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October 2, 2008

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CMS Releases New Rules Limiting Recoupment Pending Claims Appeals

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Providers, physicians, and suppliers of medical goods and services (collectively, "providers") may now be able to avoid recoupment of alleged overpayments pending appeals, but at a cost. Providers who ultimately lose their appeals will be charged an exorbitant interest rate (currently 11.375%) on any outstanding overpayments not recouped by CMS pending the appeals. Providers who do not wish to risk paying interest on unsuccessful appeals must voluntarily remit overpayments to CMS within thirty days of receiving a demand notice from the Medicare contractor. CMS established the revised procedures for recoupment of overpayments pursuant to Section 935 of the Medicare Prescription Drug, Improvement and Modernization act of 2003.

Section 935 ostensibly makes the same interest available to providers who are victorious on appeal. However, CMS has interpreted this mandate so narrowly as to render it meaningless. Under CMS's interpretation of Section 935 interest does **not** accrue on amounts voluntarily paid by a provider pending the outcome of the appeals process. Rather, interest only accrues on funds that the Medicare contractor affirmatively recoups from the provider prior to receiving notice of the provider's appeal. Contractors do not commence recoupment until shortly before the expiration of filing deadlines, so, under CMS's interpretation of Section 935, funds subject interest in favor of victorious providers will be extremely limited.

Given the significant rate of interest charged to a losing provider, and CMS's narrow reading of Section 935's reciprocity provisions, the new recoupment provisions amount to a disincentive to appeal alleged overpayments.

The manual provisions implementing the new policy were released in transmittal 141, Pub. 100-06, which can be viewed at www.cms.hhs.gov/Transmittals/Downloads/R141FM.pdf.

CMS has also released a MLN Matters article explaining the new procedures, which can be viewed at

Julie E. Kass

www.cms.hhs.gov/MLNMattersArticles/downloads/MM6183.pdf.

Paul W. Kim (Counsel)

Ober|Kaler's Comments: Unless you do not have ready access to capital, it is not advisable to take advantage of the new recoupment procedures. The better course would be to voluntarily return alleged overpayment funds pending appeals. Most providers with a working capital line of credit can get a lower interest rate than the current rate of 11.375%, so the interest expense charged by CMS on an unsuccessful appeal amounts to a penalty for using the appeals process.

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