

## 835.5 General

A benefit overpayment occurs when more than the correct amount of Part A or B benefits was paid by the intermediary or carrier. The process of recovering the overpayment does not involve the district office unless you are asked to deliver an overpayment letter by OPR. This section provides a brief summary of the process to help you answer any general questions you may be asked.

All benefit overpayments are handled in the same general manner except for Part A benefit overpayments made to Canadian residents. These are treated as railroad retirement annuity overpayments.

## 835.10 Liability For Medicare Overpayments

### 835.10.1 Provider of Services, 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:

- A. The overpayment was caused by a mathematical or clerical error;
- B. The overpayment was due to a duplicate payment which was retained by the provider or other person;
- C. The beneficiary did not receive the services (or items) paid for;
- D. 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;
- E. The overpayment resulted from a charge in excess of the reasonable charge;
- F. 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;
- G. A physician or supplier collected a payment on the basis of an assignment without disclosing that he had already been paid by the beneficiary.

### 835.10.2 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:

- A. The overpayment resulted from failure to properly apply the deductible or coinsurance; or
- B. The overpayment resulted from benefits paid to the provider of services under the guarantee provision of section 1814(e) of the Social Security Act; or
- C. 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:
  - 1. Had no basis for questioning entitlement or coverage or, if he did, brought it promptly to the attention of the intermediary or carrier; and
  - 2. Complied with all pertinent regulations and had reason to believe the services were covered.
- D. The provider or other person was without fault in causing the overpayment (effective with notices of payment sent after 10-30-72).

### **835.10.3 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:

- A. 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
- B. The provider or other person received duplicate payments and turned one payment over to the beneficiary.

### **835.10.4 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.

## 835.15 Recovery Process

### 835.15.1 Intermediary's or Carrier's Responsibility

The intermediary or carrier first determines who is liable for the benefit overpayment, releases a letter notifying them of the overpayment and initiates the appropriate recovery action. Part A or B overpayments under \$50.00 are automatically waived regardless of who is determined to be liable.

- 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 and request refund, if refund not reserved within a specified period action is taken to offset the overpayment against any future benefits due the provider or other person. If recovery of a Part A overpayment cannot be made from the provider of services, the intermediary will refer the case to CMS. If recovery of a Part B overpayment cannot be made from a physician or supplier, the Medicare 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 a Part A overpayment is not recovered from the beneficiary, the intermediary will refer the case to CMS. If a Part B overpayment is not recovered from the beneficiary, the Medicare 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 a Part A overpayment cannot be made from either the provider of services or the beneficiary, the intermediary will refer the case to CMS. If recovery of a Part B overpayment cannot be made from either the supplier or physician or the beneficiary, the Medicare 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. Furnish the amount of the overpayment.
  4. Request a refund.
  5. Notify the beneficiary that unless a refund is made, the overpayment may be deducted from other Medicare benefits due or monthly annuity payments.
  6. Inform a beneficiary of his right to a reconsideration or review of the overpayment decision.
  7. Include an explanation of the waiver provision.
- E. When the beneficiary requests that recovery be waived - If a beneficiary requests that a Medicare overpayment be waived or states conditions that might qualify him for waiver, the intermediary or carrier should refer the case to CMS (Part A overpayment) or RRB (Part B overpayment) 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.  
  
If a Part A overpayment cannot be recovered by withholding, the intermediary should immediately refer the case to CMS. If a Part B overpayment cannot be recovered by withholding, the Medicare Part B carrier should immediately refer the case to RRB. Any information received concerning an estate should be included with the referral.
  2. Physician liable - The Medicare Part B carrier should withhold the overpayment from any other Medicare payment due the physician's estate. If the overpayment 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. A Part A 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. A Part B 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 CMS, or the Medicare 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 CMS or RRB.

### 835.15.2 Responsibility of CMS

- A. HIB overpayment - CMS receives 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, CMS handles to completion all cases in which the provider is solely liable.

If a QRRB or DQRRB is liable for repayment of the overpayment, CMS refers the case to RRB for consideration of waiver or recovery from benefits payable under the Railroad Retirement Act.

- B. SMI overpayment - CMS will not handle Part B overpayments for QRRBs or DQRRBs unless RRB requests that recovery be made from benefits payable by SSA, because the annuity is not in current pay status. However, all cases in which a physician or supplier of services is liable for repayment should be sent to CMS for handling.

### 835.15.3 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, MS gives preferred handling to Medicare overpayment cases.

- A. General - RRB is responsible for the waiver or recovery of a Part A overpayment 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, and RRB cannot recover the overpayment because the annuity is not in current pay status, the case may be referred to SSA for recovery if benefits are payable by that agency.

- B. Responsibility of MS (Medicare Section of Operations) - MS reviews all cases referred to Operations to determine if the amount of the overpayment is correct and if all action taken has been correct. If there are any problems or questions, it will act to correct or clarify them. Once MS has determined that all the necessary actions have been completed correctly, they will pursue collection.

## 835.20 Waiver

### 835.20.1 When Waiver May Apply

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. Deprive the overpaid person of income that is reasonably necessary for ordinary living expenses, or
  2. Deprive the person of funds needed within a year for hospital or medical care reasonably necessary for his health.
  3. Be against equity and good conscience in accordance with Section 1870(c) of the Social Security Act.

### 835.20.2 Finding of Without Fault

- A. General - A finding of without fault is required in all cases before waiver may be considered.

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." A "without fault" determination may be possible with information in file without further investigation.

The following guidelines are used 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.
- 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 known 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 be 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 3 calendar 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 calendar years after the year in which the notice of payment was sent.

### **835.20.3 Beneficiary Claims that Recovery Would Deprive Him of Necessary Income**

Headquarters may request that the field office obtain a completed Form DR-423 from the debtor if the individual claims it would be a hardship to repay the overpayment. A Form DR-423 will not be requested if there is an indication that the beneficiary is receiving or entitled to welfare payments.

Waiver of recovery against an estate may not be considered on the basis of this provision, 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.

### **835.20.4 Beneficiary Would Be Deprived of Funds for Health Care**

The need for hospital or medical care must be real and tentatively planned to occur within a year, and the commitment of the funds must be real and not conjectural to be considered in determining whether adjustment or recovery would deprive the person of funds needed within a year for hospital or medical care reasonably necessary for his health. 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 (one or two 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 also taken into consideration.

### **835.20.5 Against Equity and Good Conscience**

- A. General - Under the Social Security 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.

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 calendar 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 an overpayment for medically unnecessary or custodial care services, charge the enrollee who is without fault after 3 calendar years have expired.

### **835.20.6 Notice of Waiver**

If the overpayment is waived, the person liable for the overpayment is notified of the decision by BRC.

### **835.25 Recovery from Beneficiary's Estate**

When liability for recovery rests with an estate, BRC requests that the field office 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, check to see who received the assets of the estate and the amount of those assets.

### **835.30 Forged Medicare Benefit Checks**

When the payee of a Part B benefit check alleges that he did not endorse the check, The Palmetto GBA will develop the forgery claim and route it to the CMS regional office for investigation. Forward any Part B benefit check forgery claims received in the field office to the Chief of Medicare programs who will forward them to the appropriate destination.

