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# CMS Manual System

## Pub. 100-5 Medicare Secondary Payer

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Department of Health &  
Human Services (DHHS)  
Centers for Medicare &  
Medicaid Services (CMS)

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Transmittal 24

Date: FEBRUARY 18, 2005

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CHANGE REQUEST 3724

*Note: This transmittal was previously communicated via RO-3129/CI-2929, Dated February 18, 2005, is no longer sensitive.*

**SUBJECT: Notification to Affiliated Contractors of the establishment of Medicare Secondary Payer (MSP) Recovery Audit Contractors (RACs) and the impact to the Affiliated Contractors current MSP recovery processes.**

**I. SUMMARY OF CHANGES:** This is a new chapter to identify that a demonstration project is being initiated and will utilize RACs in the identification of new Medicare Secondary Payer (MSP) Group Health Plan (GHP) occurrences and the recovery of the associated Medicare mistaken primary payments. The business requirements associated with this chapter are housed in Pub. 100-19, Demonstrations.

Affiliated contractors shall interact with its RAC to ensure duplicate recovery activities do not take place. Affiliated contractors are those carriers and intermediaries who have paid claims for beneficiaries in the RAC assigned states associated with the contractor. A DMERC affiliated contractor are those DMERCs who have paid claims for beneficiaries with their primary residence as one of the RAC assigned states (i.e.; CA, FL, NY)

**NEW/REVISED MATERIAL - EFFECTIVE DATE\*: April 1, 2005**  
**IMPLEMENTATION DATE: April 4, 2005**

*Disclaimer for manual changes only: The revision date and transmittal number apply to the red italicized material only. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.*

**II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual not updated.)**  
**(R = REVISED, N = NEW, D = DELETED) – (Only One Per Row.)**

R/N/D	CHAPTER/SECTION/SUBSECTION/TITLE
N	8/10/Medicare Secondary Payer (MSP) Recovery Audit Contractors (RACs)
N	8/20/Affiliated Contractor (AC) GHP Recovery Process Expansions
N	8/20/20.1/GHP History Search
N	8/20/20.2/Identification of RAC Created GHP Records
N	8/20/20.3/Exclusion of RAC Identified Records from AC Recoveries.
N	8/20/20.4/AC Subsequent Recovery Process
N	8/30/Transfer of RAC Identified GHP Duplicate Primary Payments (DPP) to the Affiliated Contractor
N	8/30/30.1/GHP DPP Referrals and AC Recovery Process

N	8/30/30.2/AC Reconciliation of Appeal Request
N	8/40/Avoidance of Recovery Overlap
N	8/40/40.1/AC Response to Refund Request from RAC
N	8/40/40.2/AC Response/Role to Subsequent VDSA and DM Records
N	8/40/40.3/AC Response to 42 CFR 411.25 Notice and RAC Involvement
N	8/40/40.4/AC Response to Voluntary/Unsolicited Refunds and RAC Involvement
N	8/50/Affiliated Contractor Actions for Exhaustible Benefits and MSP Savings
N	8/60/Misrouted inquiries (phone/paper/fax) related to RAC Recovery Efforts
N	8/70/Tracking and Reporting RAC Interactions
N	8/70/70.1/RAC Referred DPP Report
N	8/70/70.2/RAC Notice of Refund Report
N	8/70/70.3/Report on Manual Exclusion Efforts Associated with RAC Identified MSP Occurrences
N	8/70/70.4/Report of Requests to Re-Establish Exhaustible Benefits
N	8/80/Administrative Costs Incurred by Medicare Contractors
N	8/Exhibit 1

**III. FUNDING: Funding for implementation activities will be provided to contractors through the supplemental budget request process.**

**IV. ATTACHMENTS:**

	<b>Business Requirements</b>
<b>x</b>	<b>Manual Instruction</b>
	<b>Confidential Requirements</b>
	<b>One-Time Notification</b>
	<b>Recurring Update Notification</b>

**\*Unless otherwise specified, the effective date is the date of service.**

# Medicare Secondary Payer (MSP) Manual

## Chapter 8 - Affiliated Contractor Interaction with Medicare Secondary Payer (MSP) Recovery Audit Contractors (RACs)

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Exhibit 1

## **10. Medicare Secondary Payer (MSP) Recovery Audit Contractors (RACs)**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

Section 306 of the Medicare Modernization Act (MMA) is entitled “Demonstration Project for Use of Recovery Audit Contractors”. This provision requires the Secretary to conduct a demonstration project for not longer than three (3) years to identify Medicare underpayments and overpayments and to recoup overpayments for both Part A and Part B services. A Report to Congress is required six months after completion of the project. The report will contain analysis specific to the impact of the demonstration on Medicare savings and recommendations on extending or expanding the project.

CMS decided to establish MSP RACs in the following states:

- California
- Florida
- New York

These instructions apply to the following contractors: UGS-CA #454, NHIC-N. CA #31140, NHIC-S. CA #31146, First Coast Service Options (A) #090, First Coast Service Options (B) #590, Empire (A) #308, Empire (B) #803, GHI-NY #14330, Healthnow-NY #801, and to the DMERCs for beneficiaries residing in the states of California-Cigna #5655, Florida-Palmetto #885 and New York-Healthnow #811. These contractors are hereby referred to as “affiliated contractors” throughout these instructions. The affiliated contractors shall interact with their affiliated RAC.

NOTE: The affiliated contractor is excluded from recovery on a RAC identified GHP occurrence **ONLY** if the RAC is its affiliated RAC.

## **20. Affiliated Contractor GHP Recovery Process Expansions**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

(Subset of IOM Pub.100-5 MSP Chapter 7 Section 10.2) Affiliated contractors shall recognize these instructions as additional processes necessary to accommodate their interactions with their affiliated RAC.

### **20.1. GHP History Search**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

Just as today, the affiliated contractors shall search their claims history for the time period specified in the Budget Performance Requirements (BPR) to determine if payments have been made related to a newly accreted MSP record that equal or exceed the recovery tolerance for Group Health Plan (GHP) cases.

### **20.2. Identification of RAC Created GHP Records**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

In addition to their current CWF validation process prior to the issuance of any demand, affiliated contractors shall identify all RAC identified beneficiary records, which have been created by the RAC assigned to the affiliated contractor's state.

- Check the CWF MSP auxiliary file to validate the record and determine originating contractor.
  1. If the record is present and contains all employer and insurer information, each affiliated contractor shall identify the contractor number of the originating contractor (the contractor who was responsible for the creation of the record).
  2. If the originating contractor number is a RAC contractor number (11125 with a CWF source code of 25, 11126 with a CWF source code of 26 or 11127 with a CWF source code of 27), the affiliated contractor will confirm the relationship of the originating RAC contractor with their state. For example: RAC 11125 will be assigned to California, 11126 will be assigned to Florida and 11127 will be assigned to New York. The California affiliated contractor has a relationship with RAC 11125, no other RAC.

### **20.3. Exculsion of RAC Identified Records from AC Recoveries**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

Affiliated contractors shall not initiate recoveries on MSP beneficiary GHP records that were identified and created as a result of their related RACs involvement. (In the event a contractor shared system creates the accounts receivable (A/R) upon the request for history, the contractor shall make appropriate adjustments to the A/R to ensure no demand is made on claims associated to the MSP GHP record created by the RAC. Upon HIGLAS implementation the debt shall be adjusted within HIGLAS. The ReMAS interface of GHP debts to HIGLAS will be done systematically/automatically so that there will be no chance to catch this situation before the debt is created.

### **20.4. Subsequent Recovery Process**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

From this step, affiliated contractors shall follow all existing instructions specific to MSP recovery. (IOM Pub.100-5, Chapter 7 and IOM Pub.100-6, Chapter 5)

## **30. Transfer of RAC Identified GHP Duplicate Primary Payments (DPP) to the Affiliated Contractor**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

(Subset of IOM Pub.100-5 MSP Chapter 7 Section 10.3.B.)

### **30.1. GHP DPP Referrals and AC Recovery Process**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

RACs shall refer all notices of duplicate primary payment to their affiliated contractor's. The RAC shall send claims information and detail identified as having had a duplicate primary payment (i.e., the debtor responds to RAC that it "paid the provider") to their appropriate affiliated contractor(s). At a later date, each affiliated contractor will be asked for a point of contact for all referrals/transfers from its affiliated RAC contractor(s).

- The affiliated contractors shall follow standard operating procedures specific to provider, physician or other supplier recovery of duplicate primary payments.
- If the DPP overpayment had previously been recovered due to credit balance reporting, provider claim adjustment, etc., the affiliated contractor shall relay this information via the DPP Report to the Project Officer and shall not initiate a demand for repayment.

### **30.2. AC Reconciliation of appeal Request**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

If the event the affiliated contractor receives an appeal request (i.e., a Re-determination request) specific to the referred DPP situation, the affiliated contractor shall make an appeal determination and report the status of any DPP appeal on the monthly report to the Project Officer. (See Exhibit 1 for the required format for all DPP activity)

The affiliated contractor shall create a DPP hardcopy case folder containing the initial notification/transfer of the DPP by the RAC, a copy of the demand letter, all subsequent correspondence specific to the debt and the date and amount actually recovered either by the affiliated contractor or through cross-servicing efforts.

### **40. Avoidance of Recovery Overlap**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

(Subset of Financial Management Manual, IOM Pub.100-6 Chapter 5 and Medicare Secondary Payer, IOM Pub.100-5 Chapter 7)

#### **40.1. AC Response to Refund Request from RAC**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

In some instances, the MSP occurrence accepted as a valid RAC identified GHP occurrence may later be determined, by the Coordination of Benefits Contractor (COBC), to be invalid. If claims have been recovered in error, a refund of the recovery amount may need to be issued (if the funds are not applied to other outstanding debts of the debtor). The RAC does not have the authority to make refunds (and does not have the authority to determine if the recovered amounts can be applied to other outstanding debts of the debtor).

- The RAC shall notify and supply to its affiliated contractor all requests to refund along with all documentation to support the refund. The affiliated contractor shall follow their standard operating procedure regarding refunds

(See IOM Pub.100-6 Financial Management Manual Chapter 5 for instructions).

## **40.2. AC Response /Role to Subsequent VDSA and DM Records** ***(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)***

In certain situations where the RAC has identified an MSP occurrence that occurrence is subsequently identified through a Voluntary Data Sharing Agreement (VDSA) submission or Data Match response, the RAC shall be notified by COBC to cease recovery efforts. The COBC will delete the RAC record and create a new record with the appropriate originating contractor number.

- The affiliated contractor shall capture this new record in their next scheduled GHP history search and shall take appropriate recovery actions.

When the RAC receives payment specific to this situation, the RAC shall send a copy of the case file to the affiliated contractor.

- The affiliated contractor shall ensure duplicate recovery does not take place on claims for which payment had already been received.
- The affiliated contractor shall issue any applicable refund when timing issues result in a duplicate recovery.

If the RAC was unsuccessful in its recovery attempts and refers the debt to Treasury prior to the VDSA submission or Data match response, the RAC shall obtain all recovery information from CMS's Central Office Division of Financial Reporting and Debt Referral and recall the remainder of the debt from Treasury. If funds had been recovered through Treasury efforts, the RAC shall copy the entire case, including claim specific information on Treasury recoveries, and send it to its affiliated contractor.

- The affiliated contractor shall use this information to ensure duplicate claim recoveries are not made specific to the newly accreted VDSA or Data match record.

## **40.3. AC Response to 42 CFR 411.25 Notice and RAC Involvement** ***(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)***

Section 1862(b)(2)(B)(ii) [42 U.S.C. 1395y(b)(2)(B)(ii)] states, "...an entity that receives payment from a primary plan, shall reimburse the appropriate Trust Fund for any payment made by the Secretary under this title ... if it is demonstrated that such primary plan has or had a responsibility to make payment..." This situation is often referred to as a "42 CFR 411.25 notice situation."

The responsible entity identifying a 42 CFR 411.25 situation should notify Medicare and repay Medicare the lesser of: (1) the amount Medicare actually paid; and the (2) amount of the insurer's full primary payment obligation.

- Upon receipt of the 42 CFR 411.25 notice, the affiliated contractor shall follow existing CMS instructions regarding the recovery of funds associated with the notice (if the notice is not accompanied by an appropriate repayment) **or** the posting of funds as a result of the notifying entity's compliance with its statutory obligation to repay.
- When the affiliated contractor receives a 42 CFR 411.25 notice, with or without payment, which has a corresponding GHP occurrence initiated by its affiliated RAC, the contractor shall notify its affiliated RAC and the Project Officer to determine the current status and date of any demand or repayment. The affiliated contractor shall ensure no duplication of recovery takes place.
- Where a 42 CFR 411.25 notice is received without accompanying payment --
  - If the RAC issued a demand prior to the receipt date of the notice, and the notice contains no information that the provider, physician, or other supplier has been paid by the GHP insurer/TPA/plan, the RAC continues its collection efforts. The affiliated contractor shall send all information specific to the notice to its affiliated RAC. The affiliated contractor takes no further action.
  - If the RAC issued a demand prior to the receipt date of the notice, and the notice contains information that the provider, physician, or other supplier has been paid by the GHP insurer/TPA/plan, the affiliated contractor shall inform the RAC of any claims associated with the notice as the RAC shall cease recovery efforts on those claims. The affiliated contractor shall follow standard operating procedures specific to DPP recovery on the claims.
  - If the RAC issued a demand on or after the receipt date of the notice or if the RAC has not issued a demand, the RAC shall cease collection efforts. The affiliated contractor shall take appropriate recovery actions.
- Where a 42 CFR 411.25 notice is received with payment –
  - If the RAC issued a demand prior to the receipt date of the notice and check or claim adjustment, and the notice contains no information that the provider, physician, or other supplier has been paid by the GHP insurer/TPA/plan, the RAC continues its pursuit on any recovery claims associated with the MSP occurrence that have not been repaid. The affiliated contractor shall inform the RAC of claims associated with the payment received.
  - If the RAC issued a demand prior to the receipt date of the notice and check or claim adjustment, and the notice contains information that the

provider, physician, or other supplier has been paid by the GHP insurer/TPA/plan for claims not included in the repayment amount, the RAC shall cease recovery efforts for such claims. The affiliated contractor shall follow standard operating procedures specific to DPP recovery on the claims.

- If the RAC issued a demand on or after the receipt date of the notice and check or claim adjustment or if the RAC has not issued a demand, the RAC shall cease collection efforts. The affiliated contractor shall take appropriate recovery actions.
- Where the affiliated contractor determines there is no existing CWF record, it shall await COBC development and record creation prior to initiating further recoveries. Where the affiliated contractor has information that the COBC received the 42 CFR 411.25 notice at the same time as the affiliated contractor, it shall send no ECRS inquiry. In the event the contractor cannot determine whether COBC has simultaneously been notified of the notice, the affiliated contractor shall send an ECRS MSP inquiry transaction.

#### **40.4. AC Response to Voluntary/Unsolicited Refunds and RAC**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

Upon receipt of a voluntary/unsolicited refund by the affiliated contractor or referral of a voluntary/unsolicited refund from the RAC, the affiliated contractor shall follow existing procedures along with the processes defined below. See also Pub. 100-6 Transmittal 50 issued July 30, 2004 (CR 3274).

- If the voluntary/unsolicited refund is specific to a GHP issue, the affiliated contractor shall confirm if a GHP record exists on CWF **and** if the record is attributed to the contractor's affiliated RAC. If "yes" to both of these conditions --
  - If the RAC issued a demand prior to the receipt date of the unsolicited/voluntary refund, and the notice contains no information that the provider, physician, or other supplier has been paid by the GHP insurer/TPA/plan, the RAC continues its pursuit on any recovery claims associated with the MSP occurrence that have not been repaid. The affiliated contractor shall inform the RAC of claims associated with the payment received.
  - If the RAC issued a demand prior to the receipt date of the unsolicited/voluntary refund, and it contains information that the provider, physician, or other supplier has been paid by the GHP insurer/TPA/plan for claims not included in the repayment amount, the RAC shall cease recovery efforts for such claims. The affiliated contractor shall follow standard operating procedures specific to the DPP recovery effort on the claims.
  - If the RAC issued a demand on or after the receipt date of the unsolicited/voluntary refund or if the RAC has not issued a demand, the

RAC shall cease collection efforts associated with the MSP occurrence. The affiliated contractor shall follow instructions in Pub. 100-6 Transmittal 50 (CR 3274).

## **50. Affiliated Contractor Actions for Exhaustible Benefits and MSP Savings**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

(Subset of IOM Pub.100-5 MSP Chapter 7 Section 60)

The RAC shall notify each appropriate affiliated contractor of any claims it has recovered for which exhaustible benefits would need to be re-established. The RAC shall supply to each appropriate affiliated contractor a list of that affiliated contractor's affected claims and the associated recovery amounts.

- The affiliated contractor shall re-establish exhaustible benefits specific to the recovery and claims referred by the RAC.

CMS may also direct affiliated contractors to manually report additional RAC MSP savings. In the event this occurs, the instruction will be given in a subsequent CR.

## **60. Misrouted inquiries (phone/paper/fax) related to RAC Recovery Efforts**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

The affiliated contractor receiving inquiries either by phone, fax or hardcopy paper inquiries specific to a beneficiary where CWF currently shows the MSP occurrence was identified by the RAC, shall document the phone conversation and refer the documentation to the RAC. The method of referral may be fax. The affiliated contractor shall supply the inquirer the appropriate RAC telephone number. Listed are each RACs Point of Contact, addresses and phone numbers:

California: RAC (TBD)

Florida: RAC (TBD)

New York: RAC (TBD)

## **70. Tracking and Reporting RAC Interactions**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

### **70.1 RAC Referred DPP Report**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

Affiliated contractors shall report DPP referrals from their affiliated RAC. The report for the preceding month is due to the Project Officer in an EXCEL format by the 10<sup>th</sup>

calendar day of each month. The report shall include the following categories: Date of Referral, Date of Demand, Amount of Demand, Amount Collected, Status of Overpayment (use Exhibit 1). The affiliated contractor shall report all RAC referred DPP affiliated contractor efforts within Activity code 42006 under workload 2.

## **70.2 RAC Notice of Refund Report**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

Affiliated contractors shall report debt specific information regarding all RAC Refund Requests. The report for the preceding month is due to the Project Officer in an EXCEL format by the 10<sup>th</sup> calendar day of each month. The affiliated contractor shall include a column with the reason for each refund. Reason descriptors shall include: 1) erroneous beneficiary record creation, 2) appeal decision favorable to provider/supplier (for DPP), etc. (See prior Sections to determine refund applicability.) The affiliated contractor shall report all RAC initiated refund requests and affiliated contractor efforts within Activity Code 42006 under workload 3.

## **70.3 Report on Manual Exclusion Efforts Associated with RAC Identified MSP Occurrences**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

Affiliated contractors shall report on a beneficiary-specific basis the MSP occurrences for which they have had to take manual interventions to exclude associated debts from their systematically identified potential demand universe for either Data Match or retro-recoveries. The report for the preceding month is due to the Project Officer in an EXCEL format by the 10<sup>th</sup> calendar day of each month. Affiliated contractors shall quantify, on the report, the time and cost to ensure no duplication of recovery occurred. The affiliated contractors shall show this figure in your monthly report for Activity code 42006 under workload 1.

## **70.4 Report of Requests to Re-Establish Exhaustible Benefits**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

Affiliated contractors shall report a listing of beneficiaries for which exhaustible benefits were re-established due to RAC notification as specified in Section 50 above. The report for the preceding month is due to the Project Officer in an EXCEL format by the 10<sup>th</sup> calendar day of each month. CMS may also direct affiliated contractors to manually report additional RAC MSP savings at a later date.

## **80. Administrative Costs Incurred by Medicare Contractors**

*(Rev. 24, Issued: 02-18-05, Effective: 04-01-05, Implementation: 04-04-05)*

Affiliated contractors shall track all direct and indirect costs associated with **all** RAC interactions, as defined above, within Activity Code 42006. This code is currently not in use and will provide one single venue affiliated contractors to report RAC support and

RAC related costs. The required reports in Section 70 address specific workload items. Affiliated contractors shall track the number of excluded beneficiaries as a result of the RAC identification in workload 1, the number of DPP demands in workload 2 and the number of refund requests from the RAC in workload 3. Regardless of not having additional workload categories, the affiliated contractors shall track the cost and time of all RAC interactions as part of Tasks under Activity Code 42006.

