

## Chapter 10

## Section 3

# Overpayments Recovery - Financially Underwritten Funds

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This section pertains to contractor financially **underwritten funds**. **The contractor shall follow** these procedures when a contractor initiates recoupment of an overpayment for underwritten funds. Also, see [Chapter 3, Section 3](#), for instructions on reporting overpayments to the Defense Health Agency (DHA) made with underwritten funds.

### 1.0 CAUSES OF OVERPAYMENTS

An overpayment adjustment for recoupment action may be a result of any one or more of a number of circumstances, such as issuance of a duplicate payment, correction of a coding error, or erroneous calculation of the allowable amount.

### 2.0 DETERMINATION OF LIABILITY FOR OVERPAYMENT

The general rule for determining liability for overpayments is that the person who received the erroneous payment is responsible to return such payment. This provision may be modified by applicable state laws. In the case of care delivered by a contractor network provider to a person not eligible for care under TRICARE, the provider shall not submit a claim for such care and **shall** collect payment directly from the patient. If a claim is erroneously paid for care delivered to an ineligible person then the contractor shall be responsible for collection.

### 3.0 PROVIDER OVERPAYMENTS

**3.1** **The contractor shall seek** overpayment refunds from the provider who received the incorrect payment in the following situations:

**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 overpayment was due to a mathematical or clerical error; e.g., an error in calculation of overlapping or duplicate bills. This does not include a failure to properly assess the deductible. Where a provider has been incorrectly paid a deductible, **the contractor shall seek** recovery from the beneficiary.

**3.5** The overpayment was for non-covered services or supplies.

**3.6** The **beneficiary did not receive the** services or supplies, or there is no documentation to substantiate that the provider performed the services claimed. (See [Chapter 13](#), if fraud is suspected.)

**3.7** The services or supplies were furnished by a provider not authorized under TRICARE.

**3.8** The TRICARE payment was made to the participating provider and a primary health insurance plan also made a benefit 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 paid its benefits or the amount TRICARE would have paid as primary payer (see the TRM, [Chapter 4](#)).

**3.9** The payment was made to the wrong provider or to a nonparticipating provider. In such cases, the contractor shall issue payment to the correct payee and initiate recoupment action against the erroneously paid provider concurrently. The contractor shall **not** postpone issuing payment to the correct payee pending completion of the recoupment. If only network providers are involved, **the contractor shall** follow the agreement and/or administrative procedures for this situation.

**3.10** The patient was not eligible for TRICARE when the services were provided.

**3.11** The patient had Other Health Insurance (OHI) primary to TRICARE and the contractor's efforts to recover the overpayment through coordination of benefits with the OHI were not successful in whole or in part (see [paragraph 9.0](#)).

#### **4.0 BENEFICIARY LIABLE**

Recoupment should be sought from the beneficiary in the following situations:

**4.1** The overpayment was caused by incorrect application of the deductible, copayment, or other 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 by DHA (see [paragraph 6.0](#)).

**4.3** The TRICARE payment was made to the beneficiary and his or her primary health insurance plan made a benefit payment for the same services or supplies.

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

**4.5** Any other instance in which the **contractor made** erroneous payment directly to the beneficiary.

**4.6** The beneficiary who received the TRICARE payment had OHI primary to TRICARE.

#### **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 under state laws. The **contractor shall follow the** procedures described in this section.

## 6.0 GOOD FAITH PAYMENT

**6.1** With prior approval from Defense Health Agency (DHA) Communications, a contractor shall make a good faith payment to a participating provider, or allow a previous payment to stand, for care provided to a patient, but only in the following situations:

- An ineligible patient holds an ID card showing TRICARE eligibility and the provider exercised reasonable care in accepting the apparently valid ID card as evidence of eligibility; or
- An ineligible patient/person enrolls in TRICARE Prime, claims are filed and denied as TRICARE ineligible, and the contractor can document via evidence from DEERS that the individual had in fact been shown on DEERS as eligible on the date of TRICARE Prime enrollment and for the period covering the dates of medical care.

**6.2** Whether the claim is initially paid or denied, the provider shall make reasonable efforts to collect payment from the ineligible patient prior to requesting approval of a good faith payment. If the contractor is unable to collect the debt after a reasonable effort, the contractor shall submit a request for relief from the debt providing documentation of the unsuccessful effort to the Defense Health Agency, 7700 Arlington Blvd., Suite 5101, Falls Church, Virginia, 22042-5101, Attn: Good Faith Payment Requests, with the request. Immediately prior to submitting a request for approval of a good faith payment, the contractor shall recheck the current DEERS records to confirm that the person is not eligible and include the documentation of the results. The contractor shall not be financially responsible for making good faith payments. The Government will separately reimburse contractor's costs.

**6.3** If the contractor made payment to the participating provider, the contractor shall advise the participating provider and the patient of the patient's ineligibility and then follow recoupment procedures. If, during the recoupment process, the participating provider alleges that they relied on the information on the patient's ID card showing TRICARE eligibility, the contractor shall forward the file to DHA Communications for consideration of a good faith payment and advise the participating provider of the action taken. The contractor shall ensure the file includes documentation of all contact with the participating provider and patient.

**6.4** If the contractor has not made payment to the participating provider, the contractor shall deny the claim based upon ineligibility of the patient. If the participating provider alleges that they relied on the information on the patient's ID card showing TRICARE eligibility, the contractor shall forward the file to DHA Communications and advise the participating provider of the action taken. The contractor shall ensure the file includes documentation of all contacts with the participating provider and patient.

**6.5** If DHA Communications notifies the contractor that a good faith payment has been granted, the contractor shall terminate collection from the provider, refund any monies collected from the provider and initiate recoupment against the ineligible patient.

**6.6** A provider who erroneously furnishes services or supplies to an ineligible patient as a result of careless identification procedures is not entitled to a good faith payment. Defense Manpower Data Center (DMDC) is responsible for providing beneficiaries with accurate and appropriate means of identification.

## 6.7 TRICARE Encounter Data (TED) Related to Good Faith Payments

**6.7.1** If a previously made underwritten payment is determined to be eligible for a good faith payment, the contractor shall transfer the debt from underwritten to non-underwritten by **submitting a manual invoice to the Government for the underwritten debt owed to the contractor by the ineligible patient. The contractor shall ensure the supporting documentation includes the amount owed, by TED record indicator (TRICARE Systems Manual (TSM), Chapter 2, Section 2.9).**

**6.7.1.1** The Government will issue payment to the contractor, transferring the debt from underwritten to non-underwritten.

**6.7.1.2** Upon receipt of the non-underwritten payment the contractor shall establish a non-underwritten debt in the amount of reimbursement in the name of the ineligible **patient**. The contractor shall pursue and report the non-underwritten debt in accordance with **Section 4**.

**6.7.1.3** The contractor shall deposit all collections of converted debt in their assigned current FY non-underwritten bank account. The monthly deposits of converted debt will create an out-of-balance on the bank reconciliation report for all collections where underwritten credit TED record submissions were sent to DHA prior to the underwritten debt being converted to non-underwritten debt. The contractor shall separately report on their monthly bank reconciliation report (in summary) all collections for converted debt where a credit TED record was sent prior to conversion. Details for reporting are identified in DD Form 1423, Contract Data Requirements List (CDRL), located in Section J of the applicable contract.

**6.7.2** The contractor shall, for claims that have not been paid but the contractor determines to be eligible for a good faith payment, **pay** to the provider or beneficiary from the **current fiscal year** non-financially underwritten bank account **and cite SPC = G2 - Good Faith Payment**. If the contractor pays from the non-financially underwritten account, **the contractor shall initiate and report** any subsequent collection actions per **Section 4**.

## 7.0 OVERPAYMENTS RESULTING FROM ALLEGED MISINFORMATION

An allegation by a patient or provider that information obtained from a Beneficiary Counseling and Assistance Coordinator (BCAC), contractor, or other party resulted in 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 in which clarification, interpretation or a change in the TRICARE Regulation would result in denial of services or supplies previously covered, **the contractor shall not take** action to recover payments expended for those benefits paid prior to the date of such clarification or change, unless specifically directed by DHA.

## 9.0 DOUBLE COVERAGE SITUATIONS

A "Primary Plan," under TRICARE Law and Regulation is any OHI 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 TRICARE Reimbursement Manual (TRM), **Chapter 4**.) Prior to payment of any claim for services or supplies rendered to any TRICARE beneficiary,

regardless of eligibility status, **the contractor shall determine** whether OHI 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 **contractor shall take the** following actions 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 contractor shall recover** the overpayment 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 take action under the provisions of [Section 5](#).

## **11.0 IDENTIFICATION 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). The contractor shall establish its own threshold for economically feasible recoupments. However, if the overpayment is attributable to failure to properly assess the deductible, **the contractor shall recoup it**, even if **it is** less than a contractor's established threshold. A contractor's decision not to recoup when an overpayment is reported to DHA shall never result in the beneficiary paying more than the minimum deductible, copay/cost-share amount, or the amount of any erroneous payment that the beneficiary received.

## **12.0 OVERPAYMENTS RECOVERY**

The contractor shall take recovery actions in accordance with applicable laws of the states in the jurisdiction. The **contractor shall document recovery** procedures **for DHA** review and approval. The **contractor shall ensure** recovery actions include issuing a letter to the participating provider requesting payment and establishing a system for offsetting from subsequent claims. At the same time, the **contractor shall notify the** beneficiary, in writing, that a recoupment action has been initiated against the rendering provider. This letter shall identify the beneficiary specific claims included in the recoupment action. The letter **shall** advise the beneficiary that no response is required and **shall** refer the beneficiary to the contractor's customer service **for** further questions. The contractor has discretion in developing its own demand letters as long as it includes the information required by [paragraph 14.0](#) (see [Addendum A, Figure 10.A-1](#)). Because the recovery actions are for the collection of "financially underwritten" funds, **the contractor** demand letters **shall** not reference the Federal Claims Collection Act (FCCA) as authority for collection nor should they advise debtors that delinquent debts may be collected by administrative offset from other federal monies owed, or referred to the Department of Justice (DOJ) for enforced collection or offset from tax refunds.

## **13.0 OFFSET PROCEDURES**

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, the contractor **shall** leave an offset flag or similar control on the file of the overpaid party (including a provider) for the term of the TRICARE contract for potential future offset. If at any time all or part of an overpayment is offset, **the contractor shall** prepare an Explanation Of Benefits (EOB) for each claim against which offset was made and **shall** send a notice to the overpaid party explaining the overpayment and the offset. If the offset is against the provider, the **contractor shall advise the** provider that reimbursement for the claim against which the offset was made **shall** not be sought from the patient on whose behalf the services were provided. Any requests for offset from other Government agencies and orders for garnishment issued by the courts shall be handled under the laws of the state(s).

## 14.0 REFUND REQUESTS

### 14.1 The contractor shall ensure refund requests include:

- A preaddressed return envelope.
- Name and Address of the Beneficiary and Provider.
- Last four digits of sponsor's Social Security Number (SSN).
- Internal Control Number (ICN).
- Date(s) and Type(s) of Service.
- Principal Amount of Debt.
- Date(s) of Check(s).
- Name of Payee.
- A clear explanation of why the payment was not correct.
- The amount of the overpayment and how it was calculated, and the amount of the correct payment, if any.
- 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.
- A notice that:
  - Interest shall be assessed at the rate of \_\_\_\_ percent. (**Enter the rate which would be collected under the Federal Claims Collection Act or the rate allowed by applicable state law, whichever is lower.**) Interest shall begin to accrue from the date of this letter.
  - Accrued interest will be waived if payment is received within 30 days.
- A notice of the possibility of offset if the overpayment is not refunded.

- Instructions **to pay** the refund by check or money order made payable to the contractor.
- A notice, when appropriate, that unless a refund is made, or arrangements for a refund are made, the case may be referred to a credit reporting agency which could result in the assessment of added administrative costs, penalties and interest.
- An explanation of rights to an administrative review and/or to appeal rights (see [paragraph 18.0](#)).

**14.2** The contractor may assess administrative costs for debt collecting expenses. The contractor shall keep DHA informed regarding procedures, policies and changes to those procedures and policies. The contractor shall obtain DHA approval of these procedures and policies.

## **15.0 CONTRACTOR RESPONSES TO DEBTORS**

The contractor shall not delay in responding to any communication from debtors. The contractor shall respond within normal correspondence timeliness standards, but in no case shall delay in excess of 30 days from receipt of any communication from the debtor.

## **16.0 BENEFICIARY INSTALLMENT REFUNDS**

**16.1** If, in responding to the request for refund, the beneficiary requests an installment refund plan for financial hardship reasons, the contractor shall exercise its judgment in providing such a plan. The contractor shall primarily consider the size of the overpayment and the financial status of the beneficiary. If installment payments are approved, the contractor shall enter into a repayment agreement with the debtor. The contractor may include interest in the repayment agreement. If the debtor fails to sign and return a written agreement, the contractor may still collect installment payments. However, if the debtor fails to remit the agreed-upon monthly installments, the contractor shall treat the case in accordance with the instructions for handling delinquent installments (see [paragraph 17.0](#)). The contractor shall acknowledge each payment received in writing. The contractor shall indicate the amount of the payment received, the amounts applied to interest, if applicable, and principal and the current balance due in the acknowledgment. The contractor shall maintain an accounting record of such payments which shall be subject to audit at all times.

**16.2** The contractor shall establish the size of the monthly installment to allow for complete refund of the overpayment within 24 months. The contractor shall allow monthly installments of less than \$50 if evidence is presented that financial hardships or other justifiable reasons exist. If it is alleged by the beneficiary that monthly installments cannot be made to complete the refund within 24 months, the contractor shall carefully review the case. The contractor shall assist the beneficiary to the fullest reasonable extent by allowing reasonable terms.

**16.3** If an offset flag was previously established on an account, the contractor shall lift it once a repayment agreement is established, unless the debtor requests that the offset remain. The contractor shall treat any offsets so collected as an installment payment. The contractor shall process and pay suspended claims normally.

**16.4** The contractor shall make the collection of overpayments under conditions which will not create severe hardship on the beneficiary/sponsor debtor. Policies related to such collections shall be subject to DHA approval and shall comply with all applicable state and local laws governing collections



and promissory notes. If the contractor elects to charge interest on overpayments, the contractor shall not begin to accrue interest earlier than 30 days following notice of the overpayment, if payment is made within the 30 days following notice. The contractor shall not charge interest rates that exceed the rate which would be collected under the FCCA or the rate allowed by applicable state law, whichever is the lower.

## 17.0 INSTALLMENT DELINQUENCIES

If the debtor fails to comply with an established repayment agreement, the contractor shall notify the debtor of the delinquent amount and urge that the account be brought current. The contractor shall send a written delinquency notice 35 days after the established due date if an installment payment, or any portion thereof, remains outstanding. If debtor does not remit the delinquent amount within 30 days of the initial delinquency notice, the contractor shall take appropriate action under the laws of the appropriate state. Should the debtor fail to bring the account to a current status, but, instead, remit the missed installment or a portion thereof, the contractor shall contact the debtor and attempt to resolve the delinquency problem. The contractor shall not refer a delinquent case to collection agencies, or take other similar action until at least two full installment payments are past due. However, the contractor may set and maintain an offset flag on all delinquent installment cases.

## 18.0 RECOUPMENT ACTION AND THE APPEALS PROCESS

The determination that an overpayment was made is not, in itself, an appealable issue. 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. The contractor shall identify and properly account for any funds recouped by offset after a reconsideration has been requested. The appealing party that the recoupment of the overpayment shall continue by offset. The contractor shall not terminate offset action because of an appeal. When a requirement to recoup TRICARE funds is identified in a Formal Review Decision or a Final Decision resulting from a hearing, the case will be forwarded to the contractor for possible recoupment action in accordance with this section.

## 19.0 REQUESTS FOR RELIEF OF INDEBTEDNESS

The contractor may compromise, suspend, or terminate collection actions on claims arising out of overpayments to beneficiaries if it is evident that severe hardship will be imposed and/or there is a reason of equity involved because the overpayment was the result of an initial error by the contractor. The contractor shall carefully review all requests from debtors for relief from all or a portion of their indebtedness, including requests for relief from the assessment of interest, penalties, and administrative charges. This does not apply to automatic waiver of interest on accounts paid within the first 30 days. After a case is established, the contractor shall take appropriate corrective action to stop or amend a recoupment when a contractor error is discovered.

## 20.0 ADMINISTRATIVE REVIEW OF INDEBTEDNESS

**20.1** 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 organization than the individual who originated the recoupment action. Following the review, the contractor shall respond to the debtor. When the debtor questions a contractor's determination that the care is not a covered benefit, the contractor shall refer the debtor's request for review to the appropriate unit within the contractor's organization for issuance of a reconsideration pursuant to 32 CFR 199.10 unless the issue is not appealable under the provisions of Chapter 12, the issue has been resolved through or is currently pending in the appeal system, or the recoupment action was initiated for one of the following reasons:

- TRICARE payment was issued without regard to OHI, or the TRICARE liability, after taking into consideration payments made by OHI, 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.

**20.2** 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 contractor shall advise the debtor that full payment or other satisfactory arrangements for repayment must be made within 30 days. A debtor's request for an administrative review of their indebtedness does not result in suspension of the accrual of interest from the date of the initial demand letter.

## **21.0 SUSPICION OF FRAUD**

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 contractor's account and an accounting record maintained which is capable of audit. The contractor shall send only copies of documentation of the refund and all other evidence relating to the case to the DHA Program Integrity Office (PI). Any recoupment action shall be taken in accordance with Chapter 13.

## **22.0 BANKRUPTCY**

When the contractor learns that any debtor has filed a petition in a bankruptcy, the contractor shall cease all recoupment actions. If the debtor is on offset, the contractor shall terminate the offset immediately. Until the bankruptcy is resolved, the contractor shall take no further recoupment action and the contractor shall be bound by the laws of the state and the court ruling. Bankruptcy cases for debts which were paid with financially underwritten funds are retained by the contractor for appropriate action. The contractor shall forward all bankruptcy notices to DHA.

## 23.0 INTEREST, PENALTIES AND ADMINISTRATIVE COSTS

**23.1** The contractor shall notify the debtor in the initial demand letter that interest, if required by established corporate policy, and allowed by state law and the TRICARE contract, will accrue from the date of that letter. However, the contractor shall automatically waive interest collection on the debt or any portion thereof which is paid within 30 days after the date of the initial demand letter.

**23.2** If the contractor applies penalties, the contractor shall notify debtors in the initial demand letter. The contractor shall not impose a penalty exceeding 6% per year, if to be charged. The contractor shall only apply the penalty to the portion of the debt which is delinquent for more than 90 days. The contractor may add administrative costs, based on costs incurred in processing and handling the debt because it became delinquent, to the amount of the indebtedness.

**23.3** The contractor shall collect interest only when the debtor enters into an installment repayment agreement as described in above. The contractor shall establish the rate of interest as described above. The contractor shall apply each installment payment to the accrued interest first and then to the outstanding principal balance.

**23.4** The contractor shall not charge interest on previously accrued interest. When the debtor and the contractor enter into an installment repayment agreement, the contractor shall charge interest for the period which began with the date of the initial demand letter and ended on the due date of the first payment. The contractor shall calculate interest at the current rate, on that portion of the debt which was outstanding 30 days after the date of the initial demand letter. The contractor shall apply interest to the debtor's account for any balance remaining after the due date of the first installment payment. The contractor shall apply payments to interest first and then to the principal. Subsequently, the contractor shall compute interest daily on the outstanding principal balance, at the rate current when the debtor entered into a repayment agreement, or at the rate specified in the note, if the debtor signs a promissory note. The note rate shall be that which is current at the time the note is signed.

**23.5** The rate of interest shall remain fixed unless a debtor defaults on a repayment agreement and seeks to enter into a new agreement. The contractor shall set the new interest rate to reflect the current value of funds, and in accordance with the contractor's rate and/or state laws at the time the new agreement is executed. The current value of funds is the value of funds to the U.S. Treasury.

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