

CMS Manual System

Pub 100-05 Medicare Secondary Payer

Transmittal 45

Department of Health &
Human Services (DHHS)

Centers for Medicare &
Medicaid Services (CMS)

Date: DECEMBER 16,
2005

Change Request 4125

SUBJECT: Interest on MSP Debts

I. SUMMARY OF CHANGES: Clarifying, centralizing, and updating Medicare Secondary Payer (MSP) interest rules (i.e., interest accrual, assessment and adjustment processes, etc.). NOTE: Interest material previously in Chapter 7, Section 30.1.5, was moved to Chapter 2 and given subsection headings.

NEW/REVISED MATERIAL

EFFECTIVE DATE: January 17, 2006

IMPLEMENTATION DATE: January 17, 2006

Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual is not updated)

R = REVISED, N = NEW, D = DELETED – *Only One Per Row.*

R/N/D	Chapter / Section / SubSection / Title
D	7/30.1.5/Interest on MSP Recovery Claims
N	2/70/Interest on MSP Recovery Claims
N	2/70.1/MSP Debt Interest Calculation Methodology
N	2/70.2/MSP Debt Interest Accrual
N	2/70.2.1/MSP Debt Interest Accrual on Partial Payments
N	2/70.3/MSP Debt Interest Assessment
N	2/70.3.1/Additional Rules with Regard to the Assessment and Collection of Interest for MSP Based Debts

III. FUNDING:

No additional funding will be provided by CMS; Contractor activities are to be

carried out within their FY 2006 operating budgets.

IV. ATTACHMENTS:

Business Requirements

Manual Instruction

**Unless otherwise specified, the effective date is the date of service.*

Attachment - Business Requirements

Pub. 100-05	Transmittal: 45	Date: December 16, 2005	Change Request 4125
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SUBJECT: Interest on MSP Debts

I. GENERAL INFORMATION

A. Background: Clarifying, centralizing and updating Medicare Secondary Payer (MSP) interest rules (i.e. interest accrual, assessment, and adjustment processes, etc.). NOTE: Interest material previously in Chapter 7 section 30.1.5 was moved to Chapter 2 and given subsection headings. The business requirements in this CR will only address MSP-based debts.

B. Policy: Clarifying existing rules.

II. BUSINESS REQUIREMENTS

"Shall" denotes a mandatory requirement

"Should" denotes an optional requirement

Requirement Number	Requirements	Responsibility ("X" indicates the columns that apply)								
		F I	R H I	C a r r i e r	D E R I C	Shared System Maintainers				Other
						F I S S	M C S	V M S	C W F	
4125.1	Contractors shall not accrue interest on a GHP-based debt where the beneficiary is the debtor.	X	X	X	X					
4125.2	Contractors shall not accrue interest on a debt where the "current debtor" is a Federal entity.	X	X	X	X					
4125.2.1	Contractors shall identify all debts for federal entities and do a downward adjustment (manually if current systems cannot do systematically) for all interest charges.	X	X	X	X					
4125.3	Contractors shall not charge interest on an "interest only" debt.	X	X	X	X					

Requirement Number	Requirements	Responsibility (“X” indicates the columns that apply)								
		F I	R H I	C a r r i e r	D M E R C	Shared System Maintainers				Other
						F I S S	M C S	V M S	C W F	
4125.4	Contractors shall apply amounts compromised (that is, amounts “forgiven”) to the interest portion of the debt first then principal. (See examples in section 70.3.1.)	X	X	X	X					
4125.4.1	Contractors shall write off as closed the portion of the debt (principal and interest) which has been compromised (forgiven”).	X	X	X	X					
4125.5	Contractors shall make a downward adjustment to any interest dollars associated with portions of a debt which have been adjusted due to a valid documented defense or a waiver.	X	X	X	X					
4125.5.1	Contractors shall re-calculate interest based upon the remaining principal.	X	X	X	X					
4125.6	Contractors shall adjust accrued interest when the beneficiary establishes that he/she did not receive settlement/judgment/award funds until after the issuance of the recovery letter.	X	X	X	X					
4125.6.1	No interest is due until 60 calendar days from the beneficiary’s receipt of such funds. (See section 70.3.1 for a discussion of receipt.)	X	X	X	X					
4125.6.2	Contractors shall not submit this type of adjustment to their RO as a “waiver of interest”.	X	X	X	X					

III. PROVIDER EDUCATION

Requirement Number	Requirements	Responsibility (“X” indicates the columns that apply)								
		F I	R H I	C a r r i e r	D M E R C	Shared System Maintainers				Other
						F I S S	M C S	V M S	C W F	
	None.									

IV. SUPPORTING INFORMATION AND POSSIBLE DESIGN CONSIDERATIONS

A. Other Instructions:

X-Ref Requirement #	Instructions
CR 3163	Change of Interest Calculation for Medicare overpayments and Underpayments and Medicare Secondary Payer (MSP) Recoveries
CR 4012	Group Health Plan Demands (Previously some MSP recovery demands for liability, no-fault or workers’ compensation included time frames of 30 days. Effective with this CR, all MSP recovery demands must include a 60-day period for repayment/resolution before a debt is delinquent.)
CR 4015	Updates to the Group Health Plan Identification and Recovery Processes

B. Design Considerations: None

X-Ref Requirement #	Recommendation for Medicare System Requirements

C. Interfaces: None

D. Contractor Financial Reporting /Workload Impact: None

E. Dependencies: None

F. Testing Considerations: None

V. SCHEDULE, CONTACTS, AND FUNDING

Effective Date*: January 17, 2006 Implementation Date: January 17, 2006 Pre-Implementation Contact(s): Tina Merritt Post-Implementation Contact(s): Barbara Wright	No additional funding will be provided by CMS; Contractor activities are to be carried out within their FY 2006 operating budgets.
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Medicare Secondary Payer (MSP) Manual

Chapter 2 - MSP Provisions

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(Rev. 45, 12-16-05)

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70.3.1 - Additional Rules with Regard to the Assessment and Collection of Interest for MSP based Debts:

70 – Interest on MSP Recovery Claims

(Rev. 45, Issued: 12-16-05; Effective/Implementation Dates: 12-17-06)

Section 1862(b)(2)(B)(i) of the Social Security Act (the Act) and 42 C.F.R. 411.24(m) provide express authority to assess interest on Medicare Secondary Payer (MSP) debts. Interest is calculated on MSP debts using the method applicable to Non-MSP Medicare overpayments and underpayments as stated in 42 C.F.R. 405.378. For Medicare overpayments and underpayments and MSP debts, interest is calculated in full 30-day periods. Interest instructions for Medicare overpayments and underpayments are found in Chapter 4, Pub. 100-6, Medicare Financial Management Manual.

70.1 – MSP Debt Interest Calculation Methodology

(Rev. 45, Issued: 12-16-05; Effective/Implementation Dates: 12-17-06)

With respect to the recovery of payments for items and services furnished before October 31, 1994, CMS charges interest, exercising its common law authority (see 42 CFR 411.24(m)(1)).

With respect to the recovery of payments for items and services furnished on or after October 31, 1994, CMS charges interest in accordance with section 1862(b)(2)(B)(i) of the Act (see 42 CFR 411.24(m)(2)). The method for calculating interest is set forth in 42 CFR 405.378. The interest rate on overpayments is determined in accordance with regulations promulgated by the Secretary of the Treasury and is the higher of the private consumer rate or the current value of funds rate prevailing on the date the recovery demand letter is issued.

Interest is computed for both delinquent payments and installment payments as simple interest using a 360-day year. The U.S. Postal Service postmark date (or the date of physical receipt in the contractor's corporate mail area for a commercial shipper) is used to determine the receipt date of the payment.

Interest is calculated for a 30-day period as follows:

- Principal times Prevailing Interest Rate + Interest for Year, and*
- Interest for Year divided by 12 = 30-day Interest*

Effective October 1, 2004, 42 C.F.R. 405.378 and 42 C.F.R. 411.24 were amended to change how interest is calculated on MSP recoveries. For debts established before October 1, 2004, interest on delinquent debt is due and payable for the entire 30-day period as of the first day of each 30-day period. For debts established on or after October 1, 2004, interest on delinquent debts is due and payable as of the end of each 30-day period.

70.2 – MSP Debt Interest Accrual

(Rev. 45, Issued: 12-16-05; Effective/Implementation Dates: 12-17-06)

Interest “accrues” from the date of the recovery demand letter but is not “assessed” unless/until the debt becomes delinquent. (i.e., If the first demand letter provided for 60 days for the debtor to repay the debt and was dated 8/31/04, the entire debt will become delinquent on 10/30/04 or 61 days [1 day delinquent] after the date of the demand if it remains owing.)

The general rule and specific examples of interest accrual for MSP recoveries are as follows:

Interest will accrue from the date the debt is established. MSP debts are routinely established as of the date of the initial recovery demand letter. Interest is owed when the debt is not fully resolved/paid within the time period specified in the recovery demand letter (e.g., 60 days). If payment is received within the time-frame specified in the recovery demand letter, no interest will be due or assessed. If payment is not received when due, interest is assessed on the outstanding principal amount from the date of the initial recovery demand letter for each full 30-day period.

Reminder regarding the first day of the 30 day interest period --The date of the recovery demand letter (not the day after) is the first day of the first 30-day period.

Examples:

MSP Debt Established Prior to 10/01/2004 –Recovery Demand Letter Specified that Payment was due within 60 Days. *On 08/31/2004, the contractor issues a recovery demand letter establishing an MSP-based debt for \$10,000 and stating that interest will be charged if payment in full is not made within 60 days. Payment is not remitted until 11/04/2004 (65 days after the date of the recovery demand letter). Interest has accrued on the \$10,000 for three 30-day periods: one for the first 30 days, one for the period of time between days 31-60, and one for the period of time between days 61-65 (because interest is due and payable for the full 30-day period as of the first day of that period).*

MSP Debt Established Prior to 10/01/2004 – Example of Interest Accrual – Recovery Demand Letter Specified that Payment was Due Within 30 Days. *On 08/31/2004, the contractor issues a recovery demand letter establishing an MSP-based debt for \$10,000 and stating that interest will be charged if payment in full is not made within 30 days. Payment is not remitted until 10/03/2004 (33 days after the date of the recovery demand letter). Interest has accrued on the \$10,000 for two 30-day periods: one for the first 30 days, and one for the period of time between days 31-60 (because interest is due and payable for the full 30-day period as of the first day of that period).*

MSP Debt Established On or After 10/01/2004 –Recovery Demand Letter Specified that Payment was due within 60 Days. *On 10/31/2004, the contractor issues a recovery demand letter establishing an MSP-based debt for \$10,000 and stating that interest will be charged if payment in full is not made within 60 days. Payment is not remitted until 01/04/2005 (65 days after the date of the recovery demand letter). Since only two full 30-day periods have passed, interest has accrued on the \$10,000 for two 30-day periods.*

MSP Debt Established On or After 10/01/2004 – Example of Interest Accrual – Recovery Demand Letter Specified that Payment was Due Within 30 Days. *On 10/01/2004, the contractor issues a recovery demand letter establishing an MSP-based debt for \$10,000 and stating that interest will be charged if payment in full is not made*

within 30 days. Payment is not remitted until 11/03/2004 (33 days after the date of the recovery demand letter). Since only one full 30-day period has passed, interest has accrued on the \$10,000 for one 30-day period.

70.2.1 – MSP Debt Interest Accrual on Partial Payments

(Rev. 45, Issued: 12-16-05; Effective/Implementation Dates: 12-17-06)

For situations where partial payment is received on a debt with outstanding interest -- Payment is normally credited to interest first, principal (HI first, then SMI) second, leaving an outstanding amount of principal due (or in some situations, leaving both principal and interest due if the partial payment is insufficient to satisfy the outstanding interest amount).

- *For debts established before 10/01/04, interest for the entire 30-day period in which the partial payment was received is required to be accrued and posted before application of the partial payment. Consequently, further interest/any additional interest on the outstanding principal amount for an MSP debt established before 10/1/04 would be calculated **starting with the first day of the next 30-day period** following receipt of the check.*

*Example: Debt established 8/31/04 for \$500 and a partial payment of \$200 dollars was received (post marked) 11/1/04. Contractors shall calculate and post interest specific to 3 30-day periods (63 days from date of demand equals 3 interest periods). Assuming the interest equaled \$5 for each 30-day periods, \$15 would be applied to interest and \$185 would be applied to principal. The remaining outstanding principal of \$315 would continue to accrue interest. Interest for an additional **prospective** 30-day period for the \$315 would be due on day 91 (the first day of a new 30-day period as interest is due and payable for the full 30-day period as of the first day of each period).*

- *For debts established on or after 10/1/04 where a partial payment is received midway through the 30-day period, interest on the debt will not have accrued up to the date of payment, but only through the end of the prior 30-day period. Consequently, further interest/additional interest on the outstanding principal amount for an MSP debt established on or after 10/1/04 would be calculated on the principal amount outstanding as of the end of the 30-day period in which the partial payment was received and would be calculated **from the first day of the 30-day period in which the partial payment was received.***

*Example: Debt established 10/01/04 for \$500 and a partial payment of \$200 dollars was received (post marked) 12/1/04. Contractors shall calculate and post interest specific to 2 full 30-day periods (62 days from date of demand equals 2 full interest periods). Assuming the interest equaled \$5 for each 30-day periods, \$10 would be applied to interest and \$190 would be applied to principal. The remaining outstanding principal of \$310 would continue to accrue interest. Interest for an additional **retrospective** 30-day period for the \$310 would be due on day 91 (the day after the end of a current 30-day period, as additional interest is due only after each **full** 30-day period for that part of the principal that remains unresolved).*

70.3 – MSP Debt Interest Assessment

(Rev. 45, Issued: 12-16-05; Effective/Implementation Dates: 12-17-06)

Under the regulations for calculating interest, as effective for MSP debts established on or after October 1, 2004, interest is assessed for each full 30-day period when payment is not made in full (both principal and interest) and continues to be assessed for each full 30-day period on any portion of the debt that remains outstanding. This change in the manner in which interest is calculated applies to all MSP debts, both GHP-based debt and non-GHP-based debt, regardless of who is the debtor. Interest on MSP debts established prior to October 1, 2004 will continue to be assessed under the former method (interest is due and payable as of the first day of each 30-day period for that full 30-day period) until recovered in full. (Contractors are reminded that, in those rare instances where they have an “interest only” debt, debt does not accrue interest.)

Note: Contractors shall implement the instruction in CR 4012 which provides 60 days for resolution of the debt prior to interest assessment for all MSP debt established on or after the effective date of the CR. That is, effective with CR 4012, all recovery demand letters for new MSP debt will provide a period of 60 days for repayment before the debt is delinquent. If the debt becomes delinquent, interest accrues from the date of the original demand.

70.3.1 - Additional Rules with Regard to the Assessment and Collection of Interest for MSP-based Debts:

(Rev. 45, Issued: 12-16-05; Effective/Implementation Dates: 12-17-06)

- *Interest must be charged on all MSP debts except: 1) GHP-based debt where the beneficiary is the debtor, and 2) debt where the “current debtor,” as that term is defined in section 60.2 of Pub. 100-5, Chapter 7, is a Federal entity. The requirement concerning debtors that are Federal entities is required by law and is a new requirement for Medicare contractors. To implement this requirement, contractors are to identify all outstanding debts where a Federal entity is the “current debtor.” Once identified, contractors must make a downward adjustment for all accrued interest previously reported and associated with these debts. If systems changes are necessary to cease interest accrual for these debts, contractors must manually adjust the accrued interest amounts for these debts on the quarterly M751/MC751 reports until systems changes can be completed.*

*NOTE: The rule applies only when the current debtor is the Federal entity. It does **not** apply in the rare circumstance where the employer is a Federal entity but the current debtor is the insurer or TPA.*

- *Interest charged is simple interest, not compound interest. The CMS does not charge interest on any outstanding interest. Interest accrues only on unpaid principal amounts.*
- *When compromising an MSP debt, CMS’ primary concern is protection of the Trust Funds. When CMS compromises a debt, the policy is to compromise interest first and principal second; otherwise, compromises would often be of little or no benefit to the Trust Funds. The only exception to this policy would be if a compromise agreement specifically allocates the amount to be repaid in some other manner. The amount compromised is written off closed as bad debt.*

Two examples of the correct application of payment received from the debtor when CMS has notified the contractor of a compromise agreement include:

- Assume there is an AR with principal due of \$1000, interest due of \$200 as of the date of receipt of payment, and CMS has agreed to compromise for \$700. When the payment of \$700 is received, the end result must be: \$200 interest written off closed as bad debt, \$300 principal written off closed as bad debt, and the \$700 payment applied to principal.*
- Assume there is an AR with principal due of \$2000, interest due of \$1000 as of the date of receipt of payment, and CMS has agreed to compromise for \$2200. When the payment of \$2200 is received, the end result must be: \$800 interest written off closed as bad debt, \$200 of the payment applied to interest, and \$2000 of the payment applied to principal.*

As long as the agreed upon compromise amount is paid within the time frame specified by the RO, any interest accrued after the date of the compromise agreement is written off closed as bad debt.

NOTE: Contractors may not take write-off closed actions for the compromised (“forgiven”) portions of a debt until payment for the remaining portion of the debt has been received. Contractors shall maintain the compromise instructions from CMS to support the associated write-off closed action(s) for principal and/or interest.

NOTE: Contractors will be notified by CMS when Treasury has compromised a debt and instructed as to how the compromise portion of the debt shall be shown on the financial statements.

If contractors cannot achieve the necessary result without systems changes, they must perform a manual work around until systems changes are made.

- Where the principal amount of the debt is adjusted downward due to a valid documented defense or a waiver of recovery under section 1870 of the Social Security Act, the interest amount must be re-calculated based upon the remaining principal. If a contractor’s system does not automatically perform this function when the principal is adjusted, then the contractor must do this manually and enter an appropriate downward adjustment to the associated interest. (Decisions for waiver of recovery under section 1870 of the Act are decisions with regard to the principal amount of the debt. For any amount of principal waived under section 1870, the associated interest ceases to exist and must be adjusted downward accordingly.)*
- Where a contractor is informed by CMS that CMS has waived some or all of the interest on a particular debt, the contractor must perform an adjustment for the amount of the waived interest before applying any payment. A waiver of interest is recorded as an adjustment on line 5(a). (Note: Use of line 5(h) is limited to waiver actions under section 1870 or section 1862 of the Social Security Act).*

Waiver of interest requests should be rare. If such a request is received, the request must state the basis for the request. When this information is received, the request shall be forwarded to the contractor’s RO MSP coordinator along with the applicable case file.

- Contractors are reminded that where a beneficiary establishes that he/she did not receive settlement/judgment/award funds until **after** the issuance of the recovery demand letter, no interest is due until 60 days from his/her receipt of such funds. Receipt of such funds by the beneficiary or his/her representative constitutes*

*receipt by the beneficiary. In such situations the contractor must adjust off any interest showing as owed within the contractor financial tracking systems for the period prior to 60 days from receipt of the funds. Such an adjustment is not a waiver of interest and **shall not** be treated as a waiver of interest and forwarded to the RO.*

Contractors are furnished with the applicable interest rates on a regular basis through a separate notification. Contractors shall track and report interest manually, if necessary, in order to comply with the above instructions.