

Part B Insider (Multispecialty) Coding Alert

Appeals: They Can't Collect Until They Make Their Case

But will carriers let your appeals keep running up the flagpole?

In the past, the carriers have held all the cards when it came to appeals of alleged overpayments. You had to pay up and hope to get your money back if you won, or watch the carrier take the money out of your future reimbursement.

But the Medicare Prescription Drug, Improvement and Modernization Act (DIMA), passed late last year, says that carriers won't be able to collect overpayments until they win and you give up. This changes the balance of power in your favor, say attorneys, and it may even convince the carriers not to calculate overpayments unless they've got a strong case.

"In the old system, the government and the carriers had an incredible amount of leverage against the provider," notes attorney **Michael Manthei** with **Holland & Knight** in Boston.

This change "may have the effect of causing them to go after the overpayments they believe they have more diligently investigated," says attorney **Craig H. Smith** with **Hogan & Hartson** in Miami. And they may not be able to use questionable overpayments to pad their bottom line or make their recoupment rate look bigger, notes Manthei.

Another provision in DIMA says that if the carriers can't deal with an appeal within 45 days, they have to bump it up the ladder to the next level. This raises the spectre of carriers letting appeals go up to the administrative law judge and district court levels -- and therefore becoming more expensive for providers to keep fighting.

This risks creating a backlog at higher levels and adding to providers' expense, Manthei warns, unless the carriers become more cautious. But for smaller overpayment amounts, providers generally represent themselves or use consultants instead of attorneys.

But DIMA also says that physicians must submit their complete cases at the carrier level, notes **Allison Shuren** with **Arent Fox Kintner Plotkin & Kahn** in Washington. In the past, physicians have often waited until they faced an ALJ to gather experts and put together a formal case, but now ALJs can't consider any evidence that wasn't submitted to the carrier fair hearing officer.