
CMS Manual System

Pub. 100-05 Medicare Secondary Payer

Department of Health &
Human Services (DHHS)
Centers for Medicare &
Medicaid Services (CMS)

Transmittal 15

Date: April 30, 2004

CHANGE REQUEST 3163

I. SUMMARY OF CHANGES: Relevant provisions of the manual have been altered to conform to a regulatory change in how interest is calculated on Medicare Secondary Payer debt. This change also applies to Non-MSP debt. (Pub. 100-06, Chapters 3 & 4 are revised to address how interest is calculated for Non-MSP debt.) Under the new instructions, interest for new debts will now be assessed only for full 30-day periods when payment is not made on time. Appropriate revisions have been made to the text of the “Intent to Refer” letter in Section 60.10.1, Exhibit 1.

NEW/REVISED MATERIAL - EFFECTIVE DATE: October 1, 2004

***IMPLEMENTATION DATE: October 4, 2004**

Disclaimer for manual changes only: The revision date and transmittal number apply to the red italicized material only. 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:

(R = REVISED, N = NEW, D = DELETED)

| R/N/D | CHAPTER/SECTION/SUBSECTION/TITLE |
|-------|------------------------------------------------------------------|
| R | 7/ Table of Contents |
| R | 7/30.1.5/ Interest on MSP Recovery Claims (Re-named and Revised) |
| R | 7/60.10.1/ Exhibit 1/ DCIA “Intent to Refer” Letter |

*III. FUNDING:

These instructions shall be implemented within your current operating budget.

IV. ATTACHMENTS:

| | |
|---|-------------------------------|
| X | Business Requirements |
| X | Manual Instruction |
| | Confidential Requirements |
| | One-Time Notification |
| | Recurring Update Notification |

*Medicare contractors only

Attachment - Business Requirements

| | | | |
|-------------|-----------------|----------------------|---------------------|
| Pub. 100-05 | Transmittal: 15 | Date: April 30, 2004 | Change Request 3163 |
|-------------|-----------------|----------------------|---------------------|

SUBJECT: Change in Interest Calculation for Medicare Overpayments and Underpayments and Medicare Secondary Payer (MSP) Recoveries

I. GENERAL INFORMATION

A. Background: Sections 1815(d) and 1833(j) of the Social Security Act (the Act) require that, whenever a payment to a provider, supplier, or other entity is more than (overpayment) or less than (underpayment) the amount that was due to the provider, supplier (including a physician), or other entity, we assess interest on the amount of the overpayment that the provider, supplier, or other entity owes to us or the underpayment that we owe to the provider, supplier, or other entity. Interest becomes due if the overpayment amount owed to us or the underpayment amount owed by us is not paid within 30 days of the date of the final determination of the overpayment or underpayment. The regulations implementing these authorities are at 42 CFR 405.378. Section 1862(b)(2)(B)(i) of the Act provides express authority to assess interest on Medicare Secondary Payer (MSP) debts. Interest is calculated on MSP debt using the method applicable to Non-MSP Medicare overpayments and underpayments as set forth in Section 405.378. For both Medicare overpayments and underpayments and MSP debts, interest is calculated in 30-day periods, and a period that is less than 30 days is considered to be a full 30-day period.

B. Policy: On July 25, 2003, a proposed rule was published in the Federal Register (68 FR 43995) to change how interest is calculated on Non-MSP Medicare overpayments and underpayments to providers, suppliers (including physicians), health maintenance organizations, competitive medical plans, and health care prepayment plans to be more reflective of standard business practices. This change would also apply to MSP debts. Under the rule, periods of less than 30 days will no longer be treated as a full 30-day period. Interest will be assessed only for full 30-day periods when payment is not made on time. This change would take effect for non-MSP overpayments and under-payments determined and MSP debts established on or after the effective date of the final rule.

C. Provider Education: None.

II. BUSINESS REQUIREMENTS

"Shall" denotes a mandatory requirement

"Should" denotes an optional requirement

| Requirement # | Requirements | Responsibility |
|---------------|--------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| 3163.1 | Interest on Non-MSP Medicare overpayments and underpayments and on MSP recovery demands shall be assessed for each full 30-day | All contractors and system maintainers |

| | | |
|--|------------------------------------------|--|
| | period that payment is not made on time. | |
|--|------------------------------------------|--|

I. SUPPORTING INFORMATION AND POSSIBLE DESIGN CONSIDERATIONS

A. Other Instructions:

| X-Ref Requirement # | Instructions |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3163.2 | This change in the method of calculation applies only to: (a) non-MSP Medicare overpayments and underpayments whose date of final determination occurs on or after the effective date of the final rule; and (b) those MSP debts where the debt is established by a recovery demand issued on or after the effective date of the final rule. |
| 3163.3 | For all debts determined or established prior to the effective date of the final rule, a 30-day interest charge shall continue to accrue on any principal balance outstanding at the beginning of each 30-day period until the debt is liquidated. |
| 3163.4 | Because the effective date for the change in the regulation will be 10/1/04, and the implementation date for this CR is not until 10/4/04, contractors shall not issue demand letters or MSP recovery letters on October 1-3, 2004. This will prevent the issuance of erroneous letters during the window between the effective date of the regulation, and the implementation date of these instructions. |

B. Design Considerations:

| X-Ref Requirement # | Recommendation for Medicare System Requirements |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3163.5 | Medicare contractors shall continue to have the capability of calculating interest using the existing method (a period of less than 30 days is considered to be a full 30-day period) for debts determined or established prior to the effective date of the final rule. |

C. Interfaces: N/A

D. Contractor Financial Reporting /Workload Impact: N/A

E. Dependencies: This requirement and its effective date are dependent upon the content and timing of the publication of the final regulation amending 42 CFR 405.378. It is anticipated that the final regulation will be published in July 2004 with an effective date of October 1, 2004.

F. Testing Considerations: N/A

IV. SCHEDULE, CONTACTS, AND FUNDING

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| <p>Effective Date: October 1, 2004</p> <p>Implementation Date: October 4, 2004</p> <p>Pre-Implementation Contact(s): Eugenia Mattison, 410-786-2564; Nancy Braymer, 410-786-4323</p> <p>Post-Implementation Contact(s): Nancy Braymer, 410-786-4323</p> | <p>These instructions shall be implemented within your FY 2005 operating budget.</p> |
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Medicare Secondary Payer (MSP) Manual

Chapter 7 - Contractor MSP Recovery Rules

Table of Contents

(Rev. 15, 4-30-04)

[30.1.5 - *Interest on MSP Recovery Claims*](#)

30.1.5 - Interest on MSP Recovery Claims

(Rev.15, 4-30-04)

B3-7130.H

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 waived if the debt is completely liquidated within the time frame specified in the recovery demand letter for payment. 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*

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.

Note: Effective October 1, 2004, 42 CFR 405.378 and 42 CFR 411.24 were amended to change how interest is calculated on MSP recoveries. Under the new rule, 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 the debtor is. It applies to MSP debts established on or after October 1, 2004 (the effective date of the final rule). 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, that debt does not accrue interest.)

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 recovery demand letter. Interest is owed when the debt is not fully resolved/paid within the time period specified in the recovery demand letter, either 30 or 60 days. If payment is received within the time frame specified in the recovery demand letter, interest is adjusted and no interest is due. If payment is not received when due, interest is assessed on the outstanding principal amount from the date of the recovery demand letter for each full 30-day period.

Examples:

MSP Debt Established Prior to 10/01/2004 – Example of Interest Accrual – Recovery Demand Letter Specified that Payment was Due Within 60 Days. *On 08/31/2004, the contractor issues a recovery demand letter establishing a 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 day 31-60, and one for the period of time between day 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 a 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 day 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 – Example of Interest Accrual – Recovery Demand Letter Specified that Payment was Due Within 60 Days. *On 10/31/2004, the contractor issues a recovery demand letter establishing a MSP based MSP 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 a 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.

*Reminder for partial payments -- For situations where partial payment is received on a debt with outstanding interest -- Payment is normally credited to interest first, principal second, leaving an outstanding amount of principal due. **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. **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.*

60.10.1 - Exhibit 1 - DCIA “Intent to Refer” Letter

(Rev. 15, 4-30-04)

DCIA “Intent to Refer” Letter

[Insert: Date]

[Insert: Debtor Name]

Debtor Address

Debtor City/State/Zip]

Past-due debt owed CMS as of **[insert:date of “intent to refer” letter/this letter] :**
[\$[insert: total principal and interest]

Date debt became past-due: **[insert:the 31st or 61st day after demand letter date depending on the type of debt and whether the demand letter set a 30-day time frame for repayment or a 60-day time frame for repayment]**

Date of Demand Letter previously sent: **[insert: date; Contractors, remember that this is the date of the demand to the debtor receiving this “intent to refer” letter.]**

Debt identification numbers: **[insert: Contractor number plus contractor case ID number for all MSP other than DM; contractor number plus MPaRTS Report ID number for DM]**

Taxpayer Identification Number (TIN): **[insert: EIN (or SSN for beneficiary debtors or other non-corporate debtors)]**

Beneficiary’s Name: **[insert]**

Beneficiary’s HIC#: **[insert]**

[insert for liability, no-fault, workers’ compensation “intent to refer” - Date of Accident/Incident: (insert date)]

**NOTICE OF INTENT TO REFER DEBT TO THE DEPARTMENT OF TREASURY
OR A DEPARTMENT OF TREASURY DESIGNATED DEBT COLLECTION
CENTER FOR CROSS-SERVICING AND OFFSET OF FEDERAL PAYMENTS**

(Please note that it is possible that this letter is being sent to you by a Medicare contractor other than the one who issued the request(s) for repayment that is(are) attached to this letter. This situation would occur whenever one contractor has assumed responsibility for a particular workload from another contractor (usually because the initial contractor is leaving or has left the Medicare program).)

The Centers for Medicare and Medicaid Services (CMS) (formerly the Health Care Financing Administration (HCFA)) has determined that you are indebted to the Medicare program for the amount shown above and that this amount is delinquent. The amount shown includes principal and interest. This debt arose under the Medicare Secondary Payer (MSP) provisions of the Social Security Act. The CMS has the right to collect this debt through offset of any payments due to the debtor. In addition, the Debt Collection Improvement Act (DCIA) of 1996 requires federal agencies to refer delinquent debts to the Department of Treasury and/or a designated Debt Collection Center (DCC) for collection through cross-servicing, including the Treasury Offset Program (TOP). Under TOP, delinquent federal debts are collected through offset from other Federal agency

payments you may be entitled to, including the offset of your income tax refund through the referral of this debt to the Internal Revenue Service (IRS), and Federal benefit payments such as Social Security retirement or disability benefits. Treasury or a designated DCC uses various collection tools to collect the debts, including offset, demand letters, phone calls, referral to a private collection agency and/or referral to the Department of Justice or agency counsel for litigation.

The purpose of this notice is to inform you of our intention to refer your debt to Treasury/a designated DCC, under the provisions of the DCIA, Title 31 United States Code, Section 3711 to collect this debt. This referral will permit the Department of Treasury and/or a designated DCC to use the aforementioned means of collection as well as to permit administrative offset of payments you may be receiving from other federal agencies. During this collection process, interest will continue to accrue on the debt and you will remain legally responsible for any amount not satisfied through the collection efforts.

Please read the following instructions carefully as they may assist you in resolving this matter prior to referral. Add: **[insert - Contractors, insert the following sentence for “intent to refer” letters to insurers, employers, third party administrators, GHPs, or other plan sponsors: Please note that in addition to the information set forth below, we are enclosing more detailed information on how to review this debt, and proper documentation requirements for asserting that the debt is not past due or legally enforceable.]**

Challenging the Indebtedness:

You have the right to request an opportunity to inspect and copy records relating to the debt. This request must be submitted in writing to the address listed below. Additionally, you have a right to present evidence that all or part of your debt is not past due or legally enforceable. In order to exercise this right, this office must receive a copy of the evidence to support your position. Please include a copy of this notice when corresponding with the agency regarding this matter. You must submit any evidence that the debt is not owed or legally enforceable within 60 days of the date of this letter. We will notify you within 30 days of receipt of the information of our determination as to whether the debt is still past due and legally enforceable. Failure to present any evidence will result in the automatic referral of the debt to the Department of Treasury/a designated DCC for cross-servicing/offset actions.

Your debt will not be referred for further collection action if you make payment in full. Please be advised that payment of principal only is not considered payment in full and will not satisfy this debt. By law, partial payments are applied to interest first and then to principal.

The past-due debt owed to CMS as of **[insert: date of “intent to refer”/this letter]**, including interest accrued through **[insert: date of last day of the current interest period]**, is **[\$]**. ***[Insert: use (A) for debts established before 10/01/04; use (B) for debts established on or after 10/01/04; (A) By regulation, interest is due and payable for each***

30-day period as of the first day of that 30-day period; (B) By regulation, interest is due and payable is due for each full 30-day period that the debt is not fully liquidated.] Be advised that interest is accrued monthly and is added to the balance of the debt. If the debt remains outstanding after **[insert specific date: date of last day of the current interest period]**, the amount of the debt, including interest, will be **[insert dollar amount]**. If no payment is received by **[insert date: date of last day of the next interest period (30 days from date of the last day of the current interest period)]**, the amount of the debt including interest will be **[insert: dollar amount, including interest]**; and if no payment is received by **[insert date: date of the last day of the third interest period (60 days from the date of the last day of the current interest period)]**, the amount of the debt including interest will be **[insert: dollar amount, including interest]**. Please make your check or money order payable to **[insert: name of Medicare Contractor - MSP Unit]**, include a copy of this notice and forward both to the address below.

[insert & instructions: “interest only debt” – If the outstanding debt is interest only, that debt does not accrue additional interest. “Interest only” debts generally happen when the employer or insurer paid the provider/supplier after the date of the demand. In these situations, contractors must delete the preceding paragraph (that is, starting with “ The past due debt owed....”) and insert the following paragraph in its place: Please be aware that if you paid the provider, physician, or other supplier for the claims at issue after Medicare issued its demand letter, you still owe any interest which accrued and was due at the time of the payment to the provider, physician, or other supplier. The past due debt of [insert: amount] owed to CMS is comprised entirely of interest. Please make your check or money order payable to [insert: name of Medicare Contractor – MSP Unit], include a copy of this notice and forward both to the address below.]

[insert & instructions: beneficiary GHP-based debt - If the debtor is the beneficiary and the debt is GHP-based debt, CMS does not charge interest to the beneficiary. In these situations, the contractor must delete the standard paragraph which includes information about interest (that is starting with “The past due debt owed....”) and insert the following paragraph in its place: The past-due debt owed to CMS is [insert: amount of outstanding debt]. Please make your check or money order payable to [insert: name of Medicare Contractor - MSP Unit], include a copy of this notice and forward both to the address below.]

[insert: Name of Medicare Contractor - MSP Unit

Attention: Manager’s Name

Address of Medicare Contractor]

Your check should also include the “debt identification numbers” as shown at the beginning of this letter in order to ensure that you receive proper credit for your payment.

If you cannot make the payment in full, you may be allowed to enter into an extended repayment agreement.

Bankruptcy Related Information: If you have filed for bankruptcy **and** an automatic stay of bankruptcy is in effect, you are not subject to offset while the automatic stay is in effect. Documentation supporting your bankruptcy status, along with a copy of this notice, must be forwarded to this office at the above address in order to avoid referral.

Information for Individual Debtors Filing a Joint Federal Income Tax Return: TOP automatically refers debts to the IRS for offset. Your federal income tax return is subject to offset under this program. If you file a joint income tax return, you should contact the IRS before filing your tax return to determine the steps to be taken to protect the share of the refund which may be payable to the non-debtor spouse.

If you have questions concerning this debt, extended repayment plans, and/or relating to the submission of evidence, you may contact:

[insert: Name of Contractor's Contact Person

Telephone Number of Contact Person]

If you call, please be sure that you have this letter available so that you can readily provide us with the identification information provided at the beginning of the letter.

Sincerely,

[insert: Name

Title

Contractor's Name - MSP Unit]

Enclosures:

Demand Letter

Claims Summary/Claims Facsimiles

[insert for GHP insurer, employer, third party administrator, GHP, or other plan sponsor debts only: Enclosure with supplemental information on resolving debts]

[insert where the beneficiary is the debtor and is represented - cc: attorney or other representative]