

CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-06 Medicare Financial Management	Centers for Medicare & Medicaid Services (CMS)
Transmittal 260	Date: January 29, 2016
	Change Request 9458

SUBJECT: Revision to Chapter 3 Section 200: Limitation on Recoupment - Medicare Overpayments Manual

I. SUMMARY OF CHANGES: This Change Request (CR) addresses the Revision to the Redetermination and Reconsideration Revised Overpayment Letter Templates.

EFFECTIVE DATE: March 1, 2016

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

IMPLEMENTATION DATE: March 1, 2016

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
R	3/Table of Contents
R	3/200.3/What to Do When a Valid and Timely Request for a Redetermination is Received
R	3/200.3.1/What to Do When a Valid and Timely Request for a Reconsideration is Received

III. FUNDING:

For Medicare Administrative Contractors (MACs):

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

IV. ATTACHMENTS:

**Business Requirements
Manual Instruction**

Attachment - Business Requirements

Pub. 100-06	Transmittal: 260	Date: January 29, 2016	Change Request: 9458
-------------	------------------	------------------------	----------------------

SUBJECT: Revision to Chapter 3 Section 200: Limitation on Recoupment - Medicare Overpayments Manual

EFFECTIVE DATE: March 1, 2016

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

IMPLEMENTATION DATE: March 1, 2016

I. GENERAL INFORMATION

A. Background: 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 and the reconsideration 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 Administrative 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.

B. Policy: After an unfavorable decision, the contractor sends out an Overpayment Notice or a Revised Overpayment Demand Letter on the remaining balance. When the redetermination and reconsideration decision results in a partially favorable decision (partial reversal) the contractor effectuates the redetermination and reconsideration decision. When the decision is partially unfavorable and after the recalculation, the contractor sends out the revised overpayment demand letter which states the recoupment may begin no earlier than 60 days from the date of the redetermination revised overpayment letter and 30 days from the reconsideration revised overpayment letter. When the decision is a fully unfavorable (Affirmation) the contractor shall send the overpayment notice that states recoupment may begin no earlier than 60 days from the date of the redetermination overpayment notice and 30 days from the date of the reconsideration overpayment notice. This is to give providers, physicians and suppliers an opportunity to make payment arrangements. The letter or notice shall give the provider the opportunity to rebut the recoupment according to 42 CFR 405.373 and 375.

II. BUSINESS REQUIREMENTS TABLE

"Shall" denotes a mandatory requirement, and "should" denotes an optional requirement.

Number	Requirement	Responsibility								
		A/B MAC			D M E M A C	Shared- System Maintainers				Other
		A	B	H H H		F I S S	M C S	V M S	C W F	
9458.1	The contractor shall use the Letter template for partially and fully unfavorable redetermination and reconsideration revised/notification letters.	X	X	X	X					CEDI, HIGLAS, RRB-SMAC

III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility				
		A/B MAC			D M E	C E D I
		A	B	H H H	M A C	
	None					

IV. SUPPORTING INFORMATION

Section A: Recommendations and supporting information associated with listed requirements: N/A

"Should" denotes a recommendation.

X-Ref Requirement Number	Recommendations or other supporting information:
	N/A

Section B: All other recommendations and supporting information: N/A

V. CONTACTS

Pre-Implementation Contact(s): Deborah Miller, 410-786-0331 or deborah.miller3@cms.hhs.gov (Theresa Carter, Theresa.carter@cms.hhs.gov)

Post-Implementation Contact(s): Contact your Contracting Officer's Representative (COR).

VI. FUNDING

Section A: For Medicare Administrative Contractors (MACs):

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

ATTACHMENTS: 0

Medicare Financial Management Manual

Chapter 3 - Overpayments

Table of Contents

(Rev.260, Issued: 01-29-16)

200.3 - What to Do When a Valid *and Timely* Request for a Redetermination is Received

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 through our Web site at 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 61st 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 61st 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 75th 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
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 nd 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).*

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 60th 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

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).

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.