

# **Operational Policy Letter #36**

**Department of Health Human Services**

**Health Care Financing Administration**

**Medicare Managed Care**

**June 25, 1996**

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## **PROMPT PAYMENT REQUIREMENT FOR SERVICES OR SUPPLIES PROVIDED BY NON-CONTRACTING PROVIDERS OR SUPPLIERS**

### **Issue:**

The purpose of this program letter is to clarify our policy regarding the requirement that Medicare risk-contracting health maintenance organizations (HMOs) and competitive medical plans (CMPs) make prompt payments for services or supplies furnished by non-contracting providers or suppliers.

### **Background:**

We recently received an inquiry asking if risk-contracting HMOs and CMPs must pay interest penalties as described under Title XVIII of the Social Security Act at section 1876(g)(6)(A) for late payments to non-contracting providers or suppliers?

The answer is yes. Following are the prompt payment requirements for risk-contracting HMOs and CMPs. Also, intermediate sanctions may, be imposed for violations of the prompt payment requirement.

### **The Prompt Payment Legislation:**

Section 9312(d) of OBRA 1986 (P.L. 99-509) established the prompt payment requirement at section 1876(g)(6)(A) of the Social Security Act which was effective on January 1, 1987 as follows:

"A risk-sharing contract under this section shall require the eligible organization to provide prompt payment (consistent with the provisions of sections 1816(c)(2) and 1842(c)(2)) of claims submitted for services and supplies furnished to individuals pursuant to such contract, if the services

or supplies are not furnished under a contract between the organization and the provider or supplier."

**Note:** Sections 1816(c)(2) & 1842(c)(2) are virtually identical in their provisions. Section 1816 covers claims paid by fiscal intermediaries, while section 1842 covers claims paid by carriers (including claims paid to physicians).

### **The Prompt Payment Requirements for Risk-Contracting HMOs/CMPs:**

The provisions of the prompt payment requirement which risk-contracting HMOs and CMPs must meet in paying non-contracting providers and suppliers are described below.

1. Subsection (c)(2)(A) of sections 1816 and 1842 requires that not less than 95 percent of "clean claims" must be paid within 30 days.

"The term "clean claim" means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payments from being made on the claim under this title", (see sections 1816(c)(2)(B) and 1842(c)(2)(B)).

2. If payment is not made on a clean claim (from a non-contracting provider or supplier), within 30 days, interest shall be paid at the rate used for purposes of section 3902(a) of Title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made. The rate is approved by the Secretary of the Treasury and is published in the Federal Register twice each year. The current interest penalty rate for July 1, 1994 - December 31, 1994 is 7 percent, (see sections 1816(c)(2)(C) and 1842(d)(C)).

Thus, at least 95% of clean-claims from non-contracting providers or suppliers must be paid within 30 days. Also, interest payments on all clean claims from non-contracting providers or suppliers must be made if payment is not made within the 30 calendar days after the date of receipt of the claim. For example, a clean claim received on March 1, 1994, must be paid before the end of the business day on March 31, 1994 (the 30th day). Otherwise interest will start accruing on April 1, 1994.

### **Intermediate Sanctions for Late Payments:**

Among the violations subject to the intermediate sanctions regulation (see 42 CFR section 417.500(a)(6)), are the failure of HMOs/CMPs to make prompt payment on at least 95% of clean claims from non-contracting providers/suppliers and/or the failure to pay interest on clean claims that have exceeded the 30 day time limit. The possible penalties for violating the prompt payment requirement for the HMO/CMP are:

- A civil money penalty not to exceed \$25,000 with respect to each determination that the prompt payment requirement has been violated; and/or
- The Secretary also may suspend enrollment of individuals and/or Medicare marketing activities under this section until the Secretary is satisfied that the basis for the determination that a violation occurred has been corrected and is not likely to recur.

The implementing regulations for the intermediate sanctions were published in the Federal Register on July 15, 1994 and will be effective September 13, 1994.

Contact:  
HCFA Regional Office Managed Care Staff