Chapter 10 Section 4

Overpayments Recovery - Non-Financially Underwritten Funds

This section applies to funds for which the contractor is non-financially underwritten, with the exception of funds overpaid to Department of Veterans Affairs/Veterans Health Administration (DVA/VHA) facilities (see paragraph 33.0). For recovery of overpayments involving funds for which the contractor is financially underwritten, see Section 3.

1.0 CAUSES OF OVERPAYMENTS

The occurrence of any of the following circumstances may result in an erroneous payment and a requirement for recoupment action. (This list is not intended to be all-inclusive).

- Erroneous calculation of the allowable charge
- Erroneous coding of a procedure
- Erroneous calculation of the cost-share or deductible
- Duplicate payment
- Incorrect payee
- Payment by other insurance
- Erroneous billing
- Patient not eligible
- Unauthorized provider
- Noncovered service or supply
- Service not actually received
- Services not medically necessary

2.0 DETERMINATION OF LIABILITY FOR OVERPAYMENT

The general rule for determining liability for overpayments is that the person or provider who received the erroneous payment is responsible for the refund.

3.0 PROVIDER LIABLE

Overpayment refunds shall be sought from the provider who received the incorrect payment in the following situations:

3.1 The provider furnished erroneous information or failed to disclose facts that the provider knew or should have known were relevant to payment of the benefit. (Refer to Chapter 13.)

3.2 The payment was based on an amount in excess of that allowable.

3.3 The provider received and retained duplicate TRICARE payments.

3.4 The provider turned a duplicate TRICARE payment over to the beneficiary.

3.5 The overpayment was due to a mathematical or clerical error; e.g., an error in calculation of overlapping or duplicate bills. Mathematical error does not include a failure to properly assess the deductible. Where a provider has been incorrectly paid a deductible, the provider shall be deemed to be without fault and any required recovery shall be sought from the beneficiary.

3.6 The overpayment was for noncovered services, supplies, or pharmaceutical agents.

3.7 The services, supplies, or pharmaceutical agents were not received by the beneficiary, or there is no documentation to substantiate that the provider performed the services or provided the pharmaceutical agents claimed. (See Chapter 13, if fraud is suspected.)

3.8 The services, supplies, or pharmaceutical agents were furnished by an unauthorized provider.

3.9 The TRICARE payment was made to the participating provider and a primary health insurance or pharmacy plan also made a payment to the provider or beneficiary for the same services or supplies, and the combined payments exceed the lower of the amount remaining after the double coverage plan has paid its benefits or the amount TRICARE would have paid as primary payor. See TRICARE Reimbursement Manual (TRM), Chapter 4.

3.10 The payment was made to the wrong provider or a nonparticipating provider. In such cases, the contractor shall issue payment to the correct payee and concurrently initiate recoupment action against the erroneously paid provider. The contractor shall not postpone issuing payment to the correct provider pending completion of the recoupment.

3.11 The patient was not eligible at the time the services were provided.

3.12 The patient had OHI or pharmaceutical coverage primary to TRICARE.

4.0 BENEFICIARY LIABLE

Erroneous payment refunds shall be sought from the beneficiary in the following situations:

4.1 The overpayment was caused by incorrect application of the deductible or cost-share.

4.2 The patient was not an eligible beneficiary at the time services were provided and the payment was made to a participating provider for whom a good faith payment has been authorized under paragraph 6.0. When payment was made to a retail network pharmacy based on erroneous eligibility data provided by the Government from Defense Enrollment Eligibility Reporting System (DEERS), the pharmacy may retain the payment as a good faith payment. In addition, when the TRICARE Overseas Program (TOP) contractor creates an authorization for a TOP provider based upon erroneous DEERS data and improperly pays a TOP provider, the TOP provider may retain the payment as a good faith payment.

4.3 The beneficiary who received TRICARE payment had OHI or pharmacy coverage primary to TRICARE.

4.4 The TRICARE payment was made to the beneficiary instead of the participating provider. The contractor shall immediately issue payment to the participating provider and concurrently take recoupment action against the beneficiary.

4.5 Any instance where the erroneous payment was made directly to the beneficiary.

5.0 OVERPAID PARTY IS DECEASED

If the contractor determines that liability for an overpayment rests with a beneficiary or provider who is deceased, the contractor shall seek recoupment of the overpayment from the estate of the deceased person. The procedures described in this section shall be followed.

6.0 GOOD FAITH PAYMENT

6.1 Participating providers who exercise reasonable care and precaution in identifying persons claiming to be eligible TRICARE beneficiaries and furnish otherwise-covered services and supplies to such persons in good faith, may be granted a good faith payment, although the person receiving the services and supplies is subsequently determined to be ineligible for benefits. In order to meet the requirements for a good faith payment, the participating provider must have:

- Exercised reasonable care and precaution in identifying the patient as TRICARE eligible.
- Made reasonable efforts to collect payment for the services provided from the person who erroneously claimed to be a TRICARE beneficiary.

6.2 In order to qualify for a good faith payment, the provider must submit documentation to substantiate that he/she has met BOTH requirements. The usual evidence that a provider has exercised reasonable care and precaution in identifying the patient as TRICARE-eligible is a copy of the patient's ID card which indicates that he/she was eligible for civilian medical care at the time services were provided. Generally, the provider must have obtained the copy of the ID card when the services were provided. If the provider did not obtain a copy of the ID card, he/she will submit to the Defense Health Agency (DHA) Beneficiary Education and Support Division (BE&SD) an explanation of why a copy was not obtained and the reason(s) for his/her determination that the patient was eligible for TRICARE benefits.

6.3 The documentation required to establish that a provider has made reasonable efforts to collect will vary, depending upon the facts of each case. Such documentation may include, but is not limited to, invoices or demand letters sent to the patient, and memoranda of telephone calls to the patient demanding payment. If the TRICARE beneficiary has moved and left no forwarding address, the provider must supply copies of returned letters or memoranda of unsuccessful attempts to reach the patient by telephone.

6.4 The contractor is not authorized to determine whether a provider exercised "reasonable care" which may qualify the provider for a good faith payment; nor are they authorized to seek, invite, or encourage good faith payment requests from providers. However, should a provider initiate an inquiry regarding denial of a claim due to the patient's ineligibility, or a recoupment action in which the patient's eligibility is the issue, the contractor may advise the provider of the procedures for requesting a good faith payment.

6.5 If the contractor has NOT paid the participating provider (i.e., the claim is denied), the contractor shall advise the provider and the patient by Explanation Of Benefits (EOB) that the claim has been denied due to the patient's ineligibility so that the provider may attempt collection from the patient in a timely manner. Occasionally, the patient may need only to update his DEERS record, so that the denied claim may be processed and paid. Upon notification of the patient's ineligibility, the provider must attempt collection from the patient. If the provider alleges that he/she exercised reasonable care and caution in identifying the patient as TRICARE-eligible and requests a good faith payment, the contractor is responsible for advising the provider in writing within 30 days of the date of the request that documentation of his/her efforts to collect from that patient is required. The file shall be referred to DHA BE&SD, for consideration of the request for a good faith payment and shall include:

- Pertinent claim form(s) and EOB(s). (If the pharmacy EOB does not contain certain data elements, then a separate report is required (see Addendum A, Figure 10.A-34). If offsets have been taken, additional data elements are required as listed in Addendum A, Figure 10.A-35.)
- Evidence of the patient's ineligibility.
- The provider's request for a good faith payment.
- Documentation of all contractor contacts with the provider and the patient.
- Documentation of efforts made by the provider to identify the patient as TRICARE-eligible prior to rendering service.
- Documentation of efforts to collect from the ineligible patient.

6.6 The contractor shall notify the provider that his request has been referred to DHA BE&SD. If DHA grants the request for a good faith payment, the contractor shall then reprocess and pay the previously denied assigned claim and initiate recoupment action against the patient. The contractor shall cite Special Processing Code (SPC) **G2** - Good Faith Payment (TRICARE Systems Manual (TSM), Chapter 2, Section 2.8, Record Locator 1-185 or 2-305) when submitting the TRICARE Encounter Data (TED) record.

6.7 If an assigned claim was paid before the contractor discovered the patient's ineligibility, the contractor shall initiate recoupment action against the participating provider, and concurrently, advise the patient of his/her ineligibility for TRICARE benefits and his/her liability for payment to the provider. If the provider alleges that he/she exercised reasonable care and precaution in identifying the patient as TRICARE-eligible, and requests a good faith payment, the file shall be referred to DHA BE&SD, for consideration of the request. The provider is required to supply all of the documentation outlined in paragraph 6.2. If the provider's good faith payment request does not include documentation to substantiate the provider's efforts to collect from the patient, the contractor shall notify the provider in writing within 30 days of the date of the provider's request of the requirement to provide the information. Upon receipt of the requested information, the contractor shall notify the provider that his/her request has been referred to DHA BE&SD. The contractor shall suspend recoupment action until a response to the good faith payment request has been received from DHA BE&SD. If no response is received within 60 days, the contractor shall contact the Claims Collection Section (CCS), DHA, to determine whether continued suspension of

recoupment action is appropriate. If DHA BE&SD notifies the contractor that a good faith payment has been granted, the contractor shall terminate collection action against the provider, refund any monies collected from the provider, and initiate recoupment action against the ineligible patient. The contractor is NOT required to update the existing TED record with SPC = **G2**.

7.0 OVERPAYMENTS RESULTING FROM ALLEGED MISINFORMATION

An allegation by a patient or provider that information obtained from a Health Benefits Advisor (HBA), contractor, or other party caused the overpayment does not alter the liability for the overpayment nor is it grounds for termination of recoupment activity.

8.0 DENIAL OF BENEFITS PREVIOUSLY PROVIDED

In those instances where DHA clarification, interpretation, or a change in the TRICARE Regulation results in denial of services or supplies previously covered, no action need be taken to recover payments expended for these benefits prior to the date of such clarification or change, unless specifically directed by DHA.

9.0 DOUBLE COVERAGE SITUATIONS - PRIMARY HEALTH INSURANCE PLAN OR PHARMACY PLAN LIABLE

A "Primary Plan," under TRICARE Law and Regulation is any Other Health Insurance (OHI) or pharmacy coverage the patient has, except Medicaid (Title XIX) or a supplement plan which is specifically designed to pay only TRICARE deductibles, coinsurance and other cost-shares (see the TRM, Chapter 4). Prior to payment of any claim for services or supplies rendered to any TRICARE beneficiary, regardless of eligibility status, it must be determined whether double coverage exists. If the reason for the overpayment is that another coverage plan primary to TRICARE was not considered in whole or in part in the coordination of benefits, then the following actions are required to recover the overpayment:

9.1 If the primary plan has not made payment to the beneficiary or provider, the contractor shall attempt to recover the overpayment from the primary plan following the contractor's coordination of benefits procedures;

9.2 If the overpayment cannot be recovered from the primary plan, or if the primary plan has made payment, the overpayment will be recovered from the party that received the erroneous payment from TRICARE.

10.0 THIRD PARTY RECOVERIES

When potential recovery from or actual payment by a liable third party is discovered, the contractor shall refer the matter to the designated Uniformed Service Claims Office (USCO) as set forth in Section 5.

11.0 PROCEDURES FOR RECOUPMENT OF OVERPAYMENTS

For the purpose of determining the amount of the overpayment in a particular case, the contractor shall include all claims overpaid for the same reason/case/Episode Of Care (EOC). All research required to establish the existence of a debt shall be accomplished and the initial demand

letter shall be issued within 30 days from the date that a potential recoupment action is identified or notification is received that an erroneous payment has been made. (See sample letters Addendum A, Figure 10.A-5 and Figure 10.A-6.) The contractor shall ensure that all demand letters are sent to the correct debtor at the most current address on file, i.e., enrollment file, provider file, claims history, etc. When letters are returned by the post office the forwarding address shall be obtained and letters that are returned shall be reissued to the new address. For any recoupment case involving a large number of claims having low dollar overpayments, the contractor may request a waiver to the claim adjustment requirements on a case by case basis. Such requests are to be sent to the Chief, CCS, DHA. The pharmacy contractor shall issue the initial demand letter to a network pharmacy within 30 calendar days of the end of the 60 calendar day period referenced in Section 1, paragraph 1.0 if collection pursuant to the network agreement is not successful.

12.0 ERRONEOUS PAYMENTS RESULTING FROM INCORRECT ASSESSMENT OF THE DEDUCTIBLE

12.1 If a contractor erroneously calculates the deductible and the error is discovered within the same fiscal year as the one in which the error was made, the error shall be corrected by properly assessing the deductible on the next claim or claims. No recoupment notice needs to be given if the deductible can be collected within the fiscal year in which the error was made.

12.2 If the deductible cannot be collected in the same fiscal year in which the error was made, the contractor shall initiate recoupment action in accordance with this chapter, regardless of the amount owed by the beneficiary, as a result of the erroneous calculation of the deductible.

13.0 OVERPAYMENTS TOTALING LESS THAN $110

The contractor shall take no recovery action when the overpayment to a single payee is less than $110.

14.0 OVERPAYMENTS TOTALING $110 OR MORE

The contractor shall take the following recovery actions when the overpayment resulted from reasons other than failure to properly assess the deductible and the overpayment totals $110 or more.

15.0 OTHER THAN PARTICIPATING PROVIDER

15.1 When an initial request for refund is sent, flag the record of the overpaid party for possible future offset action and suspend payment on a sufficient number of current claims to satisfy the amount of the debt.

15.2 Such claims may be processed to the point of payment to expedite finalizing when the refund payment is received. If the debtor on the claim in question is other than a participating provider, a system flag shall be set for future offset action.

15.3 If the refund request is unsuccessful after 30 days from the date of the request, offset against any claims suspended during the 30 days as required in this section. Offset can be made against any claim or claims on which payment(s) would be made to the previously overpaid party, irrespective of who is the patient on the claim from which offset is taken. For example, where

benefit payments have been made to either parent on behalf of a minor child; i.e., under 18 years of age, unless one parent has been named the custodial parent in a divorce decree, both parents are responsible for those debts and offset may be taken against claims of either parent. However, an offset may not be taken against a sponsor for debts of the spouse or against a spouse for debts of the sponsor. If the overpayment is offset, prepare a EOB or substitute EOB for pharmacy claims (Addendum A, Figure 10.A-35) for each claim against which offset was made and send a notice to the overpaid party explaining the overpayment and the offset action (see sample letter, Addendum A, Figure 10.A-7).

16.0 PARTICIPATING PROVIDER

Within 30 days of identifying an overpayment, send a written request for refund to the overpaid party. At the same time, the beneficiary shall be notified in writing, that a recoupment action has been initiated against the rendering provider. This letter shall identify the beneficiary's specific claims included in the recoupment action. The letter shall advise the beneficiary that no response is required and refer the beneficiary to the Beneficiary Service Representative (BSR) if they have further questions. (See sample letter, Addendum A, Figure 10.A-8.) No offset flag is set at this point in the recoupment process (see paragraph 16.2.2). The pharmacy contractor is not required to issue the notice (Addendum A, Figure 10.A-8) to the beneficiary unless directed by DHA.

16.1 Account Balance $110 To Less Than $600

If the initial refund request is unsuccessful and there are insufficient funds available for a full offset send a follow-up letter 30 calendar days from the date of the initial letter. All follow-up requests shall include a copy of the original refund request and will notify the overpaid party that unless arrangements for refund are made with the contractor within 30 days from the date of the follow-up request, an attempt shall be made to offset against future claims. (See instructions in paragraph 16.2.2 and the sample letters, Addendum A, Figure 10.A-9 and Figure 10.A-11). When one year has passed and the debt has not been collected, the contractor shall ascertain whether there are any other active recoupment cases against the same debtor. If there are none, the contractor shall follow the instructions in Chapter 3. In those cases which are not transferred to DHA (i.e., cases below $600 in which the debtor has not requested relief from the indebtedness), the offset flag shall remain on the file of the overpaid party for the term of the TRICARE contract for potential future offset. If there are one or more additional active recoupment cases against the same debtor and the total outstanding debt for all active recoupment cases is $600 or more, all cases shall be consolidated with a blank sheet between each debt and a covered sheet completed to reflect the combined total dollar amount of the consolidated cases. Before transfer of the combined debts to DHA Office of General Counsel (OGC), a letter should be sent to the debtor advising that the debts have been consolidated, list the beneficiary name(s) dates of service and individual recoupment amounts. The letter should also state that the debts have been referred to DHA OGC, and therefore, future payments should be sent to the Resource Management Division, DHA, 16401 East Centretech Parkway, Aurora, Colorado 80011-9066. A credit adjustment will be submitted to include all amounts recouped up to the point of referral. The offset flag shall be removed when the cases are transferred. Documentation shall be included in the recoupment case file that the offset flag has been removed. The documentation may be a copy of the contractor's internal form to direct removal of the offset flag. All cases shall be referred to DHA within five working days after the offset flag has been removed.

16.2 Account Balance $600 Or More

16.2.1 If the initial refund request is unsuccessful and there are insufficient funds available for a full offset (see paragraph 15.3, for suspended claims) send a follow-up letter 30 calendar days following the date of the initial letter. All follow-up requests shall include a copy of the original refund request and will notify the overpaid party that unless arrangements for refund are made with the contractor within 30 calendar days from the date of the follow-up request, an attempt shall be made to offset against future claims, and the matter shall be referred to DHA for further action (see sample letters, Addendum A, Figure 10.A-10 and Figure 10.A-12).

16.2.2 If the initial and follow-up refund requests and the offset attempt, if any, are unsuccessful for a period of 60 days from the date of the initial demand letter, set an offset flag on the file of the overpaid party (including a participating provider and other debtors) until the file is transferred to DHA in accordance with paragraph 19.0. In the event of a contractor transition, only offset accounts which have been on offset for less than 12 months will be transferred to the new contractor. Any offset account received by the new contractor as a result of a transition shall be kept in effect for the life of its contract. When all or part of an overpayment is offset, prepare an EOB for each claim against which offset was made and send a notice to the overpaid party explaining the overpayment and the offset. (See the sample letter at Addendum A, Figure 10.A-7.) If the offset is against the provider, the provider shall be advised that reimbursement for the claim against which the offset was made may not be sought from the patient on whose behalf the services were provided. Additionally, a letter (see Addendum A, Figure 10.A-19) shall be sent to the TRICARE beneficiary against whose claim the offset was taken. The contractor shall remove the offset flag on an account when it is referred to DHA OGC, TRICARE, or when the contractor is advised to do so by that office. Documentation shall be included in the recoupment case file that the offset flag has been removed. The documentation may be a copy of the contractor's internal form to direct removal of the offset flag. All cases shall be referred to TRICARE within five working days after the offset flag has been removed. Active recoupment cases against the same debtor should follow the consolidation instructions in paragraph 16.1.

16.2.3 If the debt has not been collected in full and there has been no positive response to the demand for payment such as a request for installment repayment agreement within 90 days from the date of the initial demand letter, and the balance remaining on the refund request is $600 or more, the contractor shall send a final demand letter to the debtor (see Addendum A, Figure 10.A-17). The final demand letter shall be sent regardless of whether the debtor is a beneficiary or a provider and shall be accompanied by a completed Promissory Note (see Addendum A, Figure 10.A-13).

16.2.4 If offsets have not resulted in collection of at least 50% of the amount of the debt, and there has been no positive response to the demands for payment within 150 days from the date of the initial demand letter and the balance remaining on the account is $600 or more, the case shall be referred to the DHA OGC. When a case is transferred to DHA, the contractor shall advise the debtor of the referral and the debtor shall be notified that future payments should be sent to the Contract Resource Management Division, DHA, 16401 East Centretech Parkway, Aurora, Colorado 80011-9066 (see Addendum A, Figure 10.A-26). The offset flag will be removed when the cases are transferred. A credit adjustment will be submitted to include all amounts recouped up to the point of referral. Active recoupment cases against the same debtor should follow the consolidation instructions in paragraph 16.1.

16.2.5 If, on the 150th day, the contractor has been successful in collecting 50% or more of the total amount of the debt, the offset flag shall remain in place, and the contractor shall hold the case an additional 150 days. Those cases that are held 300 days because collection by offset during the first 150 days was largely successful, shall be transferred to the CCS, DHA, on the 301st day, if the balance remaining on the account is $600 or more. When the case is transferred to the CCS, DHA, the offset flag shall be removed. Documentation shall be included in the recoupment case file that the offset flag has been removed. The documentation may be a copy of the contractor's internal form designed to direct removal of the offset flag. All cases shall be referred to TRICARE within five working days after the offset flag has been removed. When a case is transferred to DHA, the contractor shall advise the debtor of the referral and the debtor shall be notified that future payments should be sent to the Resource Management Division, DHA, 16401 East Centretech Parkway, Aurora, Colorado 80011-9066. A credit adjustment shall be submitted to include all amounts recouped up to the point of referral. Active recoupment cases against the same debtor should follow the consolidation instructions in paragraph 16.1.

16.2.6 Any case, with an account balance of $600 or more in which a debtor unequivocally refuses to pay and no possibility of offset exists, shall be referred immediately to the DHA OGC. Any case in which a debtor seeks relief from the indebtedness due to financial hardship, or seeks other equitable relief shall be handled in accordance with paragraph 28.0.

17.0 BANKRUPTCY

All Notices of Bankruptcy, and letters from petitioners, attorneys for petitioners, and trustees of the bankrupt estate shall be forwarded to the DHA OGC, within three work days of receipt. Each Notice of Bankruptcy forwarded to DHA shall include: the debtor's full name; the debtor's full and complete Social Security Number (SSN)/Tax Identification Number (TIN); the name of the bankruptcy court wherein bankruptcy was filed; and the bankruptcy case number. (See sample coversheet, Addendum A, Figure 10.A-32). The contractor shall verify that the only bankruptcy cases forwarded to DHA are for debts which were paid with non-financially underwritten funds. Additionally, the contractor shall take the following actions:

17.1 If the petitioner in bankruptcy is indebted to TRICARE, all recoupment actions shall cease. If the debtor is on offset, the contractor shall terminate the offset immediately. If the recoupment case(s) against the bankrupt petitioner has not already been transferred to the DHA OGC, the complete case file(s), regardless of dollar value, shall be transferred with the Notice of Bankruptcy within three work days of receipt. Each case file shall contain all the documentation required by paragraph 19.0. However, the contractor shall not hold the Notice of Bankruptcy while they attempt to obtain all of the required documentation. A note will be placed in the case file to indicate when the missing documentation will be forwarded. If any amounts have been collected by offset or voluntary repayment by the debtor, the case file must contain the dates and amounts of each offset and/or payment. In addition, at the time the case file is forwarded to the CCS, DHA, a check for the total amount collected shall be forwarded to the Finance and Accounting Office (F&AO), DHA. The following information shall accompany the check:

- The debtor's full name
- The sponsor's SSN on the overpaid claim
- The Internal Control Number (ICN)/Refund Control Number (RCN) of the overpaid claim
- The dates and amounts of each offset and/or payment

17.2 If there is no ongoing recoupment case against the petitioner in bankruptcy and the petitioner is a provider, contractor shall ascertain whether any assigned claims are pending for the petitioner provider. If there are claims pending, payment on those claims shall be suspended, and the Notice of Bankruptcy will be forwarded within three work days of receipt to the DHA OGC, with advice as to the number of claims suspended and their value. The DHA OGC will advise the contractor when the pended claims may be processed and to whom payment should be issued. (See Addendum A, Figure 10.A-31 for a sample report of claims pended for provider bankruptcy.)

17.3 The contractor shall identify individuals and providers who have, during the term of their DHA contract, filed a Petition in Bankruptcy, regardless of whether the petitioner is or has been indebted to TRICARE. The contractor shall initiate no recoupment action, either on their own initiative or upon the request of another DHA component, against a debtor who has filed a petition in bankruptcy, without prior approval by the DHA OGC.

18.0 PROCESSING CLAIMS WHEN THE PRIMARY INSURER IS BANKRUPT OR IN RECEIVERSHIP

18.1 Increasingly, insurance companies which have been primary to TRICARE are filing petitions in bankruptcy or have been placed in receivership, and are refusing to honor claims. This situation is to be distinguished from that in which an employer or labor union stops paying premiums to an insurance company. In the latter case, insurance coverage ceases for the employee or member of the labor union when premiums have not been paid; the TRICARE claims should be processed in the same manner as any other claim on which the beneficiary has no OHI. Although the TRICARE beneficiary who was formerly covered by the bankrupt insurer may have a claim against the bankrupt estate, the beneficiary may have to wait years for distribution of assets, if any. Since TRICARE is, by federal statute and regulation, secondary to all health benefit and insurance plans (except Medicaid), extraordinary measures must be taken to allow TRICARE to pay claims as primary payer pending any distribution of assets from the bankrupt estate.

18.2 The contractor shall have documentation to prove that a claim was filed with the primary insurer or a Proof of Claim was filed with the bankruptcy court. This information may be requested using Addendum A, Figure 10.A-28. When a TRICARE beneficiary or participating provider provides evidence that the beneficiary's primary insurer is in bankruptcy and is no longer honoring claims, the contractor may issue payment on a claim-by-claim basis, after the following steps have been taken:

18.3 Determine the time period that the TRICARE beneficiary was covered by the bankrupt insurer.

18.4 For each claim, ascertain whether the medical care claimed was received during the period of coverage by the bankrupt insurer.

18.5 If the medical care was received after the petition in bankruptcy was filed by the primary insurer, determine whether the TRICARE beneficiary has obtained alternative insurance which is primary to TRICARE. If alternative insurance has been obtained, process the claim under the double coverage provisions of the TRM.

18.6 If the medical care was received prior to the filing of a petition in bankruptcy by the primary insurer, determine whether the primary insurer has issued payment on the claimed services.

18.7 If the bankrupt primary insurer has not issued payment on the claimed services, and the medical care was received during the period of coverage by the bankrupt insurer, determine who the payee on the TRICARE check will be. Normally, if the claim is assigned, payment is issued to the provider of medical services. If the claim is not assigned, payment is issued to the TRICARE beneficiary, or, if the TRICARE beneficiary is a minor, or incompetent, to a parent, guardian, or conservator.

18.8 If the TRICARE payment is to be issued to a provider, complete the Power of Attorney (POA) and Agreement (Addendum A, Figure 10.A-27) and mail it to the provider. The date line on page two of the form is to be completed by the provider. Use the letter at Addendum A, Figure 10.A-28.

18.9 If the TRICARE payment is to be issued to the TRICARE beneficiary, or his or her parent or guardian, complete the POA and Agreement (Addendum A, Figure 10.A-29) and mail it to the beneficiary. The date line on page two is to be completed by the beneficiary. Use the sample letter at Addendum A, Figure 10.A-30.

18.10 If the signed POA and Agreement has not been returned within 35 days from the date of the contractor's letter (Addendum A, Figure 10.A-28 or Figure 10.A-30), the claim is to be denied.

18.11 When the signed POA and Agreement has been received, the contractor shall process the claim. The POA and Agreement must have an original signature; facsimile signatures (i.e., signature stamps) are not acceptable. An authorized agent of a participating provider may sign the POA and Agreement; however, no special designation of appointment is required. Only one signed POA and Agreement is required from each potential recipient of a TRICARE payment for medical care claimed during the period of coverage by the bankrupt insurer. A separate POA and Agreement is not needed for each claim. Each potential recipient of a TRICARE payment (i.e., beneficiary or participating provider) who signs a POA and Agreement may file more than one claim for services provided or received during the period the TRICARE beneficiary was covered by the bankrupt insurer.

18.12 The contractor shall maintain a record of all signed POAs and Agreement and all claims on which TRICARE payment has been issued as the primary payor. The contractor shall perform the required follow-up and complete the required report. Claim forms and EOBs shall be filed in the usual manner.

18.13 Biannually, the contractor shall follow-up with each beneficiary for whom claims have been paid by TRICARE as primary payor as a result of the filing of a petition in bankruptcy by the primary insurer. If any assets were distributed from the bankrupt estate to the TRICARE beneficiary for medical care, the amount received either by the TRICARE beneficiary or the participating provider will be treated as a payment made by the primary insurer, and benefits shall be coordinated in the usual manner. If the contractor determines that an overpayment has been made, recoupment action shall be initiated from the recipient of the TRICARE overpayment.

18.14 If, during a biannual follow-up, the contractor learns that the bankruptcy case has been closed, and no assets have been distributed, no further follow-up is required.

18.15 If a transition occurs before the contractor determined that the bankruptcy case has been closed, with or without distribution of assets, the POA and Agreement forms, with copies of claims and EOBs will be sent to DHA OGC for follow-up.

19.0 CASE REFERRALS

19.1 Cases referred to DHA OGC, at the request of DHA, or as required in paragraphs 16.2.4 and 17.0, shall include the documentation listed below. (If the pharmacy EOB does not contain certain data elements, then a separate report is required (see Addendum A, Figure 10.A-34). If offsets have been taken, additional data elements are required as listed in Addendum A, Figure 10.A-35. All documentation shall be placed in the file in the order listed, with paragraph 19.2 on the bottom and paragraph 19.8 on top.

19.2 Legible copies of all claims involved in the recoupment. If copies of all claims cannot, with good reason, be provided, a copy of the automated claims history may be substituted. However, if a claims history is substituted for copies of the actual claims, a detailed explanation of each field on the claims history shall be provided.

19.3 Documentary evidence, i.e., workpapers, calculations reflecting how the amount of the overpayment was determined, establishing how the overpayment was identified and the basis for the erroneous TRICARE payment, including copies of checks and EOBs for both the erroneous payment and the correct payment, and documentation such as proof of Medicare eligibility, proof of OHI, (EOB from the OHI reflecting what the OHI paid for, the relevant care and the name of the OHI, policy number and the effective dates of coverage), signed promissory note, etc. When a check copy cannot be obtained the contractor shall document efforts to obtain it and include the documentation in the file. Normally cases shall not be forwarded without check copies and EOBs. When a contractor has determined that a check copy or EOB cannot be obtained, the contractor shall document efforts made to obtain it and include it in the file. The contractor shall also notify the DHA OGC by facsimile within five days of the date it determined that the documentation could not be obtained and provide the RCN, claim number, check date, provider name, patient name, sponsor SSN and date(s) of service. If the Recoupment Office cannot obtain the required check copies or EOBs, they will advise the contractor to forward the file without them.

19.4 Copies of checks and EOBs showing payment made to correct the erroneous payment, if any. When the recoupment is the result of a duplicate payment, copies of the check and EOB for the original payment and the copies of the check and the EOB for the duplicate payment shall be included in the file. When the recoupment is the result of a Medicare reversal or adjustment, copies of the corrected Medicare EOBs shall be included in the file.

19.5 Copies of all demand letters sent to the debtor, which must provide a full explanation of the circumstances surrounding the erroneous payment.

19.6 Copies of all correspondence received from the overpaid party or their representative relating to the recoupment case and the contractor response.

19.7 Copies of all EOBs reflecting collections by offset and copies of all payment acknowledgment letters issued to debtors. Also, the contractor shall maintain a tally sheet reflecting the original amount of the debt, each offset taken, and the balance remaining after each offset. Documentation shall be included in the recoupment case file that the offset flag has been removed. The documentation may be a copy of the contractor's internal form to direct removal of the offset flag. All cases shall be referred to DHA within five working days after the offset flag has been removed.

19.8 A completed cover sheet containing data fields necessary for entry of the case into an automated case recoupment system (see Addendum A, Figure 10.A-14). Incomplete or incorrect cases that are transferred to DHA will be returned to the contractor for correction. The contractor must account for the returned case on the Accounts Receivable Summary Report.

19.9 All refund checks shall be deposited in accordance with the instructions in Chapter 3, Section 3, paragraph 2.0. When a refund check is to be applied to a recoupment case which has been referred to DHA OGC, the amount shall be forwarded to DHA, Contract Resource Management (CRM) along with information identifying the payee and account being paid. The contractor shall notify the DHA OGC of the receipt of the payments the following work day after receipt. The contractor shall furnish identifying information to the DHA OGC as to how the funds were transferred, including the check number, date, amount, and the page number if included on the monthly UA report, by completing the Collection Made by Offset/Refund Form (Addendum A, Figure 10.A-33). The contractor should not delay notifying the DHA OGC that a payment has been received pending transfer of the funds. If the DHA OGC determines that the contractor has received a refund, the request for identifying information on the transfer of funds should be responded to the following work day.

19.10 For debts of $600 or more, the contractor shall establish, maintain, and retain for one year, or the term of their contract, whichever is longer, files containing all documentation pertaining to the recoupment cases which have been referred to DHA. Legible microfiche copies are acceptable. A contractor may maintain such files for debts below $600, if it chooses to do so. Retention of the files will allow the contractor to fully respond to all questions generated by the CCS, DHA, as a result of the contractor's referral of a recoupment case to that office. The contractor shall respond by the following work day to questions directed to them by the CCS, DHA. Additionally, the creation and retention of fully documented recoupment case files will facilitate responses to debtors' inquiries and requests for administrative reviews. In the event of a contract transition, the outgoing contractor shall have complete documentation of recoupment cases ready for transfer to the incoming contractor. The contractor shall transmit recoupment case files to the CCS, DHA with a return receipt requested. Recoupment case files not transferred to the CCS, DHA or to an incoming contractor shall be transferred to the Federal Records Center (FRC) in accordance with Chapter 2.

20.0 STATE OR LOCAL GOVERNMENT DEBTS

Offset is not to be applied with respect to debts owed by state or local governments. Such cases, valued at $600 or more, shall be referred to DHA OGC for collection. All other procedures apply as usual.

21.0 OFFSET REQUESTS FROM DHA COMPONENTS

When requested to do so by a DHA component (i.e., Program Integrity Office (PI), OGC), the contractor shall initiate recoupment action and/or set an offset flag on an overpaid party to collect erroneous payments. The contractor shall comply with the instructions issued by DHA with the request. The instructions will require one or more of the actions specified in paragraph 11.0. Normally, the requests will be made following resolution of an allegation of fraud or following a provider audit or as the result of an issuance of a Final Decision in the appeal process. At the direction of the DHA PI, the contractor shall provide a nonparticipating provider an opportunity to refund an erroneous payment in those instances where the nonparticipating provider has submitted a claim for services which were not provided or for incorrect payments, prior to initiating

recoupment action against the beneficiary. This procedure shall only be allowed after the DHA PI, has determined that the case will be resolved through administrative action. (Refer to Chapter 13.)

22.0 OFFSET REQUESTS FROM OTHER AGENCIES

Any requests for offset from other agencies or orders for garnishment issued by the court shall be forwarded to DHA OGC. The contractor shall offset TRICARE claims to collect debts owed other federal agencies only when instructed to do so by DHA OGC. This paragraph does not apply to the federal tax levies.

23.0 INFORMATION TO BE INCLUDED IN REFUND REQUESTS

23.1 Refund requests shall include a preaddressed return envelope and the following claim and payment information:

- Name and Address of the Beneficiary and Provider
- Last four digits of Debtor's SSN
- ICN or RCN
- Date(s) and Type(s) of Service
- Principal Amount of Debt
- Date(s) of Check(s)
- Amount(s) of Check(s)
- Name of Payee

23.2 A clear explanation of why the payment was not correct.

23.3 The amount of the overpayment and how it was calculated, and the amount of the correct payment, if any.

23.4 A notice that the overpaid party is required to refund the overpayment, or make acceptable arrangements to make the refund, within 30 days of the date of the request.

23.5 A notice that:

- Interest will begin to accrue from the date of the letter at the then current rate set by the United States Department of the Treasury.
- Accrued interest will be waived if payment is received within 30 days.
- Administrative costs will also be assessed for expenses in collecting the debt.
- A penalty charge of 6% per year will be assessed on any portion of the debt that is delinquent for more than 90 days and will accrue from the date that the debt became delinquent.

Note: The contractor shall obtain the current interest rate as published in the **Federal Register**. Interest is to be applied under criteria set forth in paragraph 32.0.

23.6 A notice of the possibility of offset if the overpayment is not refunded.

23.7 Instructions that the refund shall be by check or money order made payable to the contractor.

23.8 A notice where appropriate (see sample letters, Addendum A, Figure 10.A-5 through Figure 10.A-12 and Figure 10.A-17), that unless a refund is made the case shall be referred to DHA OGC for further recovery action which can include referral to a credit reporting agency and the assessment of added administrative costs, penalties and interest.

23.9 A request where appropriate (see sample letters, Addendum A, Figure 10.A-9 through Figure 10.A-12), that the debtor provide his or her SSN/TIN.

23.10 An explanation as to rights for an administrative review and to appeal rights (see paragraph 26.0).

24.0 CONTRACTOR RESPONSES TO DEBTORS

The contractor shall respond to any communication from the debtor within 30 days from its receipt.

25.0 INSTALLMENT REFUNDS

25.1 Recoupment claims shall be collected in one lump sum whenever possible. However, debtors may request repayment of a debt in monthly installments. Before installment repayment agreements are made, the contractor shall assure that the debt is amortized to completely refund the overpayment within 24 months. Debtors will be encouraged to repay the debt in monthly installments of no less than $50.00; however, if the debt can be repaid within 24 months at the interest rate properly reflected in the initial demand letter, the contractor may accept lower monthly payments. If it is alleged by the beneficiary that monthly installments cannot be made to complete the refund within twenty-four months, the debtor will be asked to complete a financial affidavit in accordance with paragraph 28.0, and the completed affidavit, along with the case file and the debtor's request and the contractor demand letter(s) shall be transferred to DHA.

25.2 To determine the monthly installment amount, and assure that repayment can be made within the 24 months allowed, the contractor shall amortize the debt over a 24 month period (or less, if requested by the debtor), including interest on the unpaid balance at the appropriate interest rate. The use of commercial programs to perform this function is also acceptable.

25.3 Once the contractor has computed the amount required each month to repay the debt in 24 regular monthly installments, if the principal amount of the debt exceeds $600, the Promissory Note (see Addendum A, Figure 10.A-13) shall be completed and sent to the debtor for his/her signature (see Addendum A, Figure 10.A-24). If the debt is $600 or below, only a letter (see Addendum A, Figure 10.A-20) need be sent to establish the repayment agreement.

25.4 The following information is provided to assist the contractor in completing the Promissory Note:

25.5 "The principal sum of _____ dollars" is the amount of the overpayment that has not been refunded, either voluntarily by the debtor or by contractor offset.

25.6 Interest accrues from the date of the initial demand letter which advised the debtor of his rights pursuant to the Debt Collection Act of 1982 (Addendum A, Figure 10.A-5 or Figure 10.A-6). Interest shall be assessed at the rate that was in effect when the initial demand letter was mailed and that was properly reflected in that letter. DO NOT assess interest until the debtor has been properly advised of his rights. Note that the initial demand letter may be sent January 1, 2004, and the debtor may request an installment agreement five months later (June 1, 2004) or at any time before the case is referred to DHA in accordance with paragraph 19.0. Interest in all cases accrues from the date of the initial demand letter. (See Addendum A, Figure 10.A-21 for an example of interest calculations on a $1000 overpayment, with an annual interest rate of 8%. In the example, the initial demand letter was sent January 5, 2004.)

25.7 The interest rate varies, dependent upon the current value of funds to the U.S. Treasury (see paragraph 23.5). Once a debtor has established a repayment agreement, the rate of interest on THAT debt does not change, regardless of changes in the value of funds to the U.S. Treasury.

25.8 Installment payments shall begin approximately 30 days after the request for an installment repayment agreement is made. If a debtor requests the agreement on March 1, 2004, his first installment will normally be due April 1, 2004. Some contractors may wish to have all installments due the first day of the month. If that is the case, and a debtor requests the arrangement on March 5, 2004, his first installment will be due April 1, 2004. If the debtor requests the arrangement on March 29, 2004, his first installment should be due May 1, 2004. Other contractors may choose to scatter the payments throughout the month, to even the workload. For consistency, do not require payments on the 29th, 30th or 31st of the month, since February normally has only 28 days.

25.9 The phrase "not less than_____dollars beginning on___," is repeated in the Promissory Note to allow for an occasional debtor who, for example, wishes to pay one amount for six months and another amount for the last 18 months. The request may be for any number of personal reasons, i.e., a car loan may be repaid in six months and the debtor will have additional funds from which to repay TRICARE. The contractor is encouraged to be flexible in establishing a repayment agreement; however, repayment must be scheduled for completion within 24 months. If the same amount is to be paid for the entire term of the note, delete the second phrase from the note.

25.10 If the Promissory Note is not returned, or is returned unsigned, but the debtor makes the scheduled payments, the contractor shall treat the account as though the Note had been signed and returned.

25.11 Each payment received shall be acknowledged in writing and must advise the debtor of the amount received, the portion of each payment that was applied to interest and to principal, and the current balance due. The acknowledgment shall advise the debtor that the information provided may be useful in the preparation of his/her income tax return (see Addendum A, Figure 10.A-22).

25.12 Financially underwritten installment payments shall be maintained by the Contractor. Non-financially underwritten related installment payments shall be reported to DHA. When the recoupment action is completed, the contractor shall process the collection action using a single transaction for each claim involved.

25.13 When the debtor enters into an installment repayment agreement, the offset flag shall be removed. Any suspended claims shall be processed and paid normally. If the debtor requests continuation of the offset, any amounts so collected shall be treated as an installment payment.

25.14 Written notification of delinquency shall be sent 35 days after the established due date if an installment, or any portion thereof, remains outstanding (see Addendum A, Figure 10.A-16). If the delinquent amount is not remitted within 30 days of the initial delinquency notice, and the amount remaining due on the account is $600 or greater, the case file, including all supporting documentation, shall be referred to the DHA OGC. If the debtor fails to bring the account current, but remits the missed installment, or a portion thereof, the contractor shall retain the case. Cases shall not be transferred to DHA until two full installment payments are past due. For example, a debtor may miss one payment entirely, but make all subsequent payments, and remain one month behind for the term of the agreement. The case would not be transferred to DHA. When a case is transferred to DHA, the contractor shall advise the debtor of the referral and shall be told that future payments should be sent to the F&AO, DHA, 16401 East Centretech Parkway, Aurora, Colorado 80011-9066 (see Addendum A, Figure 10.A-26).

26.0 RECOUPMENT ACTION AND THE APPEALS PROCESS

26.1 The determination that an overpayment was made is not, in itself, an appealable issue. When a contractor receives a request from a debtor for an administrative review, the procedures outlined in paragraph 29.0 shall be followed to assure that, when appropriate, the debtor receives a Reconsideration as outlined in Chapter 12.

26.2 If a service or supply which is not a TRICARE benefit was paid in error, the reversal of the payment decision constitutes an initial adverse determination. The overpaid party may appeal if an appealable issue exists. Such appeals are subject to the requirements and time limits outlined in Chapter 12. When the overpayment arises because inpatient mental health care was erroneously paid, the debtor will be advised that retroactive approval of the days paid may be requested from the TRICARE mental health review contractor. (See the TRICARE Policy Manual (TPM), Chapter 7, Section 3.1.)

26.3 Any funds recouped by offset after a reconsideration has been requested are to be identified and properly accounted. The appealing party is to be notified that the recoupment of the overpayment shall continue by offset. The contractor shall not terminate the offset action because of an appeal unless directed to do so by DHA.

26.4 When a requirement to recoup TRICARE funds is identified in a Formal Review Decision or a Final Decision resulting from a hearing, the case shall be forwarded by DHA OGC to the appropriate contractor for development and initial recoupment action in accordance with this section. If the contractor is unsuccessful in collecting the debt, the case shall be returned to the DHA OGC in accordance with paragraph 19.0.

27.0 OFFSET RECOUPMENT/PARTIAL PAYMENT

27.1 If the debtor is a hospital subject to the Diagnosis Related Group (DRG)-based payment system, offsets may be taken not only against claims on which payment would be issued to the debtor hospital, but also against annual payments due to debtor hospital as reimbursement for its capital and direct medical education (CAP/DME) costs. If the full amount is recouped through

offset, an adjustment claim shall be reported with the current claim or in the next payment run. If the receivable was written off, it shall be reversed. If the receivable was transferred to DHA, immediately notify the CCS, OGC, DHA telephonically and follow up by letter within two work days after the telephone call. Also, reverse the transfer transaction on the next Accounts Receivable Report.

27.2 If a debtor has entered into an installment repayment agreement and has asked the contractor to continue to offset against future claims, the amount offset shall be applied first to interest and then to principal, as installment payments are applied. Generally, though, offset amounts shall be applied only to principal.

27.3 When a debt has been paid either by offset, partial payment or installment payments, to within $10.00 of the total amount due, including interest, if applicable, the contractor may consider the debt paid in full, if it is practical to do so. If the contractor chooses to consider the debt paid in full when the balance has been reduced to $10.00 or less, the debtor shall be so advised.

28.0 REQUESTS FOR RELIEF OF INDEBTEDNESS

The contractor is not authorized to compromise or to suspend or terminate collection actions on federal claims. Requests for relief based upon financial hardship shall be handled in accordance with the below paragraphs. Requests for suspension of recoupment action pending the outcome of an appeal filed in accordance with 32 CFR 199.10, shall be forwarded to the DHA OGC.

28.1 Account Balance Of Less Than $600

When debtors request relief from all or a portion of their indebtedness, including requests for relief from the assessment of interest, penalties, and administrative charges, the contractor shall remove the offset flag and ask the debtor to complete a Financial Affidavit (see Addendum A, Figure 10.A-23 and Figure 10.A-25). The debtor will be notified that consideration cannot be given to his/her request for relief unless the completed Financial Affidavit is returned within 30 days. If the debtor fails to return the completed Financial Affidavit within 30 days, the offset flag shall again be set and recoupment action shall continue as though no request for relief had been made. When the completed Financial Affidavit is received, the contractor shall forward the affidavit, along with a copy of the demand letter(s), and the debtor's request for relief to the DHA OGC. If directed to do so by DHA, following the review of the debtor's request for relief, the contractor shall reset the offset flag and proceed with normal recoupment procedures.

28.2 Account Balance Of $600 Or More

The contractor shall remove the offset flag upon receipt of a request for relief from indebtedness and ask the debtor to complete a Financial Affidavit. The debtor will be notified that consideration cannot be given to his/her request for relief unless the completed Financial Affidavit is returned within 30 days. When the completed affidavit is received, the entire recoupment case as outlined in paragraph 19.0, including the completed Financial Affidavit, shall be referred to the DHA OGC, for resolution. If the debtor fails to return the completed Financial Affidavit within 30 days, the offset flag shall again be set and recoupment action shall continue as though no request for relief had been made. This paragraph does not apply to the automatic waiver of interest on accounts paid within the first 30 days. Once a case has been established, the contractor shall stop or amend a recoupment action, as necessary, to correct a contractor error.

29.0 ADMINISTRATIVE REVIEW OF INDEBTEDNESS

29.1 If a debtor requests an administrative review of his indebtedness, the contractor shall review the documentation contained in the case file and any additional information or documents submitted by the debtor. The contractor review shall be conducted by someone in a position of higher authority within the contractor than the individual who originated the recoupment action. Following the review, the contractor shall respond to the debtor. When the debtor questions a contractor determination that the care is not a covered benefit, the debtor's request for review will be referred to the appropriate unit within the contractor for issuance of a Reconsideration pursuant to 32 CFR 199.10 unless the issue is not appealable under the provisions of Chapter 12, or the recoupment action was initiated for one of the following reasons:

- TRICARE payment was issued without regard to OHI or pharmacy benefit plan, or the TRICARE liability, after taking into consideration payments made by OHI or pharmacy benefit plan, was inaccurately calculated.
- The action was initiated to recoup a duplicate payment.
- The action was initiated because an error was made in the original determination that a claim was a participating or a nonparticipating claim.
- The action was initiated because the payee was incorrect.

29.2 Based upon the above instructions, if it is inappropriate to provide the debtor a Reconsideration, the contractor shall issue a response to the debtor's request for administrative review. The contractor's response shall describe the documentation reviewed, including any submitted by the debtor, and explain the reviewing party's rationale for the decision to pursue or terminate the recoupment action. The response shall explain that further administrative appeal is not available. If the review results in a decision to recoup the overpayment, the debtor will be advised that full payment or other satisfactory arrangements for repayment must be made within 30 days. A debtor's request for an administrative review of his or her indebtedness does not result in suspension of the accrual of interest from the date of the initial demand letter.

30.0 SUSPICION OF FRAUD

30.1 If there is reason to believe that the overpayment may have been caused by fraud, no request for refund shall be made until the fraud issue is resolved. However, the contractor shall retain any amount voluntarily refunded pending resolution of the fraud issue. These funds shall be deposited in the TRICARE account and an accounting record maintained capable of audit. Documentation of the refund and all other evidence relating to the case shall be sent to the DHA PI. Any recoupment action shall be taken in accordance with Chapter 13.

30.2 Once a determination has been made that a case shall not be prosecuted for fraud, the DHA OGC, will return the suspected fraud case to the appropriate contractor for development and recoupment under this section. If the recoupment action is successful, the contractor shall notify DHA OGC by telephone within one work day of the final collection and follow-up with written notification within three work days. If the contractor is unsuccessful in collecting the debt, the case should be returned to DHA OGC in accordance paragraph 19.0.

31.0 CONTRACTOR TRANSITIONS

31.1 The incoming contractor and CCS, shall receive their designated cases from the outgoing contractor no later than 30 days from the start of health care delivery (SHCD) in accordance with Chapter 1, Section 7, paragraph 3.9.

31.2 If a transition occurs before the contractor determines that the bankruptcy case has been closed, with or without distribution of assets, the POA and Agreement forms, with copies of claims and EOBs shall be sent to the DHA OGC for follow-up.

32.0 INTEREST, PENALTIES AND ADMINISTRATIVE COSTS

32.1 The debtor shall be notified in the initial demand letter that interest will accrue from the date of that letter. The rate of interest to be assessed is the United States Treasury Current Value of Funds Rate. The Department of the Treasury publishes a new rate pursuant to Section 11 of the Debt Collection Act of 1982, as Amended (31 USC 3717). The contractor shall obtain the current rate as published in the **Federal Register**. The Treasury's rate may change on a quarterly basis if the rolling 12 month average used for calculating the rate changes by two percentage points. However, the collection of interest shall be automatically waived on the debt or any portion thereof which is paid within 30 days after the date of the initial demand letter. The contractor is not authorized, under any other circumstances, to waive a debt or any portion of a debt owed the United States Government.

32.2 Debtors shall also be notified in the initial demand letter that a penalty charge, not to exceed 6% per year, will be assessed upon any portion of the debt that is delinquent for more than 90 days, and that administrative costs, (based upon those costs incurred in processing and handling the debt because it became delinquent) will also be added to their indebtedness. However, the contractor shall not assess administrative costs and penalties (DHA will assess administrative costs and penalties).

32.3 The contractor shall be responsible for the assessment and collection of interest only when the debtor enters into an installment repayment agreement as described in paragraph 25.0. The rate of interest assessed shall be the rate properly reflected in the initial demand letter mailed to the debtor. The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury; i.e., the Treasury Tax and loan account rate. Each installment payment shall be applied first to the accrued interest and then to the outstanding principal balance.

32.4 Interest will not be assessed upon previously accrued interest charges. When the debtor and the contractor enter into an installment repayment agreement, interest will be assessed for the period beginning on the date of the initial demand letter and ending on the due date of the first installment payment. The interest shall be assessed at the rate properly reflected in the initial demand letter on that portion of the debt which remained outstanding 30 days after the date of the initial demand letter. The interest so assessed will be collected and applied to the debtor's account before the due date of the first installment payment. Subsequently, interest shall be computed daily on the outstanding principal balance at the rate properly reflected in the initial demand letter, which shall also be reflected in any promissory note sent to the debtor as required by paragraph 16.2.3.

32.5 Interest collected under installment agreements shall be reported to DHA monthly with unidentified refunds and refunds $10.00 or less. The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness, except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, a new interest rate may be set which reflects the current value of funds to the Treasury at the time the new agreement is executed.

32.6 Delinquent installment accounts shall be handled in accordance with the procedures outlined in paragraph 25.0.

33.0 OVERPAYMENTS TO DVA/VHA FACILITIES

33.1 Overpayments to DVA/VHA facilities are not subject to the above procedures. When the contractor identifies an overpayment to a DVA/VHA facility, the contractor shall notify the facility and request repayment to the TRICARE Program. The contractor shall not offset funds due to the DVA/VHA under any circumstances.

33.2 Upon identification of an overpayment, the TRICARE contractor shall issue written notice of the basis for the overpayment to the applicable DVA/VHA facility, including a request for repayment of an amount due. The facility will acknowledge receipt within 90 days of the contractor's notification. In addition, the facility's acknowledgment will contain any claim disputes, to include the basis for the overpayment or the calculation of the refund. The facility may request additional time to investigate potential disputes. If the facility does not respond, or the contractor cannot resolve a claim dispute, the contractor shall refer the case to the DHA, OGC, Chief, CCS. If the facility does not submit a claim dispute, DVA/VHA will refund the amount due within 180 days from the written notification. Upon resolution of claims disputes, if appropriate, the DVA/VHA, will issue a refund within 180 days.

33.3 The contractor shall provide a monthly status report of all DVA/VHA overpayment cases. Details for reporting are identified in DD Form 1423, Contract Data Requirements List (CDRL), located in Section J of the applicable contract.

- END -