

3.9.1 Scope Of Chapter

This chapter covers the handling of overpayments of Medicare benefits. The procedure for investigating the possible forgery of a Medicare benefit check is also included.

For further information on Medicare overpayments refer to:

Part A Intermediary Manual - Section 3700.

Part B Intermediary Manual - Section 6400.

Social Security Claims Manual - Section 5500.

Medicare Overpayments - General

3.9.5 Medicare Overpayments Defined

- A. HIB (Part A) Overpayment - A hospital insurance overpayment occurs when more than the correct amount has been paid in hospital insurance benefits to:
 - 1. A "provider of services" (a hospital, skilled nursing facility, or home health agency) for items or services furnished an individual; or
 - 2. An individual who received the benefit of the items or services.
- B. SMI (Part B) Overpayment - A medical insurance overpayment occurs when more than the correct amount has been paid in medical insurance benefits to:
 - 1. A physician or supplier of medical services for items or services furnished an individual; or
 - 2. An individual who received the benefit of the items or services.

3.9.6 General Handling

- A. Overpayments in the U.S. - These instructions cover the handling of HI overpayments made to or on the behalf of individuals living in the United States.
- B. HIB Overpayment in Canada - A hospital insurance overpayment made to an individual living in Canada is to treated as though it were a railroad retirement annuity overpayment. The instructions in RCM 6.6 apply except that nay case involving such an overpayment, regardless of the amount, is to be referred to MS.
- C. SMI Overpayment in Canada - A medical insurance overpayment for a resident of Canada will be handled as though the individual were a resident of the United States.

3.9.7 Liability For Medicare Overpayments

- A. Provider of Service, Physician, or Supplier Liable - A provider of services, physician, or supplier is deemed to have knowledge of the laws and regulations which apply to the payment of Medicare benefits. Therefore the provider or other person is liable for an overpayment made to him if:
1. The overpayment was caused by a mathematical or clerical error.
 2. The overpayment was due to a duplicate payment which was retained by the provider or other person.
 3. The beneficiary did not receive the services (or items) paid for.
 4. The provider or other person accepted payment for services (or items) which he knew or should have known were not reasonable or necessary for treatment.
 5. The overpayment resulted from a charge in excess of the reasonable charge.
 6. A provider or other person, not qualified under SSA regulations to perform services (e.g., an immediate relative or member of the beneficiary's household), accepted payment for services.
 7. A physician or supplier collected a payment on the basis of an assignment without disclosing that he had already been paid by the beneficiary (see SSCM section 10603.5).
- B. Beneficiary Liable - A beneficiary is liable for repayment of overpayments made direct to him. He is also liable for overpayments made to a provider of services, supplier, or physician on his behalf if he received the services, the services were necessary, the charges were reasonable and:
1. The overpayment resulted from failure to properly apply the deductible or coinsurance; or
 2. The overpayment resulted from benefits paid to the provider of services under the guarantee provision of section 1814(e) of the SS Act (see Part A Intermediary Manual - Section 3714 to 3714.3); or
 3. The overpayment resulted from some other cause (e.g., non-entitlement or non-coverage) and the provider or other person acted reasonably in filing for and accepting Medicare payments. The provider or other person will be considered to have acted reasonably if he:

- a. Had no basis for questioning entitlement or coverage or, if he did, brought it promptly to the attention of the intermediary or carrier, and
 - b. Complied with all pertinent regulations and had reason to believe the services were covered.
 4. The provider or other person was without fault in causing the overpayment (effective with notices of payment sent after 10-30-72).
- C. Dual Liability - The provider, physician or supplier and the beneficiary are jointly liable for an overpayment, provided the overpayment was made to the provider or other person for services which the beneficiary received, if:
1. The overpayment was caused by an error regarding entitlement or coverage of services and the provider or other person did not act reasonably and with due care in filing for and accepting the payment; or
 2. The provider or other person received duplicate payments and turned one payment over to the beneficiary.
- D. Limitation on Beneficiary Liability - A beneficiary who was without fault (i.e., did not know and could not be expected to know that the services were not covered) and whose claim under Part A or Part B has been disallowed because the services were not reasonable or necessary for the diagnosis or treatment of an injury or illness or because the care was a non-covered level of care (i.e., custodial care), shall not be liable for payment.

If the provider or other person in such a case also exercises due care (i.e., did not know and could not be expected to know non-covered services were involved), the Medicare program will make payment as if the services were covered. When payment is made, the provider and patient will be put on notice so that they cannot again claim lack of knowledge in subsequent claims involving similar situations.

If the provider did not exercise due care and the beneficiary was without fault, the provider would be liable for the services but could appeal both the determination as to coverage and "due care." If the provider did not exercise due care and collected from the beneficiary, the program would, upon application, reimburse the beneficiary. The payment would then be treated as an overpayment to the provider.

This provision applies only to Part A bills and assigned Part B bills for items or services provided after 10-30-72.

3.9.15 Intermediary's Or Carrier's Responsibility

- A. When the Provider of Services, Physician or Supplier Is Liable - The intermediary or carrier will notify the provider or other person of the overpayment, will offset the overpayment against any future benefits due the provider or other person and, if necessary, will ask for a refund. If recovery of an HIB O/P cannot be made from the provider of services, the intermediary will refer the case to SSA, Bureau of Health Insurance. If recovery of an SMI O/P cannot be made from a physician or supplier, the Part B carrier will refer the case to RRB.
- B. When the Beneficiary Is Liable - The intermediary or carrier will notify the beneficiary of the overpayment, will offset the overpayment against any future unassigned payments due the beneficiary and, if necessary, will ask for a refund. If an HIB O/P is not recovered from the beneficiary, the intermediary will refer the case to SSA, Bureau of Health Insurance. If an SMI O/P is not recovered from the beneficiary, the Part B carrier will refer the case to RRB.
- C. Dual Liability - The intermediary or carrier will send an overpayment letter first to the provider of services, supplier or physician. If the overpayment is not recovered within 60 days, the intermediary or carrier will ask the beneficiary for a refund. Any payments due the beneficiary will be withheld pending recovery from the provider of services or other person. If recovery of an HIB O/P cannot be made from either the provider of services or the beneficiary, the intermediary will refer the case to the Bureau of Health Insurance. If recovery of an SMI O/P cannot be made from either the supplier or physician or the beneficiary, the Part B carrier will refer the case to RRB.
- D. What the Overpayment Letter Should Contain - The overpayment letter sent by the intermediary or carrier to the provider of services, physician, supplier or beneficiary should:
1. Clearly identify the overpayment by showing the name and address of the provider or other person, the dates of services, the nature of the services, the date and amount of the check(s) and to whom it was paid, and the amount of the overpayment.
 2. Clearly explain why the payment was incorrect.
 3. Identify and advise the amount of any Medicare benefits withheld.
 4. Request a refund.
 5. Notify the beneficiary that unless a refund is made, the overpayment may be deducted from his monthly annuity.
 6. Inform a beneficiary of his right to a reconsideration or review of the overpayment decision.

7. Include an explanation of the waiver provision.

See Exhibit 2 for a sample overpayment letter.

- E. When the Beneficiary Requests That Recovery Be Waived - If a beneficiary requests that a Medicare O/P be waived or states conditions that might qualify him for waiver, the intermediary or carrier should refer the case to the Bureau of Health Insurance or RRB immediately.

- F. When Beneficiary or Physician Is Deceased.

1. Beneficiary Liable - The intermediary or carrier should withhold the overpayment from any amount payable on the beneficiary's account to a relative or to the beneficiary's estate. If an amount is payable on the beneficiary's account to any other person or organization, that amount cannot be withheld.
2. Physician Liable - the Part B carrier should withhold the overpayment from any other Medicare payment due the physician's estate. If the O/P cannot be recovered by withholding, the carrier should refer the case to RRB immediately with any information received about an estate.

- G. When the Beneficiary Is Entitled to Welfare Payments - The intermediary or carrier will contact the State Welfare Department, to determine whether that agency will refund an overpayment for which a beneficiary receiving or entitled to welfare is liable, if:

1. An HIB overpayment was caused by:
 - a. Failure to properly assess the deductible or coinsurance;
 - b. Payment for non-covered services; or
 - c. Payment for services after benefits have been exhausted.
2. An SMI overpayment was caused by failure to properly assess the deductible.

If the State Welfare Department will not refund the overpayment, the intermediary will refer the case to SSA, Bureau of Health Insurance, or the Part B carrier will refer the case to RRB without taking any further recovery action. A record of any contact made with the welfare department should be included with the material referred to SSA or RRB.

3.9.16 Responsibility Of SSA

- A. HIB O/P - SSA will receive all cases in which an overpayment of HIB benefits has not been recovered by the intermediary from a provider of services or

beneficiary. After determining who is liable for the overpayment, SSA will handle to completion all cases in which the provider is solely liable.

If a QRRB or DQRRB is liable for repayment of the overpayment, SSA will refer the case to RRB for consideration of waiver or recovery from benefits payable under the RR Act.

- B. SMI O/P - SSA will not handle SMI O/P for QRRB's or DQRRB's unless RRB requests that recovery be made from benefits payable by SSA, because the annuity is not in current pay status (see sec. 3.9.45). However, all cases in which a physician or supplier of services is liable for repayment should be sent to SSA for handling.

3.9.17 Responsibility Of RRB

The chances of recovering a Medicare overpayment are better if recovery action is taken soon after the notice of overpayment is received. Therefore, Medicare overpayment cases should be given preferred handling.

- A. General - RRB is responsible for the waiver or recovery of an HI O/P in any case in which the beneficiary is liable for repayment. RRB will have complete jurisdiction over such overpayments. However, if waiver is not applicable, RRB cannot recover the O/P because the annuity is not in current pay status, and the beneficiary is receiving social security benefits, the case may be referred to SSA for recovery from the benefits payable by that agency (see sec. 3.9.45).
- B. Responsibility of the Medicare Section (MS) - MS will take the following actions in cases referred to RRB:
 - 1. Review alleged overpayments of Medicare benefits to determine whether.
 - a. The amount of the overpayment is correct;
 - b. Recovery efforts have been directed to the person actually liable for the overpayment; and
 - c. The intermediary or carrier has taken all necessary action for which it is responsible.
 - 2. Clear up any problems or questions concerning a SMI overpayment with the Part B carrier and a HIB overpayment with CMS or the intermediary who handled the case.
 - 3. Ask CMS to contact the State Welfare Department in any case in which a beneficiary, who is or may be entitled to welfare payments, is liable for an overpayment caused by failure to properly apply the deductible. Send the overpayment material with a transmittal letter to the Centers for Medicare

& Medicaid Services, Overpayment Section (see RCM 10.6, Item 27). In the transmittal, include the following information:

- a. the overpayment was caused by failure to properly apply the deductible and the beneficiary is or may be entitled to welfare payments, and
 - b. a statement of what evidence shows that the beneficiary is or may be entitled to welfare and any identification number, etc., to be used in the contact with the welfare department, and
 - c. any unusual or unclear facts concerning the overpayment, such as the fact that the Part B carrier recovered part of it.
4. Send to the appropriate CMS regional office (see RCM 10.6, item 27a), cases in which the provider, supplier or physician is solely liable for the overpayment. Provide CMS with the name, address of the provider, supplier or physician and the reason why that person is liable for the overpayment in the transmittal letter.
 5. Refer all other overpayment cases which are not under the jurisdiction of the Board to the Centers for Medicare & Medicaid Services, Overpayment Section (see RCM 10.6, item 27). This includes cases in which CMS has jurisdiction for the payment of survivor benefits. Provide the name, address and social security number of any survivor, or a statement that we have no record of a survivor in the transmittal letter. Include any information concerning an estate, if available.
 6. In SMI overpayment cases only, send a carbon copy of the letter to the Part B Carrier.
 7. Check for evidence of fraud or abuse.
 8. If items 3, 4, 5 and 8 do not apply after completing actions 1, 2 and 9, prepare RL-390.
 9. Notify the overpaid person of a decision to recover the overpayment (see sec. 3.9.44), or ask the adjudication unit that suspends the annuity to do so.
 10. If the overpayment cannot be recovered from a railroad retirement annuity because the annuity is not in current pay status, the beneficiary is receiving social security benefits, refer the case to the controlling SSA Program Center for recovery.
 11. File a proof of claim against the estate of a beneficiary who is liable for an overpayment, whose overpayment has not been recovered, and whose estate is still open (see sec. 3.9.53).

12. Transfer overpayments which cannot be recovered to uncollectibles and to GAO, if appropriate (see sec. 3.9.53).
 13. Notify SSA of the disposition of all Medicare overpayments. Notify the Part B carrier of the disposition of SMI overpayments. (See sec 3.9.80 and 3.9.81).
- C. Responsibility of Debt Recovery Division (DRD) - DRD will take the following actions in cases referred to RRB:
1. Determine whether to waiver or recover all HI overpayments in which the beneficiary is liable.
 2. Determine the method of recovery if waiver is not applicable.

3.9.25 When Recovery May Be Waived

Recovery of a Medicare overpayment from a beneficiary or from any survivor eligible for benefits on his earnings record may be waived if:

- A. The individual against whom the recovery would be made was without fault in causing the overpayment; and
- B. Recovery would:
 1. Defeat the purpose of Title II of the SS Act, or
 2. Defeat the purpose of Title XVIII of the SS Act, or
 3. Be against equity and good conscience in accordance with Section 1870(c) of the SS Act.

Prior to the 1972 amendments (waiver actions considered before 11-1-72), an overpayment made to a deceased beneficiary who was at fault in causing an overpayment had to be recovered from any survivor eligible for benefits on the deceased beneficiary's earnings record. The overpayment could not be waived even if the surviving beneficiary was without fault in causing the overpayment.

3.9.26 Without Fault

- A. General - Since a finding of without fault is required in all cases before waiver may be approved, resolve this issue first. If "without fault" is not established, do not develop whether recovery would either defeat the purpose of Title II or Title XVIII of the SS Act or be against equity and good conscience.

The term fault as used in "without fault," applies to the overpaid person (beneficiary, provider of services, supplier, or physician) and to the individual from whose benefits the overpayment is to be recovered (a survivor entitled to

benefits on a deceased beneficiary's wage record). The fact that the overpayment may have been caused by an administrative error will not, in itself, establish "without fault." The fault need not necessarily involve fraud. However, there are certain cases in which information in file will establish "without fault" without further investigation.

If a provider of services, supplier or physician is found to be without fault in causing an overpayment the overpayment must be recovered, unless waiver applies, from any benefits payable on the earnings record of the beneficiary on whose behalf the pseudo number was made.

In order to support a without fault finding, the evidence must show that the overpaid person exercised a high degree of care in determining whether he was entitled to the incorrect payment. However, the complexity of the circumstances which caused the overpayment and the capacity of the individual to realize that he was overpaid must be considered in determining the degree of care expected in a particular case.

EXAMPLE: If a beneficiary receives two identical checks within a short period of time based on the same claim, no payments are due based on additional claim, and the beneficiary appears to have reasonable intelligence and education, without fault will probably not apply. If, however, a duplicate payment is made in two checks of differing amounts, payments are due based on additional claims, and/or the beneficiary is of low intelligence or educational level, without fault may apply, depending on the circumstances in the case.

The following guidelines may be followed in determining whether a beneficiary is without fault in causing an overpayment:

1. A beneficiary is not expected to maintain a personal record of utilization.
2. A beneficiary is not usually expected to know the correct deductible amount.
3. A beneficiary is not usually expected to know which services are not covered by Medicare, unless he has been advised in writing that a service is not covered (see sec. 3.9.7, item D).

B. When an Overpaid Person Is at Fault - The person liable for an overpayment is usually at fault when the overpayment resulted from:

1. An incorrect statement by the person that he knew or should have known was false; or
2. Failure of the person to give information that he knew or should have known was material; or

3. Acceptance by the person of a payment that he knew or should have know was incorrect.

C. When an Overpaid Person Is Without Fault.

1. Reliance on Misinformation From an Official Source - The person liable for the overpayment will be found to be without fault if the overpayment occurred solely because the individual relied on misinformation from an official source. If the overpaid person is found to be "without fault" because of reliance on misinformation from an official source, recovery of the overpayment will be deemed to be against equity and good conscience.

Generally, reliance on misinformation may involved in overpayments resulting from payment for supplies or services which are not covered by Medicare. Reliance on the advice or information given to the individual must have some reasonable basis and must be restricted to information from an agent or agency of the U.S. Government, including intermediaries and carriers.

Generally, misinformation is not considered to be involved when duplicate checks are issued on the basis of the same claim or if information is provided on the basis of erroneous or incomplete records which the individual did not question. However, an individual may sometimes be found to be without fault in such circumstances.

2. Overpayment Discovered More Than Three Years After Notice of Payment Sent - In the absence of evidence to the contrary, the provider of services, supplier, or physician is deemed to have been without fault in causing an overpayment if the overpayment was discovered more than 3 years after the year in which the notice of payment was sent.

For examples of when "without fault" applies see SSCM 5589.2.

3.9.27 Defeat The Purpose Of Title II

- A. General - Recovery of an overpayment would "defeat the purpose of Title II of the Social Security Act" (be contrary to the purpose and intent of the Act), if it would deprive the overpaid person of income that is reasonably necessary for ordinary living expenses.

Request the field to obtain a completed DR-423 from the debtor if the individual claims it would be a hardship to repay the Part B. Assume that recovery would defeat the purpose of Title II, without developing a DR-423, if there is an indication that the beneficiary is receiving or entitled to welfare payments.

B. When "Defeat the Purpose of Title II" Applies - Recovery of an overpayment will generally defeat the purpose of Title II if:

1. The person needs substantially all of his current income to meet his current ordinary and necessary living expenses; and
2. Recovery of the overpayment would reduce the person's total assets, not including household furnishings, wearing apparel, an automobile and a home of reasonable value in which the overpaid person lives, to:
 - a. below \$3,000 for a person without dependents; or
 - b. below \$5,000 for a person with one dependent. Allow an additional \$600 in assets for each additional dependent.

If the overpaid person has assets which exceed \$3,000, \$5,000, etc., by less than the amount of the overpayment, it is possible to apply waiver to only part of the overpayment and to recover the balance.

EXAMPLE: A Medicare beneficiary was overpaid \$1,850.00. He and his wife have assets of \$6,000, excluding those outlined above. Their total income barely meets their ordinary and necessary living expenses. Assuming that the beneficiary was without fault in causing the overpayment, \$850 of the overpayment can be waived and \$1,000 can be recovered, leaving assets of \$5,000.

Waiver of recovery against an estate may not be considered on the basis of defeat the purpose of Title II, even though waiver would have been proper on that basis during the lifetime of the overpaid person. The estate cannot be considered to need income for ordinary and necessary living expenses.

For further information concerning "Defeat the Purpose of Title II," see SSCM 5550 through 5552.4.

3.9.28 Defeat The Purpose Of Title XVIII

Recovery of the overpayment would "defeat the purpose of Title XVIII" (be contrary to the purpose and intent of that title of the Act), if it would deprive the person of funds needed within a year for hospital or medical care reasonably necessary for his health. If recovery would not deprive the individual of a subsistence income (i.e., defeat the purpose of Title II), but would deprive him of necessary hospital or medical care, such recovery would defeat the purpose of Title XVIII. However, if recovery would obviously defeat the purpose of Title II, only that one element need be developed.

The need for hospital or medical care must be real and tentatively planned to occur within a year (as distinguished from conjectural or in the distant future), and the commitment of the funds must be real and not conjectural, to be considered in determining whether adjustment or recovery would "defeat the purpose of Title XVIII." The individual need

not have begun the needed treatment or care, but he must have made the necessary plans to do so. He may have arranged for the treatment when it is medically appropriate or when he has accumulated the necessary cash to defray the expenses. A statement (1 or 2 sentences long) from the physician in charge or from a similarly authorized medical source is needed to indicate (a) whether the treatment and/or care is needed and (b) the estimated cost. Note that expenses already incurred for medical care, hospitalization, etc., are taken into consideration in determining whether recovery would defeat the purpose of Title II. No expense may be counted twice in determining whether recovery would defeat the purpose of Title II. No expense may be counted twice in determining whether recovery would defeat the purpose of Title II or XVIII.

3.9.29 Against Equity And Good Conscience

- A. General - Under the SS Act, recovery of an overpayment will be considered to be against equity and good conscience where the beneficiary, relying on benefit payments or on a notice that such payments would be made, relinquished a valuable right or changed his position for the worse. In reaching such a determination, the individual's financial circumstances are irrelevant.
- B. When "Against Equity and Good Conscience" Applies - Recovery of an overpayment will be deemed to be "against equity and good conscience" if the overpaid person is found to be "without fault" because of reliance on erroneous information from an official source (see RCM sec. 3.9.26).

Recovery of an overpayment from a beneficiary who is without fault is also deemed to be against equity and good conscience if:

1. The overpayment was made for items or services not medically necessary or for the expenses of custodial care; and
2. The overpayment was discovered more than 3 years after the year in which the notice of payment was sent.

In addition, a provider under Part A, or a physician or other supplier who accepted assignment under Part B cannot, after refunding a Part B for medically unnecessary or custodial care services, charge the enrollee who is without fault after 3 years have expired.

For further information concerning "Against Equity and Good Conscience," see SSCM 5553 through 5553.4 and 5589.2.

3.9.40 When To Recover

Recover the overpayment from the beneficiary or, if he is deceased, from a survivor entitled to benefits on his earnings record if:

- A. Tolerance does not apply (see sec. 3.9.41); and

- B. The beneficiary is liable for the overpayment; and
- C. The overpayment cannot be waived; and
- D. The intermediary or carrier was unable to recover the overpayment.

3.9.41 When Tolerance Applies

- A. Overpaid Person Alive.
 - 1. Benefits in Current Pay Status to the Overpaid Person - Offset against benefits currently payable unless the amount of the overpayment is \$5.00 or less.
 - 2. Benefits Not in Current Pay Status - Do not request a refund or take any further recover action if the amount of the overpayment is \$15.00 or less, even if setoff may be possible against benefits payable to the overpaid person in a subsequent month or if immediate setoff action is possible against benefits payable to an individual other than the overpaid person.
- B. Overpaid Person Deceased.
 - 1. Benefits in Current Pay Status to a Survivor - Offset against benefits currently payable unless the amount of the overpayment is \$5.00 or less.
 - 2. Benefits Not In Current Pay Status.- Do not request a refund or take further recovery action if the amount of the overpayment is \$15.00 or less.

Although no recovery action will be taken when tolerance applies, any voluntary refund by a beneficiary will be accepted.

If tolerance applies, file the overpayment notice in the folder marked: "NAN; O/P under \$15.01; No Monthly Benefits." Do not set up a program accounts receivable record. If an accounts receivable record was set up, close it out by entering code 88 in the "cause" columns (cols. 52-53) of the. Prepare Form RL-391 with a check in the "Determined Uncollectible" box and add: "Tolerance applied - No Monthly Benefits." If a SMI benefit was overpaid, send a copy of the RL-391 to Travelers. See secs. 3.9.80 and 3.9.81.

3.9.42 Methods Of Recovery

The overpayment can be recovered by one of the following methods in the order of preference listed:

- A. Cash refund in one lump sum.
- B. Set off against RR or SS Act benefits:

1. During the lifetime of the overpaid person, against RR or SS Act benefits to which he may be entitled, whether based on his own earnings record or the earnings record of another person; or
2. After the overpaid person's death, against RR or SS Act benefits or lump-sum payments payable to survivors on the overpaid person's earnings record.

The overpaid person is liable for the overpayment during his lifetime. Only upon his death can the overpayment be set off against benefits for other persons on the same earnings record.

- C. Cash installments, provided the payments are made regularly and are substantial enough to liquidate the overpayment within a reasonable period of time.
- D. Temporary Withholding (partial adjustment). (See sec. 3.9.43.)
- E. Civil action against a beneficiary's estate (see sec. 3.9.53).

NOTE: An actuarial adjustment cannot be used to recover an overpayment of Medicare benefits.

3.9.43 Temporary Withholding

- A. General - Temporary withholding (partial adjustment) consists of withholding part of a monthly benefit each month until the overpayment is recovered in full.

Temporary withholding may be offered if evidence indicates that the beneficiary is dependent on part of his monthly benefits for ordinary and necessary living expenses and recovery of the overpayment by any other method would cause financial hardship.

Temporary withholding is never permitted:

1. If the overpayment was caused by intentional false statements or misrepresentations by the person against whose benefits offset is being made, or by his willful concealment of, or deliberate failure to furnish, necessary information; or
 2. In amounts of less than \$10.00 a month; or
 3. In other than even dollar amounts.
- B. Beneficiary Without Fault - If waiver depends upon a finding of "Defeat the Purpose of Title II" and the DR-423 indicates that the beneficiary needs only part of his monthly benefit for ordinary and necessary living expenses, temporary withholding should be granted. However, if other conditions for waiver are present and it would be necessary to withhold less than \$10.00 a month to insure

the beneficiary of income needed for his ordinary and necessary living expenses, waiver, not temporary withholding, should be granted.

If the overpayment cannot be recovered by temporary withholding, before termination of entitlement, without depriving the beneficiary of needed income:

1. Withhold from the beneficiary's monthly benefits the maximum amount possible without depriving the beneficiary of needed income; and
2. After the benefits are terminated, consider waiving recovery of the balance of the overpayment. No further without fault development will be needed. It will be necessary, however, to determine whether recovery of the remainder of the overpayment will defeat the purpose of Title II of the SS Act at that time.

- C. Beneficiary Not Without Fault - If the beneficiary is not without fault in causing the overpayment, the temporary withholding must be set at a rate which will permit recovery of the overpayment before the expected last month of entitlement or within a 36 month period, whichever is earlier. If no monthly withholding amount is suggested by the beneficiary, withhold one-half of the monthly benefit, if this will result in recovering the overpayment within a 36-month period.

If the overpayment is not recovered before termination of entitlement, use all available means to recover the balance of the overpayment.

For further information, see SSCM 5516 TO 5520.6.

3.9.44 Notice To Individual

- A. Request for Refund - The intermediary or carrier is responsible for sending a request for refund, similar to that shown in Exhibit 2, to the beneficiary. If a satisfactory letter was not sent, HB should return the overpayment material to the Part B carrier or the intermediary, as shown in sec. 3.9.17.

In certain unusual cases, MS will send an initial request for refund. See Exhibit 2 for a sample letter to be used as a guide. Send a copy of the letter to the field office.

- B. Recovery Notice - MS will send a case to an adjudication unit for suspension of the annuity and a letter informing the individual of recovery action if:
1. The overpaid person is alive,
 2. A previous letter was sent to the overpaid person, notifying him of his rights to reconsideration and waiver,
 3. The overpayment is less than \$200.00, and

4. The overpayment can be recovered from one month's annuity.

A G-167 must be prepared to notify the adjudication unit of the recovery action to be taken.

MS will prepare and send a recovery notice in any case not handled by an adjudication unit. Include in the letter:

- The amount of the overpayment and how and when it occurred,
- An explanation of how the overpayment will be recovered, including the option of refunding the overpayment in cash,
- The right to request reconsideration or review of the overpayment determination, if this right was not explained in a recent letter, and
- An explanation of the waiver provision of the law, if not given in a recent letter.

If the overpayment is \$200 or more or there is an indication that waiver may apply, send the overpayment letter to the district office for in-person delivery. Use Form G-421b as a cover memo.

See Exhibit 3 for a sample letter to be used as a guide. Send a copy of the letter to the field office.

3.9.45 Requesting SSA To Recover From SS Act Benefits

If recover from RR Act benefits is not possible because an annuity is not in current pay status, and there is an indication that the beneficiary is entitled to SS Act benefits, request the SSA program center to recover the overpayment. Ask the program center to advise when their recovery action is completed. Include the following information in the letter:

- A. Name and address of the beneficiary or survivors;
- B. SSA claim number;
- C. Amount of the overpayment;
- D. Cause of the overpayment; and
- E. Reason recovery is not possible from RR Act benefits.

Send a copy of the letter to SSA Reconsideration Branch (see RCM 10.6, item 27), and the local carrier's office which notified RRB of the overpayment. It is not necessary to notify the beneficiary or the survivors of the referral to SSA unless an inquiry is received. Establish a six-month tickler call up for control purposes. If, after the

expiration of the call up, SSA has not recovered the entire overpayment, trace the program center "Attention: Recovery Unit" to request the status of the recovery action.

3.9.46 Reinstatement Of Payments By Adjudication Units

When sufficient monthly annuity payments have been withheld to offset the erroneous Medicare payment, complete the award form and withhold the amount due in the normal manner. Enter the amount recovered on Form G-376. Instruct the coding clerk to route the folder to "Accts. Rec." after vouchering.

Complete Form G-240 requesting the Medicare Section (MS) to transfer the amount of the overpayment from the RR account to the appropriate Medicare account. Control the folder to send to MS.

3.9.50 Survivor Benefits Payable At RRB

After the overpaid person dies, consider waiver or recovery of the overpayment from monthly benefits or lump-sum death payments due a survivor on the earnings record of the overpaid person. See Sec. 3.9.25 through 3.9.46.

3.9.51 Survivor Benefits Payable At SSA

If there is an annuity due and unpaid at death, MS will refer the case to an adjudication unit for offset. Transfer the balance of the overpayment, along with a letter of explanation and all material concerning the overpayment, to SSA, Program Review Section (see RCM Part 10.6, item 27a). See Exhibit 1 for a sample letter. Be sure to show all SSA claim numbers in the letter.

Do not set up an accounts receivable record for an overpayment being transferred to SSA. Close out any accounts receivable record previously set up by entering code 88 in the "Cause" columns (cols. 52-53) of the G-376.

3.9.52 No Further Benefits Payable At SSA Or RRB

If an overpaid person is deceased and recovery is not possible from any other source, liability rests with the estate of the deceased. If no further benefits are payable on the employee's earnings record, the overpayment is less than \$100.00, and evidence of an estate is not available, terminate collection action as shown in sec. 3.9.61.

If the name and address of the administrator or attorney of the estate is in file, write a letter to that person, asking for a refund of the overpayment. If a refund is not received and the overpayment is less than \$100.00, terminate collection action.

If the overpayment is \$100.00 or more, develop for information concerning an estate as shown in sec. 3.9.53, whether or not the file contains evidence that an estate exists.

3.9.53 Recovery From Estate

To develop for an estate, ask the D/O to check with the probate court in the area where the overpaid person died or with the nearest relative to determine whether an estate has been opened and, if so, the name and address of the administrator of the estate, the identity and location of the court of jurisdiction, the expected closing date of the estate and the assets and liabilities of the estate. If the estate is closed or was not administered, the D/O should check to see who received the assets of the estate and the amount of those assets.

After developing for the existence of an estate, handle as follows:

- A. No Evidence of an Estate - Transfer the overpayment to uncollectible (see sec. 3.9.60).
- B. Estate Open.- File a proof of claim (see Exhibit 4) against the estate when there are sufficient assets to settle the indebtedness of the Board. File the original of the Proof of Claim and Statement of Indebtedness with the clerk of the court in which the estate is to be probated. File a duplicate original copy with the legal representative. Send copies of both documents to the D/O having jurisdiction of the area in which the court is located.

Some references to the SS Act for use in preparing a proof of claim are:

Section of SS Act	Type of Overpayment
Title XVIII, Part A, Section 1812(a) (U.S.C. 1395d)	Exhaustion of benefit days
Title XVIII, Part A, Section 1813 (U.S.C. 1395e)	Failure to apply deductible or coinsurance
Title XVIII, Part A, Section 1814 (U.S.C. 1395f)	Payment for non-covered services
Title XVIII, Part B, Section 1833(a) (U.S.C. 1395(1))	Payment of 100%, rather than 80%
	Charges exceeding reasonable charge
Title XVIII, Part B, Section 1833(b) (U.S.C. 1395(1))	Failure to apply deductible
Title XVIII, Part B, Section 1834(a) (U.S.C. 1395m)	Exhaustion of benefit days for home health services
Title XVIII, Part C, Section 1862(a) (U.S.C. 1395y)	Payment for non-covered services (Part A and B)

- C. Estate Closed or Will Not Be Administered - When the assets of an estate have been distributed, a distributee may be liable for the refund if he still has the proceeds of the estate, or property resulting from the proceeds, in his possession. The liability of each distributee is proportionate to the share received. Therefore, request a refund from each distributee. If a distributee with substantial assets refuses to refund the portion of the overpayment for which he is liable and that portion is \$200.00 or more, refer the case to GAO.

3.9.60 When To Classify A Medicare Overpayment As Uncollectible

Classify a Medicare overpayment as uncollectible when complete recovery or a reduction in the overpayment balance cannot be made by:

- A. Waiver
- B. Setoff against a current benefit accrual under the RR or SS Act; or
- C. Further collection efforts.

3.9.61 Processing Uncollectible Cases

Uncollectible cases under the jurisdiction of RRB should be handled by one of the following methods:

- A. Suspending Collection Efforts - Collection action may be suspended temporarily (establish a call up for future collection action) when:
 - 1. The overpaid person is still entitled to benefits but offset is not possible and requests for refund have not been honored; or
 - 2. The overpaid person will become eligible for benefits within 6 months following the month in which recovery action is discontinued; or
 - 3. The debtor cannot be located after diligent effort but there is reason to believe that future collection action may be productive enough to justify periodic review; or
 - 4. The debtor is unable to make current payments but his future prospects justify periodic review and recovery action.
- B. Terminate Collection Efforts - Collection efforts should be terminated (transfer the overpayment to the uncollectible account on PARS) when:
 - 1. Substantial payments cannot be collected by any method; or
 - 2. The debtor cannot be located and future collection prospects are remote; or

3. Cost of collection efforts will exceed the amount of the overpayment; or
4. The overpayment is less than \$200.00.

When efforts to collect an overpayment are terminated, MS will prepare Form G-270 giving the reasons.

- C. Compromise Settlement - See RCM 6.6.150 through 6.6.156 and SSCM 5537 through 5538.
- D. Refer to GAO - See section 3.9.62 for when and how to refer an overpayment to the General Accounting Office.

3.9.62 Referral To GAO

- A. When to Refer a Case to GAO - An uncollectible overpayment should be referred to GAO for further collection action when the overpayment is \$200.00 or more and there is an indication of fraud or misrepresentation or the overpaid person appears to have the means to repay the debt.
- B. Information Required - Before referring to GAO a case in which a beneficiary is liable for an overpayment, request the F/O to develop DR-423 or another statement of the debtor's financial condition, if such a statement is not in file.

Refer the case to GAO on GL-14 (see Exhibit 5) and include the following information:

1. The name of the overpaid person and the person liable for the overpayment.
2. The last known address of the person from whom recovery should be made.
3. The debtor's date of birth, RRB No., and SSA No.
4. A complete explanation of the overpayment.
5. A summary of collection action taken.
6. Evidence showing the debtor's ability to repay.

See sec. 3.9.71 for the entries to be made in part 2 of Form GL-14. When releasing the GL-14, transfer the overpayment to the uncollectible account.

3.9.70 Entering Medicare Overpayments In Accounts Receivable

All Medicare overpayments under RRB jurisdiction, except those in which tolerance applies, will be entered by HB on Form G-376 according to the instructions in RCM Part 11. After preparing the G-376, route the case to "Acct's Rec."

Overpayment in which tolerance applies or which are under the jurisdiction of SSA should not be entered on PARS. If such an overpayment is inadvertently entered in PARS, the entry should be closed out.

3.9.71 Code Designation And Appropriation Number For HI Overpayments

Separate accounts receivable have been established for overpayments of hospital and medical insurance. The codes to be entered in the overpayment type on PARS are as follows:

Type Code	Type of Overpayment
520	Medical Insurance Overpayments (Palmetto GBA)
540	Hospital Insurance Overpayments (USA)
550	Hospital Insurance Overpayments (Canada)

The appropriation numbers and trust fund titles shown below are used in preparing Forms GL-14 (see Exhibit 5).

Appropriation	Trust Fund Title
75-20X8004	Federal Supplementary Medical Insurance Trust Fund
75-20X8005	Federal Hospital Insurance Trust Fund

3.9.72 Responsibility For Posting Waiver And Recovery Actions

Responsibility for posting waiver or recovery action on PARS depends on the action taken. If the overpayment is:

- A. Waived - MS GS-08 examiners will post the waiver actions. This action is authorized by GS-09 examiners.

- B. Recovered from RR Act benefits - MS will post the recovery at the time of reinstatement, if the overpayment is recovered from one months annuity, after recovery if recovery takes more than 1 month. The adjudicative units will return the files to MS for posting to PARS after recovery.
- C. Recovered by cash refund - MS premiums collections clerk will post the recovery.

3.9.80 Notifying SSA

Notify SSA of the disposition of every valid overpayment that has been referred to RRB. Send RL-391 and, if pertinent, a copy of the G-270 to CMS.

3.9.81 Notifying Palmetto GBA

When an SMI benefit overpayment is involved, send RL-391 and, if pertinent, a copy of the G-270 to the Railroad and Medicare Division, Palmetto GBA. A carbon copy of the letter to CMS may be used. In such cases, show the following information on the carbon:

cc: Railroad and Medicare Division

Palmetto GBA

3.9.90 Forged Medicare Benefit Checks

When the payee of a SMI benefit check alleges that he did not endorse the check, the Medicare Part B carrier will develop the forgery claim and route it to the CMS regional office for investigation. Any unresolved SMI benefit check forgery claims on hand should be routed to the chief of Medicare programs who will forward them to the appropriate destination.

If a Canadian HI check forgery claim is received, forward it to CPPS for handling.

3.9.93 Handling After Report By U.S. Secret Service

The U.S. Secret Service will report the results of its investigation to RRB. MS will transmit the report to the Part B carrier. If the report is that the endorsement was forged, the Part B carrier will issue a new check to the payee, with an explanation stating that the U.S. Secret Service has assumed jurisdiction of the forgery, and will enter into reclamation proceedings with its bank.

If the U.S. Secret Service reports that the endorsement was not forged, the Part B carrier will notify the payee of that fact.

Request For Refund Of Medicare Benefit Overpayment

Dear:

Our records show you received \$ ____ more in Medicare benefits than you should have. (Include an explanation which explains in simple, non-technical language how and when the incorrect payment was made.)

You are asked to refund by check or money order made payable to the Railroad Retirement Board and sent to our Payment Records Section at the address shown in the heading of this letter. If you do not repay this amount within 30 days of the date of this letter, it will be deducted from the annuity you are receiving under the Railroad Retirement Act.

If you believe that this determination is not correct, you may request that your case be reexamined. If you want this reconsideration, you must request it no later than 6 months from the date of this notice. You may make such a request through the nearest district office of the RRB. If additional evidence is available, you should submit it with your request.

The law requires that an overpayment must be paid back, unless both of the following conditions are met:

1. You were not responsible in any way for causing the overpayment. (If the payment was made to the beneficiary, rather than to the provider, add: "and you cashed the check(s) believing that the payment was correct"); and
2. Paying back the overpayment would keep you from paying your necessary living expenses, including current or planned medical expenses, or would be unfair for some other reason. If repayment would cause you serious financial hardship, it will be necessary for you to submit a statement of your income from all sources as well as your expenses and other debts.

If you believe both of the above conditions apply in your case, you should write the Railroad Retirement Board within 30 days from receipt of this letter. Unless we hear from you within 30 days, the overpayment will be recovered from your annuity.

Notice Of Recovery Of Medicare Benefit Overpayment

Dear:

(Explain in simple, non-technical language how and when the incorrect payment was made.)

The following methods of repayment are for your consideration:

1. Cash refund of ____ by check or money order made payable to the Railroad Retirement Board and sent to our Payment Records Section at the address shown in the heading of this letter.
2. Withholding your annuity from ____ through ____ The partial payment due for ____ would be released to reach you soon after the end of that month.

(Add the following item if information in file indicates that recovery by one of the above methods would cause financial hardship.)

- Temporary withholding. This means that ____ per month would be withheld from your annuity for ____ months from ____ through ____.

Please advise which of the methods you select to refund the overpayment.

(Include the following paragraphs if the individual has not previously been informed of his rights to reconsideration or waiver).

If you believe that this determination is not correct, you may request that your case be reexamined. If you want this reconsideration, you must request it no later than 6 months from the date of this notice. You may make such a request through the nearest district office of the RRB. If additional evidence is available, you should submit it with your request.

The law requires that an overpayment must be paid back unless both of the following conditions are met:

1. You were not responsible in any way for causing the overpayment, and
2. Paying back the overpayment would keep you from paying your necessary living expenses, including current or planned medical expenses, or would be unfair for some other reason.

If you believe that both of the above conditions apply in your case, you should write to the Railroad Retirement Board within 30 days of the date of this letter. If the conditions do not apply, you must arrange to refund the overpayment.

Unless we hear from you within 30 days of the date of this letter, your annuity will be suspended to recover the overpayment by withholding, as shown above.

If you have any questions about this letter, please contact the nearest district office of the RRB.

Statement And Proof Of Claim State Of Texas

The Probate Court of Wichita County Estate of John L. Doe, Deceased

To: Cleo M. Doe, Executrix
Estate of John L. Doe
305 Collins Street
Wichita Falls, Texas 76301

Overpayment of hospital insurance benefits under Section 7(d) of the Railroad Retirement Act as amended through 1974 (45 U.S.C. 231f) from 7-27-68 through 11-4-68 per attached statement.

\$847.02

STATE OF ILLINOIS) vs

County of Cook)

I, Donald M. Smith, Director of Retirement Claims of the Railroad Retirement Board, a duly authorized agent for the United States in this behalf, being duly sworn, depose and say:

1. That the estate of John L. Doe, deceased, is justly and truly indebted to the United States in the sum of \$847.02.
2. That the nature of said debt is set forth in the attached statement.
3. That the attached statement is a true and correct statement of account against the estate of John L. Doe, deceased.
4. That no part of said debt has been paid, but that the sum is now due and payable.
5. That there are no set offs or counter claims to said debt.
6. That said debt has priority and must be paid in full in advance of distribution to creditors, as and to the extent provided in Section 3466 of the Revised Statutes (31 U.S.C. 191) or other applicable provisions of law. Attention is also called to the provisions of Section 3467 of the Revised Statutes (31 U.S.C. 192) with respect to the personal liability of every executor, administrator, assignee, or other person who fails to pay the claims of the United States in accordance with their priority.

Subscribed and sworn to before me _____ Dated this _____ day of

this _____ day of January 1975 _____ January 1975

Notary Public, Cook County, Illinois J. R. Feldhiem

My Commission expires _____ 19 _____ Director of Disability and Medicare Operations

Railroad Retirement Board

Chicago, Illinois

Statement Of Indebtedness John L. Doe, Deceased

John L. Doe became entitled to hospital insurance benefits under Section 7(d) of the Railroad Retirement Act of 1974 on 7-1-66. Section 7(d) of the Railroad Retirement Act (45 U.S.C. 231f) provides that:

"The Board shall...have the same authority to determine the rights of individuals...to have payments made on their behalf under section 226, and Parts A and C of Title XVIII of the Social Security Act as the Secretary of Health, Education, and Welfare..."

Mr. Doe entered Madison North Convalescent enter on 2-28-68. Benefits were paid on his behalf under Part A, Title XVIII of the Social Security Act for 27 days from 2-28-68 through 3-26-68. He was a patient at Cedar Rest Haven, a skilled nursing facility, from 3-26-68 through 7-15-68. No benefits were paid during this period. Mr. Doe was transferred to Deaconess Hospital for the period from 7-15-68 through 7-27-68. Benefits of \$760.16 were paid during that period. He entered Madison South Convalescent Center on 7-27-68. Benefits totaling \$2,527.69 were paid on his behalf for 100 days from 7-27-68 through 11-4-68.

Section 1812(a) of Part A, Title XVIII of the Social Security Act (42 U.S.C. 1395d) provides:

"The benefits provided to an individual...shall consist of entitlement to have payment made on his behalf...for post-hospital extended care services for up to 100 days during any spell of illness..."

Section 1813(a) of Part A, Title XVIII of the Social Security Act (42 U.S.C.1395e) provides:

"The amount payable for post-hospital extended care services furnished an individual during any spell of illness shall be reduced by a coinsurance amount...for each day...on which he is furnished such services after such services have been furnished to him for 20 days during such spell..."

Section 1861(a) of the Social Security Act (42 U.S.C. 1395x) status:

"The term 'spell of illness' with respect to any individual means a period of consecutive days..(1) beginning with the first day...on which such individual is furnished inpatient hospital services or extended care services...and (2) ending with the close of the first period of 60 consecutive days thereafter on each of which he is neither an inpatient of a hospital or an inpatient of a skilled nursing facility..."

When benefits were paid on Mr. Doe's behalf for the period from 7-27-68 through 11-4-68, the intermediary was unaware of the benefits paid on his behalf for 2-28-68 through 3-26-68. Therefore, benefits were paid for the entire 100 days, rather than for 73 days.

Benefits were also paid without deducting the coinsurance amount \$5.00 per day for the 20-day period from 7-27-68 through 8-15-68.

Mr. Doe was overpaid a total of \$100.00 because of the failure to apply the coinsurance and \$747.02 for 27 days after his coverage period was exhausted. The total overpayment is \$847.02.

Report Of Alleged Forgery

TO: District Manager

FROM: Chief, Waiver, Recovery and Penalty Section

Bureau of Retirement Claims

A Name

Address

SUBJECT: Alleged Forgery of Medicare Check

Health Insurance Claim No.

Claimant:

The (name of carrier) recently referred to the RRB the matter of an alleged forgery of a Medicare benefit check for \$ _____ issued on _____ to _____. It is our responsibility to submit such cases to the U.S. Secret Service for investigation and determination.

Attached is an original plus two tissue copies of our letter to the Special Agent in Charge of the _____ Secret Service Office. It is requested that a representative of your office contact that Secret Service Agent to deliver the original and first tissue copy of the letter and the attached exhibits.

Please advise us when the letter and exhibits have been delivered. Include in the written report any comments which the Special Agent may have concerning the content of our letter or the exhibits.

The additional copy of our letter to the Secret Service is for your file.

Report Of Alleged Forgery

Special Agent in Charge
United States Secret Service

In reply refer to

RRB No.

Health Insurance Claim No.

Alleged Forgery of Medicare Check

In the amount of

Claimant:

Dear Sir:

Palmetto GBA, the Railroad Retirement Board's intermediary for Part B Medicare benefits to our annuitants, recently advised us of a claim of forgery on a Medicare payment check issued to _____. Benefit payments of this type are drawn by Medicare intermediaries from United States funds under Title XVIII of the Social Security Act.

The check in question was issued by Palmetto GBA, Augusta, Georgia, on _____, drawn on the Chase Manhattan Bank, New York, against the Federal Supplementary Medical Insurance Trust Fund. That check, numbered _____, was payable in the amount of _____ to _____ (name) (address) _____.

With their referral of this case, Palmetto GBA forwarded to us the original and four photocopies of the Medicare check in question, together with the forgery affidavit from the payee, _____.

Because the alleged forgery in this case involved a check representing funds of the United States, we are submitting this matter to your office for further handling and appropriate action. You will find enclosed copies of the following documents:

1. The original and four photocopies of the above described health insurance benefit check for _____, issued on _____ to _____ by Palmetto GBA.
2. Three photocopies of the forgery affidavit by _____ name _____ address _____, given to Palmetto GBA on _____.
3. Three photocopies of _____, signed on _____ by _____.
4. Three copies of _____, signed on _____ by _____.

After you have completed your investigation, please advise us of your recommendation or determination in this matter. We, in turn, will notify Palmetto GBA of your decision. If the forgery claim is substantiated, and if it is otherwise appropriate in this case, we will request Palmetto GBA to issue a replacement check to _____. If possible, please

return the original of the enclosed Medicare check, because we may be required to return it to Palmetto GBA for their records.

You may indicate the status or disposition of this case by checking the appropriate items on the next sheet and returning it to us at the address shown in the heading of this letter.

Very truly yours,

J. R. Feldheim

Director of Disability and Medicare Operations

Enclosures

Report Of Alleged Forgery (Status)

To: U.S. Railroad Retirement Board
Operations
RMS Section
844 North Rush Street
Chicago, Illinois 60611

Agency File:
Beneficiary:
Check No.
Claimant:

The status of our file on this case is as follows:

// Payee's claim of forgery substantiated // Settlement recommended.

// Payee's claim of forgery withdrawn. // Signed statement attached.

// Restitution was made or is expected by. _____

(Date)

// Other _____.

// Original check returned herewith.

Special Agent

Special Agent in Charge

