

# CMS Manual System

## Pub 100-06 Medicare Financial Management

Transmittal 70

Department of Health &  
Human Services  
Center for Medicare  
and &  
Medicaid Services  
Date: MAY 27, 2005  
Change Request 3795

**SUBJECT: Revision to the Beneficiary Notification Process when Recovery is Sought from the Provider**

**I. SUMMARY OF CHANGES:** This change request provides revised instructions regarding the beneficiary notification process if a Medicare Summary Notice is generated.

**NEW/REVISED MATERIAL :**

**EFFECTIVE DATE : June 27, 2005**

**IMPLEMENTATION DATE : June 27, 2005**

*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.*

<b>R/N/D</b>	<b>Chapter / Section / SubSection / Title</b>
<b>R</b>	4/90/90.3/Notification to the Beneficiary When Recovery is Sought from the Provider or Physician
<b>R</b>	4/90/90.4/Sample Letter to Beneficiary Where Recovery is Sought from Provider

**III. FUNDING:**

No additional funding will be provided by CMS; Contractor activities are to be carried out within their FY 2005 operating budgets.

**IV. ATTACHMENTS:**

Business Requirements

Manual Instruction

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

# Attachment - Business Requirements

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**SUBJECT: Revision to the Beneficiary Notification Process when Recovery is Sought from the Provider or Physician**

## I. GENERAL INFORMATION

Notification to the beneficiary is required whenever a provider or physician is requested to repay Medicare because of an overpayment determined as a result of services provided to the beneficiary.

### A. Background:

Change Request 2989 created a new Medicare Summary Notice (MSN) code which will be used whenever a claim adjustment creates an overpayment that is subsequently demanded from a provider or physician. The code will notify the beneficiary that the provider or physician may be required to repay the difference of the paid amount and the adjustment to Medicare. The creation of the new MSN code allows for the revision to the current process that the beneficiary receive a separate notification. As long as the claim adjustment creates a MSN and the appropriate code is used, a separate notification to the beneficiary will not be required.

### B. Policy:

Beneficiaries will be updated through the MSN or through a separate notification. The MSN shall only be the source of notification if the appropriate MSN code is used. A separate letter shall be used if a MSN is not generated.

## 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 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	
3795.1	If a claim adjustment creates an overpayment and generates a MSN, the appropriate MSN code shall be utilized to inform the beneficiary that the provider may be requested to repay the difference between the paid amount and the adjustment to Medicare.			X	X					

Requirement Number	Requirements	Responsibility (“X” indicates the columns that apply)								
		F I	R H 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			
3795.2	If an overpayment is determined and the claim is not adjusted or the claim is adjusted and a MSN does not generate, the Medicare Contractor shall send the beneficiary a separate notification stating that the provider may be requested to repay Medicare.			X	X					

### III. PROVIDER EDUCATION

Requirement Number	Requirements	Responsibility (“X” indicates the columns that apply)								
		F I	R H 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: None

X-Ref Requirement #	Instructions

#### 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**

<p><b>Effective Date:</b> June 27, 2005 for VMS contractors October 3, 2005 for MCS contractors</p> <p><b>Implementation Date: 30 days from issuance for VMS contractors</b> October 3, 2005 for MCS contractors</p> <p><b>Pre-Implementation Contact(s):</b> Connie Leonard, 410 786-0627</p> <p><b>Post-Implementation Contact(s):</b> Connie Leonard, 410 786-0627</p>	<p><b>No additional funding will be provided by CMS; Contractor activities are to be carried out within their FY 2005 operating budgets.</b></p>
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### **90.3 - Notification to the Beneficiary When Recovery Is Sought from the Provider or Physician**

*(Rev. 70, Issued: 05-27-05; Effective and Implementation dates: 06-27-05)*

*When a claim adjustment creates an overpayment the beneficiary who received the services will normally receive a Medicare Summary Notice (MSN) notifying the beneficiary about the specifics of the adjustment and the beneficiary's appropriate appeal rights. The MSN uses codes with accompanying descriptions to update the beneficiary. Through a MSN code, the MSN can also be used to inform the beneficiary that the provider may be requested to repay the difference in the amount paid and the adjustment to Medicare.*

*In situations where the claim adjustment creates an overpayment and a MSN is generated, a separate notice to the beneficiary is **not** required whenever recovery is sought from the provider.*

*However, if a MSN is not generated a separate notice to the beneficiary is required whenever recovery is sought from the provider. Some reasons a MSN may not generate include, but are not limited to, if the claim has been purged from the system or if the overpayment is because of a mass adjustment. In these situations a separate notice to the beneficiary is required whenever recovery is sought from the provider. (See Chapter 3, §§100 & 110ff when recovering from the beneficiary.)*

*The following instructions apply if a separate notice to the beneficiary is required.*

The *contractor* shall include in the notification to the beneficiary a copy of the letter sent to the provider unless the letter to the provider mentions more than one beneficiary or deals with overpayments which do not concern the particular being notified. In such cases, a copy of the initial demand letter sent to the provider should **not** be attached to the beneficiary notice.

Where overpayments to a provider have been determined by means of a sample study, the Contractor shall send a notice only to the beneficiaries identified in the overpayment notice sent to the provider as individuals on whose behalf the provider was overpaid a specified amount. It shall not send the notice to the beneficiaries until it has been established that recovery action will be taken.

In all cases the notice to the beneficiary should contain the following:

- The name and address of the provider and dates of service for which the overpayment was made.
- A clear explanation of why the payment was incorrect.
- A statement that the provider has been requested to refund the overpayment and, if the provider is liable for medically unnecessary services or (FIs only) custodial care, the following additional information, as applicable:
- If the error is discovered subsequent to the third calendar year after the year the payment was approved, and the other conditions described in Chapter 3, §80

apply, the Contractor shall advise the beneficiary that the provider is prohibited, by law, from requesting payment for the services; or

- If the beneficiary is determined to be without fault, the Contractor shall state that if the beneficiary pays for the services, the beneficiary may request that the Contractor indemnify the beneficiary for such payment. Any indemnification paid to the beneficiary will be recovered from the provider. (See Medicare Claims Processing Manual, Chapter 30, Financial Liability Protections.)
- In all other cases, Medicare law does not prohibit the provider from requesting the beneficiary to pay.
- An explanation of the beneficiary's appeal rights. (See Medicare Claims Processing Manual, Chapter 29, Appeals of Claims Decisions.) In the notice to the beneficiary, however, the Contractor shall not mention waiver since there is no provision for waiver when the physician is liable for the overpayment.

#### **90.4 - Sample Letter to Beneficiary Where Recovery Is Sought From Provider**

*(Rev. 70, Issued: 05-27-05; Effective and Implementation dates: 06-27-05)*

*A notice to the beneficiary is required whenever a provider is requested to repay Medicare because of an overpayment determined as a result of services provided to the beneficiary. If a MSN is generated the appropriate notice codes shall be utilized informing the beneficiary that the provider may be requested to repay Medicare. If this occurs no further action needs to be taken. However, if a MSN is not generated notice shall be sent to the beneficiary. Below is a sample letter to a beneficiary where recovery is sought from the provider.*

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

In **(month and year)**, we made a payment to **(provider or physician name and location)** on your behalf for services provided to you (insert dates).

We have reviewed the payment and determined that the services were not covered under the Medicare program.

(The Contractor shall explain as clearly as possible the reason why all, or part, of the payment was erroneous.)

**It shall use either paragraphs A, B or C below as appropriate:**

**A - Provider Liable for Medically Unnecessary or Custodial Care Services  
(Physician Liable for Medically Unnecessary Services)**

(See Medicare Claims Processing, Chapter 30, Financial Liability Protections.)

We have found that you (the beneficiary) did not know or have any way of knowing that the services you (he/she) received during **(dates of services for which beneficiary's liability has been waived)** would not be considered to be reasonable and necessary by Medicare. However, the records show that (physician's name) should have known that such services would be considered noncovered. When this situation occurs, the law requires that the liability for these noncovered services be transferred to the physician.

Therefore, you (the beneficiary) are (is) not responsible for the charges billed by **(provider's name)** except for any charges for services or items never covered by Medicare. If you (the beneficiary) have (has) paid **(provider's name)** for these services, you may be entitled to a refund. To obtain this refund, please advise this office and enclose the following documents:

- A copy of this notice;
- The bill you received for the services; and
- The payment receipt from (provider's name), your cancelled check, or any other evidence showing that you (the beneficiary) have (has) already paid (provider's name) for the services at issue.

You should file your written request for payment within 6 months of the date of this notice.

**B - Provider at Fault and Beneficiary Not at Fault for Medically Unnecessary or Custodial Services and the Overpayment was Discovered Subsequent to the Third Calendar Year After Year Payment Was Approved**

**(Provider's name)** has been requested to refund this overpayment. Under the Medicare law, **(provider's name)** is prohibited from billing you, or any other source, for these noncovered services. If **(provider's name)** sends you a bill for these services, send it to us with a copy of this letter.

**C - All Other Cases**

**(Provider's name)** has been requested to refund the overpayment. Since the above services are not covered by Medicare, **(Provider's name)** may ask you to pay for them. However, if you are billed, this is a matter between you and **(Provider's name)** and will not affect your entitlement to future Medicare benefits in any way.

**NOTE:** The notification of appeal rights should be in accordance with the reopening rules in Medicare Claims Processing, Chapter 29, Appeals of Claims Decisions.