

## COMPARISON OF THE PROPOSED RULE TO THE FINAL RULE Medicare Program; Reporting and Returning of Overpayments

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services ~~proposes to amend Chapter~~ amends 42 CFR chapter IV as set forth below:

### PART 401--GENERAL ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 401 continues to read as follows:

**Authority:** Secs. ~~1102~~1102, 1871, and ~~1871~~1874(e) of the Social Security Act (42 U.S.C. ~~1302 and~~1302, 1395hh, and 1395w-5).

2. Part 401 is amended by adding subpart D to read as follows:

### SUBPART D --REPORTING AND RETURNING OF OVERPAYMENTS

Sec.

401.301 Basis and scope.

401.303 Definitions.

401.305 Requirements for reporting and returning of overpayments.

### SUBPART D --REPORTING AND RETURNING OF OVERPAYMENTS

#### § 401.301 Basis and scope.

This subpart sets forth the policies and procedures for reporting and returning overpayments to the Medicare program for providers and suppliers of services under Parts A and B of title XVIII of the Act as required by section 1128J(d) of the Act.

#### § 401.303 Definitions.

For purposes of this subpart--

Medicare contractor means a ~~fiscal intermediary, carrier, durable medical equipment Medicare administrative contractor (DME MAC), or~~ Part A/Part B Medicare ~~administrative contractor.~~ Administrative Contractor (A/B MAC) or a Durable Medical Equipment Medicare

Administrative Contractor (DME MAC).

Overpayment means any funds that a person has received or retained under title XVIII of the Act to which the person, after applicable reconciliation, is not entitled under such title.

Person means a provider (as defined in § 400.202 of this chapter) or a supplier (as defined in § 400.202 of this chapter).

**§ 401.305 Requirements for reporting and returning of overpayments.**

(a) General. (1) A person that has received an overpayment must report and

~~(a)General. (1) If a person has identified that it has received an overpayment the person must report and~~ return the overpayment in the form and manner set forth in this section.

(2) A person has identified an overpayment when the person has, or should have through the exercise of reasonable diligence, determined that the person has received an

~~(2) A person has identified an overpayment if the person has actual knowledge of the existence of the overpayment or acts in reckless disregard or deliberate ignorance of the existence of the overpayment.~~ overpayment and quantified the amount of the overpayment. A person should have determined that the person received an overpayment and quantified the amount of the overpayment if the person fails to exercise reasonable diligence and the person in fact received an overpayment.

(b) Deadline for reporting and returning overpayments. (1) A person who has

~~(b)Deadline for reporting and returning overpayments. (1) A person with an identified~~ received an overpayment must report and return the overpayment by the later of either of the following:

(i) The date which is 60 days after the date on which the overpayment was identified.

(ii) The date any corresponding cost report is due, if applicable.

(2) The deadline for returning overpayments will be suspended when ~~either of~~ the following occurs:

(i) OIG acknowledges receipt of a submission to the OIG Self-Disclosure Protocol and will remain suspended until such time as a settlement agreement is entered, the person withdraws from the OIG Self-Disclosure Protocol, or the person is removed from the OIG Self-Disclosure Protocol. ~~the OIG Self-Disclosure Protocol, or the person is removed from the OIG Self-Disclosure Protocol.~~

(ii) CMS acknowledges receipt of a submission to the CMS Voluntary Self-Referral Disclosure Protocol and will remain suspended until such time as a settlement agreement is entered, the person withdraws from the CMS Voluntary Self-Referral Disclosure Protocol, or the person is removed from the CMS Voluntary Self-Referral Disclosure Protocol.

(iii) A person requests an extended repayment schedule as defined in § 401.603 and will remain suspended until such time as CMS or one of its contractors rejects the extended repayment schedule request or the provider or supplier fails to comply with the terms of the extended repayment schedule.

(c) Applicable reconciliation. (1) The applicable reconciliation occurs when a ~~cost report is filed; and~~ cost report is filed; and

(2) In instances when the provider --

(i) Receives more recent CMS information on the SSI ratio, the provider is not required to return any overpayment resulting from the updated information until the final reconciliation of the provider's cost report occurs; or

(ii) Knows that an outlier reconciliation will be performed, the provider is not

required to estimate the change in reimbursement and return the estimated overpayment until the final reconciliation of that cost report.

~~Contents of report. An overpayment required to be reported under this section to a Medicare contractor must be made in writing and must contain all of the following:~~

- ~~(1) Person's name.~~
  - ~~(2) Person's tax identification number.~~
  - ~~(3) How the error was discovered.~~
  - ~~(4) The reason for the overpayment.~~
  - ~~(5) The health insurance claim number, as appropriate.~~
  - ~~(6) Date of service.~~
  - ~~(7) Medicare claim control number, as appropriate.~~
  - ~~(8) Medicare National Provider Identification (NPI) number.~~
  - ~~(9) Description of the corrective action plan to ensure the error does not occur again.~~
  - ~~(10) Whether the person has a corporate integrity agreement with the OIG or is under the OIG Self-Disclosure Protocol.~~
  - ~~(11) The timeframe and the total amount of refund for the period during which the problem existed that caused the refund.~~
  - ~~(12) If a statistical sample was used to determine the overpayment amount, a description of the statistically valid methodology used to determine the overpayment.~~
  - ~~(13) A refund in the amount of the overpayment. A person may request an extended repayment schedule as that term is defined in § 401.603.~~
- ~~(e) Reporting. (1) A person must use the~~

(d) Reporting. (1) A person must use an applicable claims adjustment, credit balance, self-reported ~~overpayment~~ refund, or other reporting process set forth by the applicable Medicare contractor to report ~~and return overpayments~~ an overpayment, except as provided in paragraph (e)(2) of this section. If the person calculates the overpayment amount using a statistical sampling methodology, the person must describe the statistically valid sampling and extrapolation methodology in the report.

(2) A person satisfies the reporting obligations of this section by making a disclosure under the OIG's Self-Disclosure Protocol ~~resulting in a settlement agreement using the process described in the OIG Self-Disclosure Protocol.~~ or the CMS Voluntary Self-Referral Disclosure Protocol resulting in a settlement agreement using the process described in the respective protocol.

(e) Enforcement. Any overpayment retained by a person after the deadline for ~~(f)Enforcement. Any overpayment retained by a person after the deadline for~~ reporting and returning the overpayment specified in paragraph (b) of this section is an obligation for purposes of 31 U.S.C. 3729.

(f) ~~(g)~~ Lookback period. An overpayment must be reported and returned in accordance with ~~§ 401.305 only~~ this section if a person identifies the overpayment, as defined in paragraph (a)(2) of this section, within ~~10~~ 6 years of the date the overpayment was received.

## ~~SUBPART F--CLAIMS COLLECTION AND COMPROMISE~~

### § 401.607 [AMENDED]

3. In § 401.607(c)(2)(i), the definition of "Hardship" is amended by removing the phrase "outstanding overpayments (principal and interest)" and adding in its place the phrase "outstanding overpayments (principal and interest and including overpayments reported in accordance with §§ 401.301 through ~~401.305.~~ 401.305)".

**PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED**

4. The authority [citation](#) for part 405 continues to read as follows:

**Authority:** Secs. [205\(a\)](#), 1102, ~~1862, and 1871~~[1861, 1862\(a\), 1869, 1871, 1874, 1881, and 1886\(k\)](#) of the Social Security Act ~~as amended~~ (42 U.S.C. [405\(a\)](#), 1302, 1395~~y~~, ~~and 1395hhx~~, [1395y\(a\), 1395ff, 1395hh, 1395kk, 1395rr and 1395ww\(k\)](#)), and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

5. Section 405.980 is amended by adding paragraph ~~(b)~~[\(64\)](#) to read as follows:

**§ 405.980 Reopenings of initial determinations, redeterminations, ~~and~~ reconsiderations, hearings, and reviews.**

\* \* \* \* \*

~~(c)(b)~~\* \* \*

~~(4)(6) Within 10 years from the date of~~ [A party may request that a contractor reopen an initial determination or redetermination if the overpayment is reported in accordance with § 401.305 for the purpose of reporting and returning an overpayment under § 401.305 of this chapter.](#)