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Client Alert

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CMS Issues Limitations on Recoupment

With the advent of the permanent Recovery Audit Contractor ("RAC") program there is heightened interest in CMS' policy regarding recoupment of overpayments. This interest has been coupled with concern because of CMS' wavering efforts to address the provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 which required a stay of recoupment during the initial stages of overpayment administrative appeals.

In March of this year, CMS announced that effective in July 2008 recoupments would not occur while a provider had pending a redetermination request or a request for reconsideration – the first two of the four levels of administrative appeal available for overpayments. But, as the effective date approached, CMS indefinitely delayed the implementation of the policy, creating a great deal of concern about CMS' plans for implementation of the MMA provision.

Limitations on Recoupment

Finally, on September 12th CMS issued changes to the Medicare Financial Management Manual which specified the limitations on recoupment of provider, physician and supplier overpayments. These changes are scheduled to become effective September 29, 2008. The Limitations are:

- For subject overpayments Medicare will not begin overpayment collection (or will cease collections that already have started) when it receives notice that the provider has requested a redetermination (first level of appeal) or a reconsideration by a Qualified Independent Contractor ("QIC").
- Amounts that have been recouped before a request for redetermination or request for reconsideration were filed will not be refunded unless the provider is successful at the ALJ or Medicare Appeals Council ("MAC") levels of the appeals process.
- The recoupment process will proceed during the subsequent levels of appeal after the QIC decision is issued (ALJ and MAC levels).

When Medicare sends a demand letter for repayment of an overpayment, the letter will advise the provider of the opportunity to submit a rebuttal within fifteen (15) days. Providers should be aware, however, that the submission of such a rebuttal will not stop recoupment. Only a provider's timely filing of a

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valid request for redetermination or reconsideration will stop the recoupment, which will begin no sooner than 41 days after the date of the demand letter.

If a provider has sought and received an extended repayment schedule ("ERS") before it submits a request for redetermination or reconsideration, and then does not make payments under the schedule, the provider will not be considered in default under the ERS. The stay of recoupment effected by the pending redetermination or reconsideration supersedes the ERS agreement.

Limitations on Limitation

The limitation on recoupment is applicable only to the following debts:

- Post-pay denial of claims for benefits under Medicare Part A for which a written demand letter as issued;
- Post-pay Denial of Claims for benefits under Medicare Part B for which a written demand letter was issued
- Medicare Secondary Payer (MSP) recovery where the provider to supplier received a duplicate primary payment and for which a written demand letter was issued;
- MSP recovery based on the provider's or supplier's failure to file a proper claim with the third party payer plan, program or insurer for Part A or B.
- The final Claims associated with a Home Health Agency Request for Anticipated Payment (RAP) under the Home Health Prospective Payment System (HH PPS) but not the RAP itself.

The following overpayments are **not** subject to the limitation on recoupment:

- All other MSP recoveries except those described above;
- Beneficiary overpayments;
- Overpayments that arise form cost report determinations
- Overpayments that are appealed und eth Provider Reimbursement Payment process
- HHA RAPs under the HH PPS
- Hospice Cap calculations
- Provider initiated adjustments
- Accelerated/Advance Payments; and
- Certain adjustments at the contractor's discretion

Interest Paid By Medicare

If an overpayment is reversed in the administrative or judicial appeals process and Medicare has recouped funds in partial or full satisfaction of the debt, then Medicare must pay interest to the provider if the funds are not repaid to the provider within 30 days of the final determination. Medicare, however, will not pay

interest on interest, i.e. moneys that were recouped and applied to interest owed by the provider on the overpayment, would be refunded to the provider but would not be included in the "amount recouped" for purposes of calculating any interest owed by the government to the provider.