automatically identify certain debts for termination of collection action. However, the final decision to terminate collection action and write off/close out any debt must be approved by CMS RO or CO.

### **160.1- Termination of Collection Action – Provider Overpayments**

**(Rev. 294, Issued: 10-06-17, Effective: 07-03-17, Implementation: 07-03-17)**

Under normal circumstances if the contractor is unable to collect an overpayment, the overpayment will be referred to the Department of Treasury for additional collection efforts. However, if the principal and interest balance of the overpayment is less than \$25.00 the overpayment is not eligible for referral to the Department of Treasury.

Therefore, once an overpayment with a principal and interest balance less than \$25.00 becomes 180 days old (from the date of the first demand letter), the overpayment should be forwarded to the regional office for termination of collection action and write off closed approval. This process of referring debts to the servicing regional office for termination of collection action and write off closed approval should occur on a quarterly basis. These requests should be sent by hard copy no later than the first day of the second month of each quarter (i.e., November 1, February 1, May 1, and August 1). The actual overpayment case files should not be referred, the overpayment and the following information should be submitted to the regional office via a spreadsheet or other similar method:

- Provider/Physician number
- Current principal amount of overpayment
- Current interest amount of overpayment
- Original amount of overpayment
- Other outstanding overpayments
- Cost Report Year (Part A) or Claim Paid Date (Part B)
- Determination Date
- Overpayment Type

The above list is the minimum amount of information that must be sent to the servicing regional office. The servicing regional office may request additional information. Once received the servicing regional office will review and will send written approval or disapproval for each case regarding termination of collection action and write off closed by the first day of the last month of each quarter (i.e., December 1, March 1, June 1, and September 1). Once approval is received appropriate steps should be taken to close the overpayment in the appropriate internal accounting system and report it correctly on all necessary financial reports.

## **160.2 - Termination of Collection Action – Beneficiary Overpayments**

**(Rev. 294, Issued: 10-06-17, Effective: 07-03-17, Implementation: 07-03-17)**

A demand letter is not sent for beneficiary overpayments less than \$50. Therefore, no recovery action should take place on these overpayments. Beneficiary overpayments less than \$50 should be forwarded to the regional office for termination of collection action and write off closed approval. This process of referring debts to the servicing regional office for termination of collection action and write off closed approval should occur on a monthly basis. The actual overpayment case files should not be referred, the overpayment and the following information should be submitted to the regional office via a spreadsheet or other similar method:

- Beneficiary HIC number
- Current principal amount of overpayment
- Other outstanding overpayments
- Claim Paid Date (Part B)
- Determination Date

Once received the servicing regional office will review and will send written approval or disapproval for each case regarding termination of collection action and write off closed. Once approval is received appropriate steps should be taken to close the overpayment on the internal accounting system and report it correctly on all necessary financial reports.

NOTE: Contractors utilizing the VMS System automatically abandon beneficiary overpayments less than \$50. This instruction does not apply to these contractors until such time that standard system changes can be made to stop the abandonment.



## **170 – General Overpayment Provisions**

**(Rev. 29, 01-02-04)**

The general overpayment provisions mentioned in this section are important to the overpayment collection process but could not be categorized into another section. Some of these provisions require input from other manual instructions and are only briefly mentioned in this manual. When necessary, another manual reference has been cited for additional information.

### **170.1 - Offset of Overpayments Against Other Benefits Due – FI**

**(Rev. 29, 01-02-04)**

#### **A. Benefits Payable Under Part B - FI**

Where the FI determines that a Part A overpayment has been made to a provider on behalf of a beneficiary, it shall ascertain whether the beneficiary is entitled to any Part B payment for the services in question. (See Medicare Benefit Policy, Chapter 6.) If it appears that Part B benefits are payable, it shall arrange for billings under Part B. It shall use any Part B benefit as an offset against the Part A overpayment.

#### **B. Use of Lifetime Reserve Days - FI**

If a Part A overpayment for which a beneficiary is liable was caused by payment for services rendered after exhaustion of benefit period days, the FI shall reduce the amount of the overpayment by the application of the beneficiary's lifetime reserve days, unless the individual elected not to use them. An individual who has been overpaid for services rendered after exhaustion of benefits can elect not to use reserve days only if the individual refunds the overpaid amount. (See Medicare Benefit Policy, Chapter 5.)

### **170.2 - When the Carrier Does Not Attempt Recovery Action**

**(Rev. 29, 01-02-04)**

The carrier shall not attempt recovery action on individual overpayments if:

#### **A. Total Overpayment Less Than \$10**

The cost of recovering such a small amount ordinarily exceeds the amount recovered. However, the Carrier shall accept unsolicited overpayment refunds regardless of the amount. See §160.1 for termination of collection action procedures.

#### **B - The Carrier Has Not Taken Action to Reopen the Payment Decision Within Four Years (48 Months) after the Date of the Initial Payment Determination**

Unless fraud or similar fault is present, a payment determination may not be reopened where the Carrier has not taken some action (which can be documented) questioning the correctness of the determination within 4 years (48 months) after the date the initial determination was approved. (See Medicare Claims Processing, Chapter 30, Correspondence and Appeals for policies governing the reopening and revision of decisions to allow or disallow a claim.)

#### **C - Payments to Providers for Medically Unnecessary Services or Custodial Care Where Waiver of Liability Applies**

Where both the beneficiary and provider were without fault (see Medicare Claims Processing, Chapter 31, Limitation on Liability), the Carrier shall waive liability for the overpayments.

### **170.3 - Information and Help Obtainable from the Social Security Office (SSO)**

**(Rev. 29, 01-02-04)**

Occasionally, it may be possible for the FI or carrier to get information or help from the local SSO. For instance, if the beneficiary has moved, the SSO may know the new address, or if the beneficiary has died, it may know the administrator of the estate. If the beneficiary takes a check representing an incorrect payment to the SSO, the SSO forwards the check to the FI or carrier. However, the FI or carrier shall not ask the SSO to collect, or indirectly aid in, the collection of an overpayment.

### **170.4 - Recovery Where Physician or Other Individual Practitioner Is Deceased - Carrier Only**

**(Rev. 29, 01-02-04)**

Where a physician or other individual practitioner who is liable for an overpayment dies, the overpayment should be withheld from other Medicare payments due their estate. If recovery is not possible by recoupment, the carrier shall ascertain whether an administrator or executor has been appointed and then send a letter to the estate of the decedent at the address of the legal representative, if known, or the last known address of the deceased.

If the reply to the letter indicates that the estate will not refund the overpayment, or if a reply is not received within 30 days, the case should be forwarded to CMS for possible litigation. When referring such overpayments, the carrier shall include any information about the appointment of a legal representative, the size of the estate, etc., and copies of any correspondence with survivors or others concerning the overpayment.

### **170.5 -Provider Offers to Settle on Compromise Basis**

**(Rev. 29, 01-02-04)**

An overpaid provider may offer to compromise an overpayment. The FI/Carrier shall forward compromise offers to the RO only when further collection efforts would be unproductive and would not benefit the Medicare Program.

### **170.6 - Unsolicited Overpayment Refunds**

**(Rev. 29, 01-02-04)**

When a provider believes that an overpayment has been received and makes an unsolicited refund, the FI/Carrier accepts it regardless of the amount. All documentation submitted with the unsolicited refund should be forwarded to the correct department. (See Program Integrity Manual, Ch. 3, § 8.4 for unsolicited refunds related to an outstanding fraud investigation.)

### **170.7 - Timely Deposit of Overpayment Refund Checks**

**(Rev. 29, 01-02-04)**

Promptly deposit all refund checks into the Medicare "Federal Health Insurance Benefits Account". The FI/Carrier shall credit all such deposits on the day following the date of receipt in its mailroom or initial

point of entry. (It shall credit within 2 days if the bank is not located in the same city as the contractor.).  
(See Ch.5, §100.3)

## **170.8 – Informal Referral to RO**

**(Rev. 29, 01-02-04)**

For Medicare overpayment purposes a referral is a request to the Regional Office for assistance in an overpayment. This may be for a waiver determination, a termination request, a request for technical assistance, a referral to the Department of Justice, or any other aspect of the debt collection process. The referral may be in the form of an email, phone, fax, or written correspondence. Any referral to the RO should occur before the debt is eligible to be referred to the Department of Treasury. If changes occur to the debt during the referral process, the FI/Carrier should immediately notify the RO.

Attachment A, located after the bankruptcy section, includes a referral checklist that FI/Carrier's should utilize if necessary.

## **180 - Reserved**

**(Rev. 227, Issued: 09 17-13, Effective: 10-04-13, Implementation: 10-04-13)**

## **190 – Collection of Fee-for-Service Payments Made During Periods of Medicare Advantage (MA) Enrollment**

**(Rev. 106, Issued: 08-25-06, Effective: 10-01-03, Implementation: 06-26-06)**

Effective October 1, 2003, Common Working File (CWF) implemented the informational unsolicited response edit based on the same coding files made available for the reject edits in the risk-based MA Enrollment coding files described in the CWF System Documentation at <http://cms.csc.com/cwf/>.

Upon receipt of notification that a beneficiary has previously enrolled in a MA Plan and the enrollment is posted to the CWF, the CWF will search claims history to determine whether any fee-for-service claims were erroneously approved for payment during a period of retroactive MA enrollment. The CWF compares the period between the MA enrollment start date and the date of service of the claims in history. Services that fall within the responsibility of the MA Organizations are identified.

The CWF generates an Informational Unsolicited Response (IUR) with trailers 05 & 24 containing the identifying information regarding the claim subject to the risk based MA payment rules. The IUR has all necessary information to identify the claim including the Internal Control Number or the Document Control Number, and the Health Insurance Claim number. The CWF electronically transmits the IUR to the contractor that originally processed the claim. The IUR is included in the existing CWF response file. The IURs in that file for claims to be adjusted are identified with a unique transaction identifier. The previously submitted claim is not canceled and will remain on the CWF paid claims history file, pending subsequent adjustment.

Upon receipt of the IUR the Shared System software reads the trailer for each claim and either a manual or automated adjustment is performed. The contractor must initiate overpayment recovery procedures to retract the original Part A and Part B payment and must generate an adjustment to update or cancel the claim to update CWF and contractor history.

### **Carriers**

When CWF receives an adjustment for the fee-for-service claim on history, the deductible is updated on the beneficiary's file, and the corrected deductible information is returned to the carrier in trailer 11. Carriers are to recover any monies due back to Medicare resulting from these denials, by following the standard or (customary) recovery process. Carriers are also responsible for providing the M/A plan number to the providers in their correspondence.

In the event that a denial is reversed upon appeal, for carrier claims, the Group Health Organization (GHO) override code of '1' must be used to allow payment.

### **Fiscal Intermediaries (FIs)**

When CWF receives an adjustment for the fee-for-service claim on history, the deductible is updated on the beneficiary's file, and the corrected deductible information is returned to the intermediary in trailer 11. To recover any monies due back to Medicare resulting from these denials, claims are to be adjusted and overpayments are to be recovered through the customary recovery process.

In the event that a denial is reversed upon appeal, a 1 byte override code field is created at the header level for FI claims. The FIs should use override code "1" in this field for adjustments to all inpatient claims, including home health. For an Outpatient Denial with a 'N' No Pay Code, use a value of '2' in the HMO override field. The purpose of using "1" or "2" is to by-pass the CWF edit, which allows no changes to the amount initially paid for claims.

### **Messages To Be Used With Denials Based On Unsolicited Response**

The following messages should be used when the carrier receives a reject code from CWF indicating that the services were rendered during a period when the beneficiary was enrolled in a MA, and billing should have been submitted to the Managed Care Plan for payment.

### **Remittance Advice**

At the claim level, report adjustment reason code 24 - Payment for Charges Adjusted. Charges are covered under a capitation agreement/managed care plan.

Information to be made available to providers via letter (or an alternate method).

### **Language for Carriers to Use in Letter to Provider**

#### **Carriers**

This beneficiary was enrolled in [Plan Alpha Numeric ID]; a risked based managed care organization, for the date of service of this claim. You must contact the Managed Care organization for payment for these services. A list that provides the MCO name and address associated with the MCO number is available on the CMS Internet at <http://www.cms.hhs.gov/HealthPlansGenInfo/claimsprocessing20060120.asp#TopOfPage>.

### **Fiscal Intermediaries**

The plan number is not required on intermediary communications. Those providers are to determine which plan to contact through an eligibility inquiry or by contacting the beneficiary directly.

### **New Medicare Summary Notice (MSN)**

The MSN code 16.57 - Medicare Part B does not pay for this item or service since our records show that you were in an Medicare + Choice Plan on this date. Your provider must bill this service to the Medicare + Choice Plan.

16.57 - La Parte B de Medicare no paga por este artículo o servicio ya que nuestros expedientes muestran que en esta fecha usted estaba en un plan de Medicare + Opción. Supveedor debe facturar este servicio a el plan de Medicare + Opción.

### **200 - *Section 935 of the Medicare Modernization Act (MMA)* - Limitation on Recoupment Overpayments**

*(Rev. 293, Issued: 09-14-17, Effective: 04-02-18, Implementation: 04-02-18)*

*For purposes of this instruction, the Provider, Physician and other Supplier will be referred to as "Provider".*

Section 1893 (f)(2)(a) of the Social Security Act provides limitations on the recoupment of Medicare overpayments and the limitations extend to the redetermination (first level) and the reconsideration (*second level*). This section provides protection to providers during the initial stages of the appeal process. *It also requires the payment of interest on monies recouped when the provider prevails at the Administration Law Judge (ALJ) or subsequent levels of appeal.* These limitations do not affect a provider's right to appeal nor the requirements and timeframes associated with appealing; however, to stop recoupment, a provider must act decidedly to appeal. *If the contractor discovers a Bankruptcy or the provider is in bankruptcy and appeals an overpayment, the contractor shall refer to publication 100.06, Chapter 4, Bankruptcy, § 140.4.3*

*The contractor shall cease recoupment or not begin recoupment* when a valid redetermination or reconsideration request is received *timely* on an overpayment subject to these limitations (see § 200.1 below). *The provider has until the appeal deadline to file an appeal (refer to publication 100.04, Chapter 29).* *If a provider wants to delay recoupment, it must submit the redetermination appeal request within 30 days of the demand letter date. To continue the delayed recoupment, the provider will have 60 days from the redetermination decision to submit a reconsideration request. If the request is received before the appeal deadline but after recoupment has started, the contractor shall stop the recoupment. The contractor shall not refund any monies collected back to the provider, unless otherwise directed by the Centers for Medicare & Medicaid Services (CMS). The contractor shall be accountable to ensure the debts continue to age and accrue interest until the debt is paid in full.*

*After the first two levels of appeal are completed, the contractor shall resume recoupment and Normal debt collection processes. Whether or not the provider subsequently appeals the overpayment to the ALJ, or subsequent levels (Department Appeals Board (DAB), or Federal court), the contractor shall initiate recoupment at 100% until the debt is satisfied in full, unless an Extended Repayment Schedule (ERS) is established. If the debt was referred to Treasury and the provider files for an appeal, the contractor shall recall the debt from Treasury while in an appeal status. If the appeal decision is unfavorable to the provider, any outstanding debt will be referred back to Treasury, unless an approved ERS is established or the provider pays the debt in full.*

*The contractor shall take the necessary steps to adjust affected account receivables (AR) after each favorable appeal decision. The contractor shall apply the funds collected (ERS payments, voluntary payments or recoupments) to any outstanding eligible overpayments first (monies shall be applied to interest first and then to principal) and any funds in excess will then be refunded to the provider.*

*If the provider prevails at the third level of appeal or higher:*

*Payment of Section 935 (f)(2) interest is only applicable to overpayments recovered through involuntary recoupment under the limitation on recoupment provisions. Interest is not payable on the principal amount recouped on voluntary payments, (e.g., payments from existing ERS, immediate recoupment prior to the Qualified Independent Contractor (QIC) decision, payment suspensions and check payments, including checks paid to Treasury).*

*Requirements that remain in effect:*

- 1. The appeal timeframes and filing requirements. (Refer to Publication 100.04, Chapter 29)*
- 2. Overpayment interest accrual and assessment requirements. (Refer to 42 CFR 405.378 and Publication 100.06, Chapter 4)*
- 3. Underpayment interest requirements. (Refer to 42 CFR 405.378 and Publication 100.06, Chapter 4)*
- 4. Rebuttal requirements. (Refer to 42 CFR 405.373-405.375)*

***Note:** Rebuttal statements are not appeal requests. Only valid appeal requests at the first and second level trigger Section 935(f)(2) Limitation on Recoupment rights in accordance with 42 CFR 405.379.*

- 5. Suspended payment requirements. (Refer Publication 100-08, Chapter 4)*

## **200.1 - Limitation on Recoupment *Section 935 (f)(2) Eligibility*** ***(Rev. 293, Issued: 09-14-17, Effective: 04- 02-18, Implementation: 04-02-18)***

*The contractor shall determine if the limitations apply once an overpayment is determined (refer to §200.1.1 and §200.1.2 for guidance). This will trigger the creation of the appropriate initial demand letter and recoupment timeframes.*

### **200.1.1 - Overpayments Subject to Limitation on Recoupment** ***(Rev. 293, Issued: 09-14-17, Effective: 04- 02-18, Implementation: 04-02-18)***

*This applies to most **Fee-For-Service** claims for which a demand letter is issued (refer to 42 CFR, 405.379), such as:*

- A. Post-pay denial of claims (refer to 200.1.2 for exclusions).*
- B. Medicare Secondary Payer (MSP) Duplicate Primary Payment (DPP).  
(That was referred to the MAC contractor by the BCRC, CRC, other MAC contractor, or due to Self-Reporting (42 CFR 411.25)).*
- C. MSP recovery due to provider's failure to file a proper claim with the third party payer plan,*

*program, or insurer for payment.*

*D. Final Claims associated with a Home Health Agency (HHA) Request for Anticipated Payment (RAP) under Home Health Prospective Payment System (HH PPS), (refer to 200.1.2(D) for exclusions).*

### **200.1.2 - Overpayments Not Subject to Limitation on Recoupment**

*(Rev. 293, Issued: 09-14-17, Effective: 04- 02-18, Implementation: 04-02-18)*

*A. All other MSP overpayments that aren't identified in § 200.1.1 above.*

*B. Beneficiary overpayments*

*C. Cost report overpayments*

*D. HHA Request for Anticipated Payment (RAP) (refer to 200.1.1 (D) for exceptions).*

***Note:*** *This* is not considered a claim for purposes of Medicare appeals regulations; however, it is submitted using the same format as Medicare claims. RAPs under the Home Health Prospective Payment System (HH PPS) **do not have appeal rights during (1) the 120 days from the start of the episode; or (2) 60 days from the payment date of the RAP to submit the final claim; rather, appeals rights are tied to the claims that represent all services delivered for the entire HH PPS episode** (refer to Publication 100-04 Medicare Claims Processing Manual, Chapter 10, §§10.1.10 through 10.1.12, 40.1 & 50).

*E. Hospice Caps calculations*

*F. Provider initiated claim adjustments (including MSP DPP provider initiated adjustments)*

*G. Accelerated/Advanced Payments*

*H. Reopening of claims (Clerical errors and mass adjustments)*

*I. Periodic Interim Payment (PIP) rate adjustments (with the exception of a RAC claim review, which determines an overpayment)*

*J. Payment Suspensions*

### **200.1.3 - Adjustment of the Fee-For-Service Claims**

*(Rev. 293, Issued: 09-14-17, Effective: 04- 02-18, Implementation: 04-02-18)*

*The contractor shall adjust the claims after the 935 overpayment is determined.* This will trigger the creation of the *initial* demand letter *to begin* recoupment on the 41st day after the date of the demand letter.

### **200.1.4 – The Rebuttal Process and the Limitation on Recoupment**

*(Rev. 293, Issued: 09-14-17, Effective: 04-02-18, Implementation: 04-02-18)*

In 42 CFR 405.373 through 405.375, regulations require that providers be given an opportunity to rebut before recoupment takes effect. *The provider can submit a statement that includes any pertinent information as to why recoupment should not be put into effect on the date specified in the notice/demand letter within 15 days. The rebuttal process is not an appeal. A rebuttal permits the provider a vehicle to indicate why the proposed recoupment should not take place. The contractor may, based on the rebuttal statement, determine to stop recoupment or proceed with recoupment. In contrast, the limitation on recoupment provision mandates that no recoupment begins when a valid and timely request for a first level or second level appeal is received.*

*Refer to Publication 100.08, Medicare Program Integrity Manual, Chapter 3, Verifying Potential Errors and Taking Corrective Actions, § 3.6.5 - Provider Financial Rebuttal of Findings*

### **200.1.5 – Extrapolated 935 Overpayments**

**(Rev. 293; Issued: 09-14-17, Effective: 04-02-18, Implementation: 04-02-18)**

*The contractor shall create **one account receivable (AR)** for the total amount of the extrapolated overpayment, which includes the statistical sampling of claims. Refer to Publication 100-08, Medicare Program Integrity Manual (PIM) for instructions on extrapolations.*

### **200.1.6 – Medicare Secondary Payer (MSP) Provider Duplicate Primary Payment (DPP)**

**(Rev. 293; Issued: 09-14-17, Effective: 04-02-18, Implementation: 04-02-18)**

*The contractor shall not process new MSP DPP debts where the debtor is an individual or entity other than the provider; however, contractors shall continue to process provider MSP DPP Debts. The contractors shall separately identify MSP DPP (including provider initiated) debts from all Non-MSP Debts for **budget purposes only**. Contractors shall process MSP DPP debt as a 935 debt with the exception when the provider requests or initiates the adjustment, it will not be subject to the limitation on recoupment.*

**Note:** *All MSP DPP debt workload and cost associated need to be accounted for under the MIP funding.*

#### **1. All Contractors shall :**

- a) *Adjust claims to reprocess as secondary when the Explanation of Benefits (EOB)/primary payment sheet is included with claims.*
- b) *Adjust claims to a full claims denial when the EOB/primary payment sheet is not included with the submitted claim(s).*
  - i. *Contractors shall process these overpayments as any other 935 overpayment in accordance to the procedures outlined in Publication 100.06, Chapters 3, 4 & 5.*

#### **A. Contractors on HIGLAS shall:**

*Use the existing PART A and PART B MSP Transaction Type Codes for the 935 MSP DPP that was referred to the MAC contractor by the BCRC, CRC, other MAC contractor, or due to Self-Reporting (42 CFR 411.25).*



*They are as follows:*

1. *MAGHP-PROV935*
2. *MANONGHP-PROV935*
3. *MBGHP-PROV935*
4. *MBNONGHP-PROV935*

***B. Contractors on HIGLAS shall:***

*Use the transaction types for “Provider Initiated Adjustments” Not Subject to the Limitation on Recoupment.*

*These transaction types will be mapped to APROV1 and BPROV1 letters.*

*1. (APROV1.pdf): Part A Non-935 Aggregate Demand Letter (To be used for MSP DPP Part A Provider Initiated)*

- *MAGHP-PROV;*
- *MANONGHP-PROV*

*2. (BPROV1.pdf): Part B Non-935 Initial Letter ( To be used for MSP DPP Part B Provider Initiated)*

- *MBGHP-PROV*
- *MBNONGHP-PROV*

***C. Contractors not on HIGLAS shall:***

***1. Provider Initiated Overpayments:***

*Refer to Publication 100.6, Chapter 4, §20.1 for Non-MSP / Non-935 demand letter language (Not Subject to Limitation on Recoupment)*

***2. All other MSP DPP's :***

*Refer to Publication 100.6, Chapter 4, §20.1 for the Non-MSP 935 Demand Letter*

*Language Use the HIGLAS-CMS Receivable Balance Detail Report (Extract) or CMS Receivable*

*Activity*

*Report to account for all MSP DPP debts under MIP.*

***200.1.7 - Immediate Recoupment Requirements for 935 Overpayments (Rev. 293; Issued: 09-14-17, Effective: 04-02-18, Implementation: 04-02-18)***

*Contractors shall offer providers the opportunity to request immediate recoupment. Providers can elect this process to avoid making payment by check and/or avoid the assessment of interest if the immediate recoupment pays the debt in full before day 31. If providers request an immediate*

*recoupment, they must understand that it is considered a voluntary repayment. The request for immediate recoupment should be received in writing at least 16 days from the date of initial demand letter to avoid the assessment of interest, **however when the request is received after 16 days from the date of the demand letter, the debt shall be placed in an immediate recoupment status and interest will continue to accrue if the debt is not fully collected by day 31.***

*A. Contractors shall offer two immediate recoupment options.*

- 1. A one-time request on the total overpayment amount (All accounts receivables) in a single demand letter and any future demanded overpayments; Or*
- 2. A request on the demanded overpayment (All accounts receivables) addressed in a single demand letter only.*

*B. Contractors shall incorporate the following minimum information related to “immediate recoupment” on its website:*

*1. This option is **ONLY** for overpayments that receive a demand letter.*

- The request must be in writing, and may be submitted using regular mail, Facsimile, or email with an encrypted file.*
- The request must include the following:*
  - 1. Provider Name and contact phone number*
  - 2. Provider’s Medicare Number and/or the National Provider Identification (NPI)*
  - 3. Provider, Administrator or CFO’s signature (someone with authority is required to sign)*
  - 4. Letter number or a copy of demand letters first page*
  - 5. Which option the provider is requesting*
- The contractor shall scan, copy or keep the original request for proof of receipt.*

*2. Contractors shall use their discretion when a provider does not submit all 5 requirements to either:*

- Reach out to provider for the missing information or*
- Not accept the request based on missing information*

*3. Contractors shall continue to maintain or update the website on the immediate recoupment*

*process as needed.*

- C. Contractors shall inform providers that going through the immediate recoupment process is considered voluntary payments and will not be subject to 935 (f)(2) interest pursuant to § 1893(f)(2).*
- D. Contractors shall consider all written requests for an immediate recoupment as a payment arrangement that constitutes a voluntary payment except for immediate recoupment 30 calendar days after reconsideration decision.*
  - When the provider appeals to the ALJ and prevails.*
    - 1. Any money recouped (applied to the principal balance) 30 days after the reconsideration decision will be subject to 935 Interest.*
    - 2. Contractors shall follow the 935 (f)(2) interest calculation rules when the provider prevails and recoupment continued after an unfavorable reconsideration decision.*
- E. Contractors shall ensure the demand letter and website explain that, when there is a remaining principal balance after the initial immediate recoupment, they shall continue recoupment and other collection activities.*
- F. Contractors shall update all ARs associated to the request within 14 calendar days from the Mailroom-stamped receipt date.*
- G. As applicable, contractors on HIGLAS shall use the functionality in HIGLAS, which allows user to set the flag to immediate recoupment for multiple ARs instead of only one AR.*
- H. Contractors shall update ALL AR's within the demand letter(s) in the shared systems when a provider requests the immediate recoupment option.*
- I. Contractors shall accept a written request to discontinue participation in the immediate recoupment process at any time. Once received, **Contractor's shall stop the immediate offset process as soon as possible from the mailroom receipt date, but no later than 14 calendar days from mailroom receipt date.***
- J. Contractors shall consider all written requests for an immediate recoupment as a payment arrangement that constitutes a voluntary payment.*

**200.2 - Requirements for *All Initial Demand Letters (Manual or Electronic)***  
*(Rev. 293; Issued: 09-14-17, Effective: 04-02-18, Implementation: 04-02-18)*

Contractors *shall* issue demand letters for all overpayments subject to the limitation

on recoupment protections. *Refer to Publication 100.6, Chapter 4, § 20 and §20.1 for the 935 demand letter template. In addition to the requirements listed in Chapter 3 & 4, on Initial Demand Letters (excluding Cost Report Demand Letters) the following are specific requirements for overpayments subject to the Limitation on recoupment protections:*

**Contractors shall:**

1. Include a claim level detail report of the claim adjustments (*AR's*) that comprise the overpayment along *with each* demand letter to each provider.
2. *Use the language in the letter templates in chapter 4, § 20.1 for Overpayments subject to the limitation on recoupment protections.*
  - *HIGLAS users shall select the appropriate system generated letters listed in Chapter 4, §20 and §20.1*
    - *Non-HIGLAS users shall use the template for the 935 Initial Demand Letter*
    - *Use the 935 Initial Demand Letter Template for manual letters.*
    - *Contractors shall use the paragraph under (RAC Demand Letter Language only) in the 935 Initial Demand letter for RAC overpayments subject to 935 in chapter 4, §20 and 20.1.*
3. *Scan or copy all letters in the internal system for non-HIGLAS users and HIGLAS users shall use the Tool (Paper Clip) to ensure the availability to obtain a copy of manual letters as needed.*
4. *Send the demand letter by first-class mail.*

**200.2.1 – 935 Initial Demand Letter**

*(Rev. 293; Issued: 09-14-17, Effective: 04-02-18, Implementation: 04-02-18)*

*Refer to Publication 100.6, Chapter 4, Debt Collections, § 20.1*

**200.2.2 - Recoupment After the First Demand: When Does it Begin?**

*(Rev. 141, Issued: 09-12-08, Effective: 09-29-08, Implementation: 09-29-08)*

<b>Timeframe</b>	<b>Medicare Contractor</b>	<b>Provider</b>
<b>Day 1</b>	Date of Demand Letter (Date demand letter mailed)	Provider receives notification by first class mail of overpayment determination
<b>Day 1-15</b>	Day 15 deadline for Rebuttal request. No recoupment occurs	Provider must submit a statement within 15 days from the date of demand letter.

<b>Day 1-40</b>	No recoupment occurs	Provider can appeal and potentially limit recoupment from occurring
<b>Day 41</b>	Recoupment begins	Provider can appeal and potentially stop recoupment

Recoupment can proceed on day 41 from the first demand letter unless a valid and timely request for a redetermination is received. To limit recoupment the provider must file the request for a redetermination by the 30<sup>th</sup> day following the date of the first demand letter. Medicare Contractors shall refer to Publication 100-04 Medicare Claims Processing Manual, Chapter 29 Appeals of Claims Decision to determine what constitutes a valid request for a redetermination. Recoupment can begin no earlier than the 41<sup>st</sup> day.

**NOTE:** Medicare Contractors shall establish internal controls to ensure recoupment does not proceed if a valid request for a redetermination is received. The appeal unit or a qualified appeal staff (in mailroom) who receives the appeal request will have 2-4 business days to validate the appeal and communicate to the Overpayment/Financial Division who will have an additional 2 business days to stop the recoupment process. In general, the process of stopping recoupment based on a valid appeal request should take no more than 6 business days.

### **200.3 - What to Do When a Valid and Timely Request for a Redetermination is Received**

**(Rev. 260, Issued: 01-29-16, Effective: 03-01-16, Implementation: 03-01-16)**

#### **Action to take:**

1. Upon receipt of a timely and valid request for a redetermination of an overpayment, Medicare contractors shall cease recoupment of the overpayment that is the subject of the appeal.
2. If the recoupment has not yet gone into effect, Medicare contractors shall not initiate recoupment.
3. If the Medicare contractor recouped funds before a timely and valid request for a redetermination was received; the amount recouped shall be retained and applied first to interest and then to principal.
4. If an overpayment is appealed and recoupment stopped, the Medicare contractor shall continue to collect other debts owed by the providers, physicians and suppliers but may not withhold or place in suspense, any monies related to this debt, while it is in the appeal status.
5. The debt shall be reported in Appeal status and shall continue to be aged and interest continues to accrue.

6. The Contractor shall send a notice to the provider that briefly states you received the valid and timely request and recoupment has stopped. Construct a short paragraph such as the following:

**Example 2 Receipt Notice:**

Current Date

Provider Name

Address

City, State ZIP Code

Provider Number:

Account Receivable Number:

Dear Provider Name,

This letter serves to notify you that we have received your request for redetermination for the following \_\_\_\_\_ (i.e., AR/services/ICN) or the services at issue.

Your request for redetermination dated \_\_\_\_\_ was received in our office and all collection processes have ceased on \_\_\_\_\_. However, interest will continue to accrue on any outstanding unpaid balance of the overpayment as explained in our demand letter.

You will receive a redetermination notice once the appeals department has concluded their redetermination.

If you have any questions, please contact our office at the appropriate number listed below. You may also visit us throughout Web site at [www.\\_\\_\\_\\_\\_.com](http://www._____.com)

Sincerely,

(Name and title)

**C. Outcome of a Redetermination (Refer to Publication 100-04, Medicare Claims Processing Manual, Chapter 10, § 360.3, Number 1)**

1. **Full reversal** - This is a (Fully Favorable) decision of the Overpayment determination. Medicare contractors shall follow current policies in adjusting the overpayment and the amount of interest charged in accordance with in Chapters 3 and 4 §30. The amount held may be applied to any other debt owed by the provider or supplier; any excess would then be released to the provider, physician or supplier. Following a redetermination favorable decision to the providers, physicians and suppliers, the contractor may effectuate the decision. An Explanation of Benefits (EOB) would be acceptable in place of a written notice. When the reversal in favor

of the provider occurs interest may be payable by Medicare if the underpayment is not paid within 30 days of the final determination.

2. **Partial reversal** - This is a (Partially Favorable) decision of the overpayment determination in which the decision reduces the debt below the amount already recouped this will require the contractor to recalculate the correct amount of both the underpayment and the overpayment. The Medicare contractor effectuates the redetermination decision and if necessary issue a revised demand letter to the provider of the revised overpayment amount or make appropriate payments if due of the underpayment amount. Refer to publication 100-04 Medicare Claims Processing Manual, Chapter 29 §§310.5 and 310.7 for further guidance.

3. **Full Affirmation** - This is a (Unfavorable) decision of the overpayment determination, the contractor shall issue the 2nd or 3rd demand letter whichever is appropriate or see D4 below. Medicare contractors shall follow current policies in adjusting the overpayment and the amount of interest charged in accordance with Chapters 3 and 4.

#### **D. Medicare Overpayment Revised Notice or revised Demand Letter after the Redetermination decision involving Limitation on Recoupment**

1. If the redetermination is a full reversal (**Fully Favorable**) decision of the overpayment determination, Medicare contractors may need to effectuate (when necessary) the redetermination decision. Contractors send the applicable notice when necessary, see below (G) example 3 Revised Notice or revised Demand Letter) as explained in Publication 100-04 Medicare Claims Processing Manual, Chapter 29, §310.8)

2. If the redetermination results in a Partial reversal (**Partially Favorable**) decision which reduces the overpayment amount, the contractor shall effectuate the redetermination decision and issue a revised overpayment notice or a revised (2nd) demand letter to the provider of the revised overpayment amount. This notice/letter must state that the contractor can begin recoupment no earlier than the 61st day from the date of the revised overpayment determination in the absence of a receipt/ notification by the QIC of a timely and valid request for a reconsideration. This notice must also give the provider an opportunity to rebut the proposed recoupment action (see §200.1.2) and you will review it and consider whether to proceed or stop the recoupment. This is still permitted under 42 CFR 405.373 through 375; however it does not mandate that recoupment will stop.

a. The notice (to effectuate the redetermination decision) must state that in order to stop recoupment under the provisions of 935 of the MMA, providers, physicians and suppliers must timely request a valid appeal (reconsideration) of the overpayment within 60 days from the date the notice (to effectuate the reconsideration decision). Submission of a rebuttal statement under 42 CFR 405.374 will not stop recoupment. (See §200.1.2)

3. If the redetermination is a **full affirmation, (Unfavorable)** decision the required notice can be one of the following:

- a. The standard Medicare redetermination notice but if and only if the initial demand letter contained language comparable to that shown in §200.2.1 Example 1, which specifically states that the contractor can begin to recoup no earlier than 61<sup>st</sup> calendar day from the Medicare redetermination notice (in the absence of receipt by a QIC of a timely and valid request for a reconsideration. Refer to Publication 100-04 Medicare Claims Processing Manual, Chapter 29 §310.7. Again rebuttal language shall be included.
- b. If the 2nd or 3rd demand letter has not been sent (because the overpayment was in appeal status) this can be modified to indicate when recoupment will begin to recoup no earlier than 61<sup>st</sup> calendar day from the notice of the revised overpayment determination notice (in the absence of receipt by the QIC of a timely and valid request for a reconsideration). Again, rebuttal language shall be included (See §200.1.2). or
- c. A brief notice which states when recoupment can begin as stated in a and b above.

**E. Recoupment after a redetermination decision.**

While the notices should state that recoupment can begin no earlier than the 61st day, contractors will have an additional 15 days to start recoupment on any unpaid balance. The 15 day period between when the provider is informed recoupment can begin (day 61) and when recoupment must begin no later than (day 76) is designed to facilitate communication between the QIC and the contractor (MAC/AC), should a reconsideration request be received or payment is received. However, if you are provided documentation by the provider that a reconsideration request has been sent to the QIC, and you have not heard from the QIC, and the 75<sup>th</sup> day is approaching, you may but are not required to contact the QIC to check whether in fact an appeal has been received to avoid subsequent problems with the provider.

1. If the debt has been in an appeal status. When you initiate or resume recoupment. The status of the debt shall be changed to reflect “eligible for internal offset” or resume offset.

**NOTE:** Recoupment may not resume and must cease upon receipt of a timely and valid request for a reconsideration by the QIC.

**F. When does Recoupment Begin or Resume after the redetermination?**

Timeframe	Medicare Contractor	Provider
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Day 60 following revised notice of overpayment following redetermination	Date Reconsideration request is Stamped in Mailroom, or Payment Received from the revised overpayment notice	Provider Must Pay Overpayment or Must have submitted request for 2 <sup>nd</sup> level appeal
Day 61- 75	No Recoupment Occurs	Provider appeals or pays
Day 76	Recoupment Begins or Resumes	Provider Can Still Appeal. Recoupment stops on date receipt of appeal

**G. Example Medicare Overpayment Notification/ Revised Overpayment Letter for Part A & B resulting from the Redetermination Appeal decision.**

**Example 3: Medicare Overpayment Notification/ Revised Overpayment Letter**



MONTH, DATE, YEAR

Provider Name

Address

City, State ZIP Code

Provider Number:

Account Receivable Number:

Dear [Provider Name],

This letter is in reference to the Medicare redetermination decision dated [DATE], for the overpayment in the amount of [AMOUNT] issued to you on [DATE OF DEMAND].

This overpayment was for medical services rendered from [DATES)]. The Medicare redetermination decision is noted as [Decision] to the provider.

According to our records, the balance on the Principal amount is [AMOUNT] and the Interest amount due is [AMOUNT]. Payments totaling [AMOUNT] are due by [DATE-30 days after the date of this letter]. You can appeal to the reconsideration level for the unfavorable amount of [AMOUNT].

When the redetermination decision is Fully Unfavorable or **Partially Favorable**, we may begin to recoup no earlier than **60 days** after the date of **this Medicare Overpayment Notice or Revised Demand Letter**. Please note that if recoupment was stopped, the debt continues to age and interest continues to accrue until the debt is paid in full. Please note that interest continues to accrue in accordance to 42 CFR §405.378.

**[Contractor will use “Notice” for Fully unfavorable and “revised demand letter” for Partially favorable].**

#### **Rebuttal Process:**

Under existing regulation 42 CFR section 405.374, providers and other suppliers will have 15 days from the date of this notification/revised demand letter to submit a statement of opportunity to rebuttal, including a statement and/or evidence stating why recoupment should not be initiated. The rebuttal is not an appeal of the overpayment determination, and it will **not delay recoupment** before a rebuttal response has been rendered; however the outcome of the rebuttal process could change how or if we recoup. If you have reason to believe the withhold should not occur on [DATE], you must notify this office before

[DATE]. We will review your documentation. Our office will advise you of our decision in 15 days from receipt of your request.

Submission of a rebuttal statement under 42 CFR 405.374 will **not stop recoupment** (see §200.1.2).

**If you wish to appeal this decision:**

If you disagree with this redetermination decision, you may file an appeal at the second level (reconsideration). You must file your request within 180 days from the date of this letter. **However, if you wish to prevent recoupment from occurring, you will need to file your request for reconsideration within 60 days from the date of this letter.**

Unless you show us otherwise, we assume you received this letter 5 days after the date of this letter.

If you have already sent payment, we thank you and ask that you disregard this letter. If you are unable to repay the amount in full, please visit our website for instructions on applying for an extended repayment schedule ([www.contractor.com](http://www.contractor.com)).

If you have any questions or concerns in this matter, please contact our office at the telephone number or address listed below.

Sincerely,  
Contractor Name  
XXX-XXX-XXXX

NAME  
ADDRESS  
CITY, STATE ZIP

**H. Initiating or resuming recoupment after a Withdrawal or Dismissal**

Medicare Contractors can initiate or resume recoupment immediately if a provider, physician, or other supplies has requested a withdrawal of a request for reconsideration, or the QIC issues a dismissal of a request for reconsideration (See CFR 42 §405.972).

**200.3.1 - What To Do When a Valid and Timely Request for a Reconsideration is Received**

**(Rev. 260, Issued: 01-29-16, Effective: 03-01-16, Implementation: 03-01-16)**

The QIC determines the validity and timeliness of a request for a reconsideration. However, to limit recoupment of the overpayment a provider must request a reconsideration and have it postmarked by the 60<sup>th</sup> day. Refer to § 200.3 (E) of this section for additional information regarding QIC contractor communication regarding the filing of a request for reconsideration.

**A. Actions to take:**

1. Upon receiving notification from the QIC of a valid and timely request for a **Reconsideration**. The Medicare Contractor shall cease recoupment of the overpayment.
2. If the recoupment has not yet gone into effect, the contractor shall not initiate recoupment.
3. If the Medicare contractor recouped funds before a timely and valid request for a reconsideration was received; the amount recouped shall be retained and applied first to interest and then to principal.
4. If an overpayment is appealed and recoupment stopped, the Medicare contractor should continue to collect other debts owed by the providers, physicians and suppliers but may not withhold or place in suspense, any monies related to this debt, while it is in the appeal status.
5. The debt shall be reported in Appeal status and shall continue to be aged and interest continues to accrue.
6. The Contractor shall send a notice to the provider that briefly states you received the valid and timely request and recoupment has stopped. Construct a short paragraph such as this:

**Example 4: Receipt of Appeal Request Reconsideration to provider**

Current Date

Provider Name

Address

City, State ZIP Code

Provider Number:

Account Receivable Number:

Dear Provider Name,

This letter serves to notify you that we have received notification from the Qualified Independent Contractor (QIC), \_\_\_\_\_ [insert OIC Name], that they received your request for reconsideration dated \_\_\_\_\_ in their office on \_\_\_\_\_. You requested a reconsideration for the following [AR/services/ICN or the services at issue]. All collection processes have ceased; however, interest will continue to accrue on any outstanding unpaid balance of the overpayment as explained in our demand letter. You will receive a reconsideration notice once the QIC has concluded its reconsideration.”

If you have any questions, please contact our office at the appropriate number listed below. You may also visit us through our website at [www.\\_\\_\\_\\_\\_.com](http://www._____.com)

Sincerely,  
(Name and title)

### **C. Outcome of Reconsideration**

The QIC decision may require an effectuation action by the Medicare Administration contractor. Refer to Publication 100-04, Medicare Claims Processing Manual, Chapter 29 §320.9 for additional information on effectuation.

1. **Full Reversal** - If the QIC reconsideration results in a (Fully Favorable) decision of the overpayment as modified by the redetermination, Medicare contractors shall follow current policies in adjusting the overpayment and the amount of interest charged in accordance with the interest provision in Chapter 4. The amount held may be applied to any other debt owed by the provider or supplier; any excess would then be released to the provider or supplier. If the reversal in favor of the provider, physician or other suppliers occurs interest may be payable by Medicare if the underpayment is not paid within 30 days of the final decision.
2. **Partial Reversal** - If the final action by the QIC is a reconsideration resulting in a (Partially Favorable) decision which reduces the overpayment plus assessed interest below the amount already recouped, the excess may be applied to the any other debt, including interest, owed by the provider or supplier to CMS before any excess is released to the provider or supplier. This decision will require an effectuation action by the contractor. It takes an effectuation action only in response to a formal decision and Reconsideration Effectuation Notice from the QIC. In accordance with Publication 100-04, Medicare Claims Processing Manual, Chapter 29 §320.9.
3. **Affirmation**- If the QIC reconsideration results in an (Unfavorable) decision of the overpayment recoupment may be resumed on the 30th calendar day after the date of the notice of the reconsideration. This gives time for the provider to request a repayment plan or make payment. Medicare contractors shall follow current policies in adjusting the overpayment and the amount of interest charged in accordance with the interest provision in Chapter 4, §30.

### **D. Reconsideration Notices Involving Limitation on Recoupment**

The contractor can begin recoupment at day 30 from the date of the QIC decision or from the revised written final determination due to effectuation and shall send a notice that offset will occur on day 30; and the provider or supplier has been afforded the opportunity for a rebuttal in accordance with the requirements of §405.373 through §405.375 within 15 days of the notice. However, no demand letter (2nd or 3rd) shall be issued for a total of 60 days following the QIC decision. After 60 days the contractor shall issue the 2nd follow up demand letter or 3rd intent to refer letter (whichever is

appropriate) and referral to treasury as needed. The overpayment shall remain in "eligible for internal offset" status until it has been paid in full or referred to Treasury through cross-servicing.

1. If the reconsideration decision results in a Favorable decision (Full Reversal) Medicare contractors should effectuate the redetermination decision. Contractors may send an applicable notice if necessary consistent with Publication 100-04, Medicare Claims Processing Manual, Chapter 29, §320.9.
2. If the reconsideration decision results in a partially favorable decision (partial reversal) which reduces the overpayment amount, the contractor shall effectuate the reconsideration decision and issue a notice to the provider of the revised overpayment amount. This notice must state that the contractor can begin to recoup on the 30th day, from the date of notice of the revised overpayment. This is to give providers, physicians and suppliers an opportunity to make payment arrangements. This notice must also give the provider the opportunity to rebut the recoupment according to 42 CFR 405.373 and 375. (See §200.1.2)
3. If the reconsideration decision results in an Unfavorable decision (Full Affirmation), the contractor shall issue a notice. The notice shall state the reconsideration has been issued and Medicare can begin recoupment or resume recoupment on day 30th day from the date of the notice of the revised notice of overpayment. This will give time for the provider to make payment arrangements. This letter must state that the providers, physicians and suppliers has been afforded the opportunity for rebuttal in accordance with requirements of CFR 42 §405.373(2) through §405.375. (See §200.1.2)

**Example 5: Medicare Overpayment Notification /Revised Overpayment Letter for Part A & B resulting from the Reconsideration Appeal decision**



MONTH, DATE, YEAR

Provider Name

Address

City, State ZIP Code

Provider Number:

Account Receivable Number:

Dear Provider Name,

This letter is in reference to the Medicare reconsideration decision dated [DATE], for the overpayment in the amount of [AMOUNT] issued to you on [DATE OF DEMAND].

This overpayment was for medical services rendered from [DATES]. The Medicare reconsideration decision is noted as [Decision] to the Provider.

According to our records, the balance on the Principal amount is [AMOUNT] and the Interest amount due is [AMOUNT]. Payments totaling [AMOUNT] are due by [DATE- 30 days after the date of this letter]. You can appeal to the ALJ level for the unfavorable amount of [AMOUNT].

When the reconsideration decision is Fully Unfavorable or **Partially Favorable**, we may begin to recoup no earlier than **30 days** after the date of **this Medicare Overpayment Notice or Revised Demand Letter**. Please note that if recoupment was stopped, the debt continues to age and interest continues to accrue until the debt is paid in full. Please note that interest continues to accrue in accordance to 42 CFR §405.378.

**[Contractor shall use “Notice” for Fully unfavorable and “revised demand letter” for Partially favorable]**

#### **Rebuttal Process:**

Under existing regulations 42 CFR section 405.374, providers and other suppliers will have 15 days from the date of this notification/revised demand letter to submit a statement of opportunity to rebuttal including a statement and/or evidence stating why recoupment should not be initiated. The rebuttal is not an appeal of the overpayment determination, and it **will not delay recoupment** before a rebuttal response has been rendered; however the outcome of the rebuttal process could change how or if we recoup. If you have reason to believe the withhold should not occur on [DATE], you must notify this office before

[DATE]. We will review your documentation. Our office will advise you of our decision in 15 days from receipt of your request.

Submission of a rebuttal statement under 42 CFR 405.374 **will not stop recoupment** (see §200.1.2).

**If you wish to appeal this decision:**

If you disagree with this reconsideration decision, you may file an appeal at the third level (ALJ). You must file your request within 60 days from the date of this letter. Recoupment will begin or resume regardless of the filing for an ALJ hearing 30 days from the date of this letter. Unless you show us otherwise, we assume you received this letter 5 days after the date of this letter.

If you have already sent payment, we thank you and ask that you disregard this letter. If you are unable to repay the amount in full, please visit our website for instructions on applying for an extended repayment schedule ([www.contractor.com](http://www.contractor.com)).

If you have any questions or concerns in this matter, please contact our office at the telephone number or address listed below

Sincerely,  
Contractor Name  
XXX-XXX-XXXX

NAME  
ADDRESS  
CITY, STATE ZIP

**E. Initiating or resuming recoupment after a reconsideration decision in the following circumstances:**

Following final decision or dismissal by the QIC, recoupment can be initiated or resumed whether or not the provider, physician or other suppliers subsequently appeals to the ALJ (third appeal level) and all further levels of appeal.

1. The contractor shall initiate or resume recoupment no earlier than the 30th calendar day after the date of the written notice to the provider, physician or other suppliers of the revised overpayment amount if the **reconsideration** decision is partially favorable (partial reversal).
2. The contractor shall initiate or resume recoupment no earlier than the 30th calendar day on the remaining unpaid principal balance and interest if it has not been satisfied in full and the provider, physician or other suppliers has been afforded the opportunity for rebuttal in accordance with requirements of CFR 42 §405.373 through §405.375.



## **200.4 - Extended Repayment Schedules (ERS) With an Appeal That is Subject to Limitation on Recoupment**

**(Rev. 141, Issued: 09-12-08, Effective: 09-29-08, Implementation: 09-29-08)**

If a provider, physician or other suppliers has been granted an extended repayment schedule (ERS) and submitted a valid and timely request for a redetermination or reconsideration to the Medicare contractor, the provider or supplier will not be considered in default if payments were not made by the provider. The appeal would supersede the ERS agreement; (under normal circumstances this would have been put on withhold due to default of payment). The contractor shall send a notice to the provider that it must resume its ERS payments or be placed on recoupment according to IOM 100.6 chapter 4 §50.

Payments made by a provider under an ERS are not recoupments for the limitation provision and are not subject to 935 interest if reversed at the ALJ appeal or above. However, if a provider defaults on the ERS schedule and recoupment begins before a valid and timely request has been received, those recoupments are subject to payment of interest under the 935 interest requirements. For additional information on the Filing timeframes or instructions on Extended Repayment Schedules refer to Chapter 4 §50.

## **200.5 - Payment Suspension**

**(Rev. 141, Issued: 09-12-08, Effective: 09-29-08, Implementation: 09-29-08)**

Suspended funds involving providers, physicians and suppliers who have been put on payment suspension under 405.372 (e) are not a “recoupment” for purposes of the limitation on recoupment. Suspended funds is not a “recoupment” as this term is defined in §405.370. CMS is only limited by section 1893(f)(2) of the Act from recouping Medicare payments, we are not restricted in our ability to apply suspended funds to reduce or dispose of an overpayment.

Exception: If the suspended payments are insufficient to fully eliminate any overpayment, and the provider or supplier meets the requirements of 42 CFR § 405.379 "Limitation on Recoupment" provision under §1893(f)(2) of the act will be applicable to any remaining balance still owed to CMS.

## **200.5.1 - Payments Made Upon Notice of Demand or Through an Immediate Recoupment Request**

**(Rev. 205; Issued: 02-09-12, Effective: 07-01-12, Implementation: 07-02-12)**

Payments made by a provider in response to a demand are not recoupments as defined in 405.372(e). Recoupment is the recovery by Medicare of any outstanding Medicare debt by reducing present or future Medicare payments and applying the amount withheld to the indebtedness. Therefore, payments made in response to a demand are not subject to 935 interest. Refer to section 200.1.5 Immediate Recoupment requirements.

## **200.5.2 - Assessment of 935 Interest**

**(Rev. 141, Issued: 09-12-08, Effective: 09-29-08, Implementation: 09-29-08)**

The limitation on recoupment provisions also amended the way interest is to be paid to a provider or supplier whose overpayment determination is overturned in administrative or judicial appeals subsequent to the second level of appeal (QIC reconsideration). This is called 935 interest, which is payable on an underpayment where the reversal occurs at the ALJ level or subsequent levels of administrative appeal based on the period that Medicare recouped the provider's or supplier's funds. Payment of 935 interest is only applicable to overpayments recovered under the limitation on recoupment provisions. Interest is only payable on the principal amount recouped.

## **200.6 - Interest Rate and Calculation Periods for Appeal Decisions on Recouped Funds for Purposes of Paying 935 Interest**

**(Rev. 141, Issued: 09-12-08, Effective: 09-29-08, Implementation: 09-29-08)**

We will pay simple interest rather than compound interest, and **we will not pay interest on interest; this mirrors the manner in which we assess interest against providers, physicians and suppliers.** Monies we recouped and applied to interest would be refunded and not included in the "amount recouped" for purposes of calculating any interest due the provider. The periods of recoupment will be calculated in full 30-day periods; and interest **will not** be payable for any periods of less than 30 days in which we had possession of the recouped funds.

### **200.6.1 - Calculations for Each 30-Day Period at the ALJ Decision or a Final Determination Date**

**(Rev. 141, Issued: 09-12-08, Effective: 09-29-08, Implementation: 09-29-08)**

Interest shall be calculated for each 30-day period using the interest Rate in Effect on the ALJ decision Date or the (revised written Final Determination Date). The contractor will have 30 days to calculate and refund the provider from the ALJ Decision date or the final determination Date.

**NOTE:** Contractors will need to issue a revised written determination to the provider, physician or other supplier in accordance to Publication 100-04, Medicare Claims Processing Manual, Chapter 29.

### **200.6.2 - Computing 935 Interest at the ALJ and Higher Levels**

**(Rev. 141, Issued: 09-12-08, Effective: 09-29-08, Implementation: 09-29-08)**

Interest paid under 935 is only applicable at the ALJ or further appeal level when that decision results in a full or partial reversal of the prior decision and contractors retained recouped fund

**What is needed to calculate 935 interest**

The simple formula for calculating interest is: 1) Time; 2) Rate; and 3) Amount  
 For each recoupment action:

1. **TIME:** Determine the total Julian Days starting from the recoupment date to the ALJ Decision date or date the revised notice with the new overpayment, if applicable. Divide the number of Julian days by 30 to compute the number of 30-day periods. The interest will not be payable for any periods of less than 30 days in which we had possession of the recouped funds.
2. **RATE:** Use the Annual Rate of interest at the time of the ALJ decision date or from the revised New Written Determination date from an effectuation and convert interest rate to a monthly interest rate. (For example: The Rate of Interest as of April 18, 2008 is 11.375%). Convert annual Rate to a monthly rate by dividing by 12.
3. **AMOUNT:** The amounts that are to be used as the basis on which to compute interest earned by the provider are those amounts that are credited to principal resulting from any involuntary payments from the provider after the elimination/satisfaction of all Medicare debt. Recouped monies applied to interest are not included in determining the 935 interest. Only those principal funds recouped via withholding (e.g. payments recouped under a defaulted ERS or offset) are included. Do not include payments a provider makes under an ERS or other voluntary payments made by the provider.

**200.6.3 - How to Calculate 935 Interest**

**(Rev. 141, Issued: 09-12-08, Effective: 09-29-08, Implementation: 09-29-08)**

Where there are multiple recoupments 935 interest must be calculated separately for each recoupment action and then total for the amount due the provider.

**Example:**

**How to calculate 935 Interest:**

**(935 interest at the ALJ and higher levels)**

**Fully Favorable**

<b>ALJ Decision Date: Jan 02,2008</b>				
<b>Recoupment Amounts</b>	<b>Recoup Date</b>	<b>Rate of Interest from ALJ Decision Date</b>	<b>Length of Time Money Held</b>	<b>Interest Owed to Provider</b>

1) \$ 9062	March 07, 2007	12.5%	301 Julian Days (10 mos. 1 day)	\$ 943.95
2) \$ 9806	May 18, 2007	12.5%	230 Julian Days (7 mos. 20 days)	\$ 715.02
3) \$ 9136	August 08, 2007	12.5%	148 Julian Days (4 mos. 28 days)	\$ 380.66
			<b>Total 935</b>	
			<b>Interest owed</b>	<b>\$ 2,039.63</b>

**Calculation example:**

**Time x Rate x Amount = Interest**

1.  $10 \times (.125 \div 12) \times \$ 9062.00 = \$943.95$
2.  $7 \times (.125 \div 12) \times \$ 9806.00 = \$715.02$
3.  $4 \times (.125 \div 12) \times \$ 9136.00 = \underline{\$380.66}$
4. 935 Interest amt owed Provider \$2,039.63

#### **200.6.4 - Obligation to Pay the Providers, Physicians, or Suppliers Late Payment Interest**

**(Rev. 141, Issued: 09-12-08, Effective: 09-29-08, Implementation: 09-29-08)**

Medicare has the obligation to pay providers, physicians and suppliers interest if the overpayment determination is reversed at the first (redetermination) and second (reconsideration) level of the administrative appeal process and the decisions are not effectuated timely. At these levels of appeal, interest would continue to be payable by Medicare if the underpayment is **not paid** within 30 days of the final determination decision. See § 30.1 of Chapter 4.

#### **200.7 - Tracking and Report on Limitation of Recoupment Overpayments**

**(Rev. 141, Issued: 09-12-08, Effective: 09-29-08, Implementation: 09-29-08)**

Each calendar quarter, the Medicare contractor shall report 935 interest paid based on an ALJ or later decision that fully or partially reverses the previous decision. Reporting will be 935 Interest payment amounts aggregated by provider type. Report will be sent via email to [CMS\\_Medicareoverpayments@cms.hhs.gov](mailto:CMS_Medicareoverpayments@cms.hhs.gov). The contractor will have 30 days from the end of the calendar quarter to submit the report to CMS.

#### **Example 8:**

1st Quarter: October, November and December 2007		
<b>Provider Type</b>	<b>Total providers'</b>	<b>Total amount</b>
Home Health	20	\$ 135,000.00
Skilled Nursing Facility	05	\$ 56,000.00
Physicians	02	\$ 2,500.00

DME Supplier	<u>10</u>	<u>\$ 35,000.00</u>
<b>Grand Total</b>	<b>37</b>	<b>\$ 228,500.00</b>

**Transmittals Issued for this Chapter**

<b>Rev #</b>	<b>Issue Date</b>	<b>Subject</b>	<b>Impl Date</b>	<b>CR#</b>
<u>R293FM</u>	09/14/2017	Revision to Publication 100-06, Chapter 3, Medicare Overpayment Manual, Section 200, Limitation on Recoupment	04/02/2018	9815
<u>R292FM</u>	09/01/2017	Revision to Publication 100-06, Chapter 3, Medicare Overpayment Manual, Section 200, Limitation on Recoupment	04/02/2018	9815
<u>R294FM</u>	10/06/2017	Pub. 100-6, Chapter 3 and 4 Revisions	07/03/2017	10079
<u>R285FM</u>	06/02/2017	Pub. 100-6, Chapter 3 and 4 Revisions	07/01/2017	10079
<u>R275FM</u>	11/18/2016	Pub. 100-06, Chapter 3, Section 90 (Provider Liability) Revision	02/21/2017	9708
<u>R260FM</u>	01/29/2016	Revision to Chapter 3 Section 200: Limitation on Recoupment - Medicare Overpayments Manual	03/01/2016	9458
<u>R227FM</u>	09/17/2013	Removal of POR and PSOR instructions and the Glossary of Acronyms from the Internet Only Manual, Publication 100-06, Chapter 3	10/04/2013	8322
<u>R225FM</u>	09/04/2013	Removal of POR and PSOR instructions and the Glossary of Acronyms from the Internet Only Manual, Publication 100-06, Chapter 3	10/04/2013	8322
<u>R224FM</u>	08/02/2013	Revisions and Deletions to the Internet Only Manual, Publication 100-06, Chapter 3, Overpayment (Section 50.3); Chapter 4, Debt Collection (Section 50 - 50.6 and 100.6.4) Related to Extended Repayment Schedules (ERS)	09/03/2013	8347
<u>R222FM</u>	06/14/2013	Revisions and Deletions to the Internet Only Manual, Publication 100-06, Chapter 3, Overpayments; Section 140.2.3 - Filing Bankruptcy Draws a Line in the Sand	07/17/2013	8324
<u>R220FM</u>	06/07/2013	Removal of POR and PSOR instructions and the Glossary of Acronyms from the Internet Only Manual, Publication 100.06, Chapter 3 – Rescinded and replaced by Transmittal 225	07/09/2013	8322
<u>R205FM</u>	02/09/2012	Immediate Recoupment for Fee For Service Claims Overpayments	07/02/2012	7688
<u>R204FM</u>	01/27/2012	Immediate Recoupment for Fee For Service Claims Overpayments – Rescinded and replaced by Transmittal 205	07/02/2012	7688

<a href="#"><u>R141FM</u></a>	09/12/2008	Limitation on Recoupment (935) for Providers, Physicians, and Suppliers Overpayments	09/29/2008	6183
<a href="#"><u>R106FM</u></a>	08/25/2006	Collection of Fee-for-Service Payments Made During Periods of Managed Care Enrollment	06/26/2006	5105
<a href="#"><u>R100FM</u></a>	07/03/2006	Collection of Fee-for-Service Payments Made During Periods of Managed Care Enrollment - Replaced by R106FM	06/26/2006	5105
<a href="#"><u>R97FM</u></a>	05/26/2006	Collection of Fee-for-Service Payments Made During Periods of Managed Care Enrollment – Replaced by R100FM	06/26/2006	2801
<a href="#"><u>R87FM</u></a>	1/03/2006	Update to Carrier Demand Letter Appeals Language	01/03/2006	4211
<a href="#"><u>R64FM</u></a>	02/11/2005	For Fiscal Intermediaries (FIs), a new Provider Type 80, Status Code CH, and Method of Recoupment codes. For Carriers and Durable Medical Equipment Regional Carriers (DMERCs) Status Code 2	03/14/2005	3641
<a href="#"><u>R61FM</u></a>	12/10/2004	New Location Code ICC, Status Code AR and Modified Intent Letter for Unfiled Cost Reports Only	01/10/2005	3563
<a href="#"><u>R47FM</u></a>	06/25/2004	Expanded Identification and Workload Reporting for CMS Medicare Systems	10/04/2004	3256
<a href="#"><u>R43FM</u></a>	04/30/2004	Replaced by Revision 47FM	10/04/2004	3256
<a href="#"><u>R41FM</u></a>	04/30/2004	Change in Interest Calculation for Medicare Overpayments and Underpayments and Medicare Secondary Payer (MSP) Recoveries	10/04/2004	3163
<a href="#"><u>R29FM</u></a>	01/02/2004	Revisions to Chapter 3 & 4	02/06/2004	2911
<a href="#"><u>R25FM</u></a>	11/03/2003	Rates of Interest – FIs and Carriers	11/03/2003	2828
<a href="#"><u>R22FM</u></a>	10/03/2003	Provider Overpayment Reporting System	10/20/2003	2782
<a href="#"><u>R12FM</u></a>	10/18/2002	Rewrite of Chapter 3	10/25/2002	2350
<a href="#"><u>R03FM</u></a>	08/30/2002	Initial Publication of Chapter	N/A	N/A

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