Operational Policy Letter #39

Department of Health &Human Services

Health Care Financing Administration

Medicare Managed Care

July 31, 1996

RECOUPMENT OF UNDER-PAYMENTS BY A RISK CONTRACTING ORGANIZATION TO A NON-CONTRACTING MEDICARE PROVIDER

Issue:

A question was raised regarding a risk-contracting HMO payment of capital and other pass-through amounts to non-contracting providers.

Certain hospitals have billed a HMO, with which the provider had no contract. Payments were made to these hospitals, however, the providers may have been underpaid based on current law (1866(a)(1)(O)). The HMO agrees to the underpayment, in principle. The problem is the providers and HMO cannot agree on an appropriate time limitation during which the provider can recoup its underpayment. An argument advanced by at least one HMO was that the HMO was essentially acting as a fiscal intermediary for the Medicare program. As an intermediary, the HMO is invoking the time limits that apply to claims submitted to intermediaries.

Answer:

We do not agree that a Medicare contracting HMO or CMP is a fiscal intermediary, and, therefore, cannot invoke time limits that apply to claims submitted to intermediaries. The extent to which it is the hospitals or the HMO that were responsible for the delay, and the legal impact of the delay, will have to be determined under state law.

On the other hand, we would note that section 1866(a)(1)(O) only precludes the hospital from charging **more** than the Medicare payment level. The provision does not on its face give the hospital a "right" under federal law to any particular level of payment. Pass-through information is made available to the HMO from HCFA or the intermediary. However, federal law does not address how and whether the HMO chooses to use that information. Nor does the statute control at what point receipt of the DRG amount could be viewed as acceptance of "payment in full" from the HMO.

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