

# CMS Manual System

## Pub 100-06 Medicare Financial Management

Transmittal 87

Department of Health & Human Services (DHHS)

Centers for Medicare & Medicaid Services (CMS)

Date: DECEMBER 30, 2005

Change Request 4211

**SUBJECT: Update to Carrier Demand Letter Appeals Language**

**I. SUMMARY OF CHANGES:** The purpose of this CR is to notify Carriers and DMERCs about modifications needed to the appeals language in the Overpayment Manual and the Demand Letter to physicians/suppliers as a result of section 521, of BIPA, and sections 933, 939, and 940 of MMA. It also makes other changes to delete or correct language inconsistent with section 935 of MMA (limitation on recoupment).

### NEW/REVISED MATERIAL

**EFFECTIVE DATE: January 01, 2006**

**IMPLEMENTATION DATE: January 03, 2006**

*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.*

R/N/D	Chapter / Section / SubSection / Title
R	3/90/90.2/Provider Protests It's Liability
R	4/90/90.2/Exhibit 1- Initial Demand Letter to Physicians/Suppliers

### III. FUNDING:

No additional funding will be provided by CMS; contractor activities are to be carried out within their FY 2006 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: Update to Carrier Demand Letter Appeals Language**

## I. GENERAL INFORMATION

**A. Background:** The purpose of this CR is to notify Carriers and DMERC’s about modifications needed to the appeals language in the Overpayment Manual and the Demand Letter to Physicians/Suppliers as a result of section 521, of BIPA, and sections 933, 939, and 940 of MMA. This CR does not provide instructions to implement the limitation on recoupment (part of section 935 of the MMA). However, it makes certain changes to the Overpayment Manual and Demand Letter to delete or correct language which conflicts with section 935.

*Note:* Related CR’s are 3530, 3942, 3944, 3939 and 4019.

**B. Policy:** Section 521, of BIPA, and sections 933, 935, 939, and 940 of MMA.

## II. BUSINESS REQUIREMENTS

*“Shall” denotes a mandatory requirement*

*“Should” denotes an optional requirement*

Requirement Number	Requirements	Responsibility (“X” indicates the columns that apply)								
		F	R	C	D	Shared System Maintainers				Other
						I	M	V	C	
		S	S	S	W	F				
4211.1	Contractors shall consider a provider's protest to a notification that the provider is liable for an overpayment to be a request for an appeal.			X	X					
4211.1.1	If the overpayment was identified outside of the appeals process, the contractor shall consider the provider’s protest as a request for a redetermination.			X	X					
4211.1.2	If the overpayment was identified during the course of a redetermination, the contractor shall consider the provider’s protest as a request for a QIC reconsideration.			X	X					
4211.2	Contractors shall change the language on their overpayment demand letters to providers/suppliers to read as follows:			X	X					

Requirement Number	Requirements	Responsibility (“X” indicates the columns that apply)								
		F I	R 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	
	<p>If payment in full is not received by, (specify a date 40 days from the date of the notification), payments to you will be withheld until payment in full is received, an acceptable extended repayment request is received, or a valid and timely appeal is received. If you have reason to believe that the withhold should not occur on _____ you must notify &lt;contractor&gt; before _____. We will review your documentation. However, this is not an appeal of the overpayment determination, and it will not delay recoupment.</p> <p><b>If you wish to appeal this decision:</b></p> <p>If you disagree with this overpayment decision, you may file an appeal. An appeal is a review performed by people independent of those who have reviewed your claim so far. The first level of appeal is called a redetermination. You must file your request for a redetermination within 120 days of the date you receive this letter. Unless you show us otherwise, we assume you received this letter 5 days after the date of this letter. Please send your request for redetermination to:</p> <p>Address of Redetermination Department</p>									

### III. PROVIDER EDUCATION

Requirement Number	Requirements	Responsibility (“X” indicates the columns that apply)								
		F I	R H I	C a 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: N/A**

X-Ref Requirement #	Instructions

**B. Design Considerations: N/A**

X-Ref Requirement #	Recommendation for Medicare System Requirements

**C. Interfaces: N/A**

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

**E. Dependencies: N/A**

**F. Testing Considerations: N/A**

**V. SCHEDULE, CONTACTS, AND FUNDING**

<b>Effective Date*</b> : January 1, 2006  <b>Implementation Date</b> : January 3, 2006  <b>Pre-Implementation Contact(s)</b> : Theresa S. Jones <b>Post-Implementation Contact(s)</b> : Theresa S. Jones (410)786-7482; <a href="mailto:theresa.jones@cms.hhs.gov">theresa.jones@cms.hhs.gov</a>	<b>No additional funding will be provided by CMS; contractor activities are to be carried out within their FY 2006 operating budgets.</b>
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## **90.2 - Provider Protests Its Liability**

*(Rev. 87, Issued: 12-30-05; Effective: 01-01-06; Implementation: 01-03-06)*

A provider's reply to a notification that the provider is liable for an overpayment may indicate dissatisfaction with some aspect of the overpayment decision. Such a protest *shall* be considered a request for *an appeal*. *In most instances, this will be a redetermination which is the first level of appeal for an overpayment determination. However, if the overpayment is identified during the course of the redetermination, the contractor shall consider the provider's protest as a request for reconsideration by the qualified independent contractor (QIC).* In conducting the appeal, the FI or carrier shall consider whether

- a. There was an overpayment;
- b. The amount of the overpayment was correctly calculated; and whether,
- c. The provider is liable for repayment.

# EXHIBIT 1 - INITIAL DEMAND LETTER TO PHYSICIANS/SUPPLIERS

*(Rev. 87, Issued: 12-30-05; Effective: 01-01-06; Implementation: 01-03-06)*

Dr. Joe Smith  
Anywhere St  
Anytown, State ZIP Code

Date

Dear Dr. Smith:

## **Contractors should use the appropriate paragraph:**

"This is to let you know that you have received Medicare payment in error which has resulted in an overpayment to you of \$\_\_\_\_\_ for services dated \_\_\_\_\_. The following explains how this happened."

or

"We appreciate your recent inquiry regarding Medicare payment that you believe was paid to you in error. We thank you for bringing this overpayment to our attention."

or

"We have received your check in the amount of \$\_\_\_\_\_. We thank you for bringing this overpayment to our attention. While we appreciate you submitting payment to us, our review found that the overpaid amount was \$\_\_\_\_\_. Please remit the additional \$\_\_\_\_\_."

## **How this overpayment was determined:**

**NOTE:** This paragraph should include a clear explanation of how the overpayment arose, the amount of the overpayment, how the overpayment was calculated, and why the original payment was not correct.

## **Why you are responsible:**

**NOTE:** For medical necessity determinations, the carrier shall insert appropriate paragraphs. It shall be sure to give an 1879 determination for each claim as well as the regulatory and statutory references for the 1879 determination.

You are responsible for being aware of correct claim filing procedures and must use care when billing and accepting payment. In this situation you billed and/or received payment for services you should have known you were not entitled to. Therefore, you are not without fault and are responsible for repaying the overpayment amount. If you dispute this determination please follow the appropriate appeals process listed below.

(Applicable Authorities: Section 1870(b) of the Social Security Act; §§ 405.350 - 405.359 of Title 42, §§ 404.506 - 404.509, 404.510a and 404.512 of Title 20 of the United States Code of Federal Regulations.)

**What you should do:**

Please return the overpaid amount to us by \_\_\_\_\_ (date) and no interest charge will be assessed. Make the check payable to Medicare Part B and send it with a copy of this letter to:

Carrier Address

**If you do not refund in 30 days:**

In accordance with 42 CFR 405.378 simple interest at the rate of \_\_\_ will be charged on the unpaid balance of the overpayment beginning on the 31<sup>st</sup> day. Interest is calculated in 30-day periods and is assessed for each full 30-day period that payment is not made on time. Thus, if payment is received 31 days from the date of final determination, one 30-day period of interest will be charged. Each payment will be applied first to accrued interest and then to principal. After each payment interest will continue to accrue on the remaining principal balance, at the rate of \_\_\_ .

We request that you refund this amount in full. If you are unable to make refund of the entire amount at this time, advise this office immediately so that we may determine if you are eligible for a repayment plan. (See enclosure for details.) Any repayment plan (where one is approved) would run from the date of this letter.

If payment in full is not received by, (specify a date 40 days from the date of the notification), payments to you will be withheld until payment in full is *received, an acceptable extended repayment request is received, or a valid and timely appeal is received*. If you have reason to believe that the withhold should not occur on \_\_\_\_\_ you must notify <contractor> before \_\_\_\_\_. We will review your *documentation*. *However, this is not an appeal of the overpayment determination, and it will not delay recoupment.*

**If you wish to appeal this decision:**

*If you disagree with this overpayment decision, you may file an appeal. An appeal is a review performed by people independent of those who have reviewed your claim so far. The first level of appeal is called a redetermination. You must file your request for a redetermination within 120 days of the date you receive this letter. Unless you show us otherwise, we assume you received this letter 5 days after the date of this letter. Please send your request for redetermination to:*

*Address of Redetermination Department*



**If you have filed a bankruptcy petition:**

If you have filed a bankruptcy petition or are involved in a bankruptcy proceeding, Medicare financial obligations will be resolved in accordance with the applicable bankruptcy process. Accordingly, we request that you immediately notify us about this bankruptcy so that we may coordinate with both the Centers for Medicare & Medicaid Services and the Department of Justice so as to assure that we handle your situation properly. If possible, when notifying us about the bankruptcy please include the name the bankruptcy is filed under and the district where the bankruptcy is filed.

Should you have any questions please do not hesitate to contact \_\_\_\_\_ at \_\_\_\_\_.

If we can assist you further in the resolution of this matter, we shall be glad to do so. We expect to hear from you shortly.

Sincerely,

(name and title)

Enclosure

