

September 17, 2020

ATTN: HUMAN RESOURCES DEPARTMENT

Letter ID:  
Account TIN: \*\*\*\*\*8104  
Total Debt Due: \$18,625.30  
Response Due Date: November 15, 2020

Subject: GHP Demand

Dear

We are writing to advise you that your organization has either sole or shared liability for a debt to the Medicare program. We have determined that you are required to repay the Medicare program for mistakenly made primary payments for services furnished to the identified Medicare beneficiary(ies) below for which the actual primary payment responsibility lies with a group health plan (GHP). The total amount due is \$18,625.30. The Claim Summary Status Report with this letter list the total amount due for each beneficiary. Please note that individual beneficiary claim facsimiles are routinely included only with the courtesy copy sent to the insurer/Third Party Administrator (TPA). You may request a copy of the individual beneficiary claim facsimiles.

**NOTE: “Responsible Entities” for this debt include the employer, insurer, claims processing third party administrator (“TPA”), GHP, or other plan sponsor. If you are not a responsible entity with respect to this debt or are not authorized to act on behalf of a responsible entity, please notify us immediately.**

The following explains how this happened, what you must do to resolve this matter, and the penalties for failing to act in a timely manner. If you fail to pay Medicare in full or otherwise fully resolve this matter within sixty (60) days, you may be subject to interest as well as additional recovery activities by Medicare, the Department of Treasury, or the Department of Justice.



## How This Happened

This recovery claim arose because Medicare mistakenly made primary payments for services furnished to the identified Medicare beneficiary(ies) below for which the actual primary payment responsibility lies with a group health plan (GHP). You have been identified as the GHP itself, or you either sponsor, contribute to, insure the GHP or serve as the claims processing/paying TPA of the GHP (Responsible Entities). A Health Reimbursement Arrangement (HRA) is considered to be a GHP under applicable Federal law. Although the identified individuals may be entitled to Medicare, when certain conditions delineated within the Medicare laws (42 U.S.C. § 1395y(b)) and regulations (42 C.F.R. § 411.20, et seq.) are satisfied, the Medicare Secondary Payer (MSP) statute requires GHPs to make primary payment for services furnished to Medicare beneficiaries who are also covered by a GHP. Medicare was not aware that these conditions were satisfied at the time it made primary payment for certain services, but information now available indicates that these conditions were satisfied when the services were furnished.

The MSP statute and regulations require Medicare to recover primary payments it mistakenly made for which a GHP is the proper primary payer. Medicare's Commercial Repayment Center (CRC) may recover from any of the identified responsible entities. You are receiving this letter because you are a responsible entity under the Medicare law, and Medicare's CRC wants to afford you the opportunity to resolve this matter. We encourage you to contact other responsible entities for assistance in resolving this matter. However, you may not transfer responsibility to resolve this matter to any other entity. Please also be aware that you may be subject to an excise tax under the Internal Revenue Code if any GHP to which you contribute fails to comply with the MSP requirements.

Detailed information about the beneficiary(ies) for which Medicare mistakenly paid primary are provided in the Claim Summary Status Report sent with this letter. These enclosures also identify the subscriber associated with each beneficiary. **Please note that the Medicare beneficiary may be an employee, retiree, individual associated in a business relationship with an employer that sponsors or contributes to the GHP, and the associated spouse or other family member of any of these.**

## How to Resolve this Recovery Demand

You or someone acting on your behalf (e.g., your insurer or plan administrator) must respond within sixty (60) days of the date of this letter. The amount due Medicare is the lesser of the GHP's total primary payment obligation or the amount that Medicare paid. You may **not** reduce the amount due Medicare by the amount of any payments your GHP may have made other than full primary payments to any entity prior to the date of this Demand Letter. If your GHP had not previously made full primary payment, you must refund Medicare. The GHP may not now make

proper primary payment to the provider or supplier.

- 1) If you pay the entire amount demanded with respect to any Medicare beneficiary, you must indicate the payment amount associated with that particular beneficiary either on the check or via an attachment.
- 2) If you are paying less than the amount demanded with respect to any Medicare beneficiary because the GHP's total primary payment obligation was less than the amount Medicare paid, you must document how the lesser payment was determined as well as link the payment amount to the beneficiary in question.
- 3) You may assert and document a valid defense against all or a portion of the demand. Valid defenses include (but are not limited to):
  - a) The beneficiary received services not covered by the GHP: For this defense to be accepted, you must document that the services were not covered. You may not merely assert that the "services were not covered for primary payment."
  - b) The GHP already made full primary payment for certain specified services, either by direct payment or by inclusion in a capitation payment: You must provide proof of payment by documentation evidencing either direct payment or payment made by virtue of inclusion in a capitated payment system.
  - c) Medicare's Demand Letter claim was not presented timely.
    - i) Medicare has a minimum of 3 years from the date of service to present a demand. You may not assert a timely filing defense if the date of this Demand Letter is less than 3 years from the date of service.
    - ii) If more than 3 years from the date of service, a timely filing defense may still not be asserted if:
      - 1) Medicare's demand has been presented within a GHP's longer timely filing period; or
      - 2) Irrespective of when Medicare makes its demand, during the period either 3 years from the date of service (or, if applicable, the GHP's longer timely filing period), any responsible entity (including the GHP, insurer, or TPA) had



knowledge that services had been furnished to a Medicare beneficiary. Knowledge can come from any source (e.g., a claim for secondary payment, inquiry, report, etc.). For example, if the GHP's insurer or TPA had a cross-over agreement with Medicare (i.e., Medicare forwards its primary payment data to the insurer/TPA) for the period when the services were provided, notice would have routinely been provided as a result of that cross-over agreement.

- a) To assert a timely filing defense, a responsible GHP official must certify on company letterhead that all systems of records for the period when services were provided exist and have been searched, but no record was found. Unavailability of records due to destruction is not a valid defense.
- b) In addition, under Medicare's right of subrogation, the GHP must consider this demand to constitute a patient's appeal of a denial of the service/claim denial on the basis of timely filing. The GHP must timely respond to the appeal and a responsible official must certify on company letterhead that the GHP has evaluated the appeal using the same policies, procedures, or rules routinely applied in situations where an appeal has been filed because a claim was denied due to untimely filing but where the delay in initial presentment was not the fault of the patient.
- d) The beneficiary was either not covered by any GHP for which you are a responsible entity or cannot be identified. A responsible officer must certify on company letterhead that GHP enrollment records for the period when services were provided exist; the records identify all covered individuals (not just the principal named insured, e.g., the employee); the records have been searched; and no record of the beneficiary's being covered under any GHP, for which you are a responsible entity, was found. An insurer, TPA, or other responsible entity may not make this certification for the employer or the plan.

**Please make check or money order payable to Medicare and send to the address listed below or submit your payment through the Commercial Repayment Center Portal (CRCP) at <https://www.cob.cms.hhs.gov/CRCP>.**

If sending payment by mail, please include a copy of the first page of this letter with your payment. On all correspondence and payments, please include the beneficiaries' Medicare ID noted on the Claim Summary Status Report. This enables Medicare to reconcile its records.

If you do not repay Medicare in full by November 15, 2020, you will be required to pay interest on any remaining balance, from the date of this letter, at a rate of 9.500% per year as determined by federal regulation. If the debt is not fully resolved within sixty (60) days of the date of this letter, interest is due and payable for each full 30-day period the debt remains unresolved. By law, all payments are applied to interest first, principal second. You can find the regulation that explains interest charges at 42 C.F.R., sub-section 411.24(m).

Aside from the assessment of interest, your failure to respond within sixty (60) days of the date of this letter may also result in the initiation of additional recovery procedures by Medicare, the Department of Treasury, or the Department of Justice. The Debt Collection Improvement Act of 1996 requires Federal agencies to refer delinquent debts to the Department of Treasury for cross-servicing action, including offset by the U.S. against any monies (including tax refunds) otherwise payable to the debtor.

Medicare may also determine that a GHP that fails to appropriately refund Medicare payments is nonconforming. The basis upon which CMS will make a determination of nonconformance is explained at 42 C.F.R. § 411.110, et seq. If a GHP is determined to be nonconforming, the Internal Revenue Service may impose a 25 percent excise tax on all health plan expenditures of employers and employee organizations that contribute to the health plan for each year (or portion thereof) that the GHP is found to be non-conforming.

For further information regarding the Medicare program's rights of recovery and potential penalties for noncompliance, see 42 U.S.C. § 1395y (b) and 42 C.F.R. §§ 411.20 through 411.37, 411.100 through 411.206.

If you have any questions concerning this matter, please contact the Commercial Repayment Center (CRC) by phone at 1-855-798-2627 (TTY/TDD: 1-855-797-2627 for hearing/speech impaired) or in writing at the address below, or by fax to 844-315-4313. When sending correspondence, please include the Beneficiary Name, Medicare ID, and the Case Identification Number.

