# Appeals Process for Identified Overpayments by the Medicare Part D Recovery Audit Contractor

Section 6411(b) of the Affordable Care Act expanded §1893 of the Social Security Act to extend the recovery audit program to Part C and Part D to identify underpayments and overpayments and recoup overpayments under the Medicare program. The effective date for this provision was December 31, 2010. The Centers for Medicare & Medicaid Services (CMS), Medicare Program Integrity Group (MPIG) is providing this guidance as an explanation of how Part D plan sponsors can file an appeal for overpayments identified by the Medicare Part D Recovery Audit Contractor (RAC). All overpayments that are identified by the RAC will be confirmed by a separate independent contractor, a Data Validation Contractor (DVC).

**When must appeals be filed?**

Appeals that are submitted after the established deadline will be dismissed without the ability to re-file. If the deadline falls on a weekend or a Federal Holiday, the filing period will be extended to the next business day. Electronic submissions will be considered timely if they are received in the designated appeals mailbox by 11:59 p.m. EST on the deadline date. Physical submissions that are mailed must be postmarked by the date of the deadline. The deadlines are as follows:

**Level I, Request for Redetermination**: Level I appeals must be filed no later than 30 calendar days from the date of the Notification of Improper Payment Letter.

**Level II, Request for Reconsideration**: Level II appeals must be filed no later than 15 calendar days from the issuance date of the Level I review decision.

Extension of established deadlines: In very limited circumstances, CMS may grant a request to extend the deadline. The decision to grant such an extension is entirely at the discretion of CMS, and the PART D plan sponsors must show that extenuating circumstances (e.g. natural disaster, Notification of Improper Payment went to incorrect address, death, etc.) existed that prevented the filing of an appeal by the deadline. Circumstances involving staff turnover or an oversight of the established deadline will not be considered.

**Who can appeal?**

All Part D plan sponsors receiving a Notification of Improper Payment Letter can appeal.

**What IS appealable?**

- The Part D plan sponsor may appeal the determination made by the Part D RAC that an overpayment was made to the Part D plan sponsor as a result of improper payments made by the Part D plan sponsor for a given issue (e.g. excluded providers, duplicate payments, etc). The Part D plan sponsor may also appeal the amount of the overpayment. CMS will afford Part D plan sponsors with a two-level appeal process which includes a "Request for Redetermination" and a "Request for Reconsideration." Part D plan sponsors are encouraged to contact the RAC to work out any issues relating to the identified overpayment prior to submitting a Request for Redetermination.

**What is NOT appealable?**

- This appeals process prohibits the Part D plan sponsor from appealing the methodology and standards used to identify and calculate the overpayment(s).
- PDEs submitted by the Part D plan sponsor subsequent to the final reconciliation of the plan year being reviewed, constitute new payment information, and were not considered by the RAC as part of its review and have no relation to the RAC findings. This new information will not be considered in this appeals process, but will be included in any subsequent reopening of the final reconciliation for the plan year.
- Any issues besides the ones identified in the Notification of Improper Payment Letter. The appeal is strictly limited to the issue that is being reviewed.
- Any issues related to reopenings.

**Where can Part D plan sponsors submit inquiries regarding the Part D RAC Appeals Process?**

Part D plan sponsor s can submit inquiries on the Part D RAC appeals process to PartD_RACCommunications@cms.hhs.gov.
Inquiries regarding the status of pending appeals should be submitted to PartDRACAppeals@cms.hhs.gov for Level I appeals and PartDRACReconsiderations@cms.hhs.gov for Level II appeals.

**General requirements for filing an appeal**

**Include all relevant issues in the initial appeal**: Part D plan sponsor s must raise all relevant issues at the time of the Level I appeal. Issues that are not raised in the Level I appeal cannot be raised at a later time and will be dismissed. Part D plan sponsor s may amend the Level I appeal if they need to include additional information that may be relevant to their argument. Amendments must be submitted before the appeal timeframe expires. The Level I 30 day appeal deadline does not change upon the receipt of appeal or upon the receipt of an appeal amendment.

- **Electronic Appeal Requests:** Level I (Request for Redetermination) appeals and supporting documentation, submitted via email, should be sent to CMS at PartDRACAppeals@cms.hhs.gov and to the RAC at info@ACLRRAC.com. Level II (Request for Reconsideration) appeals submitted via email, should be sent to CMS at PartDRACReconsiderations@cms.hhs.gov. For electronic submissions, Part D plan sponsor s must use the template provided with the Notification of Improper Letter or the template posted at http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/recovery-audit-program-parts-c-and-d/Part-D-RAC-Appeal-Process.html. The following format should be used:

    1. Include the contract number and "RAC Redetermination Request" or "RAC Reconsideration" in the subject line of the email (ex. "H1234 RAC Redetermination Request").
    2. Documentation shall be submitted to CMS by Contract # using the template provided by CMS. If the Part D plan sponsor is requesting an appeal for multiple contracts, the Part D plan sponsor must submit a separate email request for each contract; all supporting documentation should be carefully categorized, clearly legible, easily understood and cross referenced where necessary. All relevant information to the appeal of this notification should be included in this initial submission to be considered for review. An Part D plan sponsor may amend its Request for Redetermination to include additional, relevant information, provided that all information is submitted before the appeal timeframe expires. In addition, if the documentation provided by the sponsor in support of its Request for Redetermination is not sufficient for CMS to appropriately consider the Request for Redetermination, CMS will provide notice to the sponsor that its submission

has not been accepted. The Part D plan sponsor will then have the balance of the remaining 30 day timeframe to submit a revised Request for Redetermination.

- **Physical Appeal Requests:** All physical appeal requests must be submitted on CD to the following address:

  Centers for Medicare & Medicaid Services (CMS)
  Division of Plan Oversight and Accountability
  ATTN: "RAC Redeterminations" or "RAC Reconsiderations"
  Mailstop: AR-18-50
  7500 Security Boulevard
  Baltimore, Maryland 21244

- **Withdrawing an appeal:** Part D plan sponsor s may withdraw an appeal at Levels I or II at any time prior to a decision being issued. All Level I withdrawal requests should be submitted via email to PartDRACAppeals@cms.hhs.gov. All Level II withdrawal requests should be submitted to PartDRACReconsiderations@cms.hhs.gov .

**Redeterminations and Reconsiderations:**

1. **Request for Redetermination Decision:**

CMS will issue a Notification of Improper Payment letter to the Part D plan sponsor, which includes the amount owed, how the amount was calculated and the Prescription Drug Events (PDEs) in question. The Part D plan sponsor will then have 30 calendar days to file an appeal on any PDEs it believes are valid; this appeal must include a detailed narrative/explanation of why the Part D plan sponsor believes each RAC determination is incorrect along with supporting evidence regarding the PDEs in question. Once this appeal and supporting documentation are received by CMS and the RAC, CMS will respond with an email to the Part D plan sponsor confirming receipt within 2 business days.

The RAC will be required to submit its findings to be used to rebut the allegations made by the Part D plan sponsor in its appeal, or its decision not to rebut the allegations made by the Part D plan sponsor, to CPI, and a copy to the Part D plan sponsor, within 15 calendar days of receipt of the appeal from the Part D plan sponsor. If the RAC decides not to rebut the allegations, the RAC must submit a statement stating this decision and the appeal will be upheld. However, if the RAC decides to rebut the Part D plan sponsor's allegations after reviewing the Part D plan sponsor's supporting documentation, the RAC may submit its findings and any additional documentation to support its findings (e.g. its rebuttal). Once the RAC submits its rebuttal, a review decision will be made by CMS on all outstanding issues raised in the appeal within 60 calendar days from the date of the Notification of Improper Payment. If amended statements are received from the Part D plan sponsor closer to the 30 day appeal deadline, then the timeframe for CMS' review will be extended and CMS will render a decision within 90 days of the Notification of Improper Payment. Evidence from both the Part D plan sponsor and the RAC will be used to make a determination. CMS may consult the DVC if additional technical information is needed to resolve the dispute between the RAC and the Part D plan sponsor.

After the review decision is made, CMS will notify the Part D plan sponsor and the RAC regarding the Redetermination Decision and provide the Part D plan sponsor with information on how to file a Request for Reconsideration. If the Part D plan sponsor does not submit a timely Request for Reconsideration, the

Redetermination Decision will be deemed a final decision and CMS will move to offset the amount in the notification or revise the notification based on the outcome of the appeal decision and offset the amount as revised.

2. **Requests for Reconsideration:**

The Part D plan sponsor must file a Request for Reconsideration within 15 calendar days of the issuance date of the Redetermination Decision. The request should include a detailed narrative of why each of the Redetermination decisions is incorrect.

On receiving a Request for Reconsideration, CMS will review the material previously submitted in support of the Request for Redetermination and make a final decision within 30 calendar days. After its review is complete, CMS will notify the Part D plan sponsor regarding the Reconsideration decision. If the Reconsideration decision is wholly unfavorable or partially unfavorable to the Part D plan sponsor, CMS will offset the amount in the notification or revise the notification based on the outcome of the appeal decision and offset the amount as revised.

3. **Offsets**

Offsets will not be made until after the appeals process for all levels has been exhausted. These interim offsets will be returned to the Part D plan sponsor prior to reopening a reconciliation. It is the Part D plan sponsor's responsibility to correct any errors in the PDEs identified by the RAC by deleting those PDEs before the reopening of the final reconciliation for the plan year.