

Optometry Coding & Billing Alert

News You Can Use: CMS Can't Recoup Overpayments During Appeal

Collect interest if you triumph during third appeal level or thereafter.

When CMS sends a recoupment notice, practices listen, and generally send back the requested overpayment amount right away, even if they plan to appeal it. But in the future, if you think CMS is wrong, you can hang onto your money during the appeal phase.

And if CMS finds out it recouped an overpayment from you in error, the agency may even pay you interest.

According to a final rule published in the Sept. 16 Federal Register, CMS will no longer attempt to recoup overpayments from you while you're in the first stages of the appeals process, assuming you appeal in a timely manner. Previously, your carrier could recoup the money during the appeals process, but now that will not happen, says **Michael F. Schaff, Esq.**, with Wilentz, Goldman and Spitzer in Woodbridge, N.J.

However, if you lose the appeals, Medicare will expect the overpayment plus accrued interest. If Medicare does recoup the amount of the alleged overpayment and you appeal it and win during the third, fourth, or fifth appeal levels, Medicare will now pay you back the money that it recovered from you, plus interest, says **Stephanie A. Webster, Esq.**, with King and Spalding, LLP in Washington, D.C.

The five appeal levels are as follows:

1. Redetermination. You must request this level of appeal within 30 days of the initial notice of overpayment, the Federal Register says.
2. Reconsideration. If Medicare denies your claim during redetermination, you can file a reconsideration within 60 days.
3. Administrative Law Judge (ALJ). You must have at least \$120 in controversy to file an ALJ appeal.
4. **Medicare Appeals Council (MAC)**. If the ALJ denies an appeal, you can request review by the MAC, also known as the departmental appeals board (DAB).
5. Federal court. The final step in the process is bringing your case to federal court. You must have at least \$1,220 in controversy to file this appeal level. To read the final rule in the Federal Register, visit <http://edocket.access.gpo.gov/2009/pdf/E9-22166.pdf>.