

RAC Audit Appeals: Delaying Recoupment of Medicare Funds Pending RAC Appeal

Legal Alert
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The Medicare Recovery Audit Contractor (RAC) audits are set to begin in Region D affecting western states including Alaska, California, Idaho, Montana, Oregon, and Washington. As required by CMS, the audit contractor Health Data Insights (HDI) has begun its outreach seminars. As part of these outreach seminars, HDI advised those in attendance that once it issues a demand letter the Medicare provider has a maximum of 120 days to file its first level appeal.

To be clear, if you wait the full 120 days to file your first level appeal, **Medicare can recoup from you the full audit amount beginning 30 days from the date of your demand letter and will not return it unless you prevail in your appeal.** The RAC appeal process has five levels of appeal. You can delay Medicare from recouping your funds if you file your first level appeal within 30 days of the date of your demand letter. However, the risk is that if you do not prevail in the appeals process, you may be subject to interest on the total recoupment amount.

Deadlines to Prevent Recoupment

Appeal Levels 1 and 2

Pursuant to CMS Transmittal 141 issued on September 29, 2008, HDI is prohibited from recouping alleged overpayments during the first two levels of appeal if you:

File your appeal within 30 days of your initial denial. Waiting more than 30 days to appeal (provided it is filed within the 120 day time limit), enables HDI to recoup the full amount of the alleged overpayment by offset of current funds due. If HDI recoups your funds, they will not be returned to you unless you prevail on appeal.

If you lose your first level appeal and decide to appeal that adverse decision, you must file your second level appeal within 60 days of receipt of the first level determination to extend the prohibition on recoupment.

If you lose your second level appeal, recoupment will commence 30 days after the second level appeal decision is issued. Medicare will recoup the full amount of the audit determination plus interest. This money will not be returned to you unless you prevail in one of the next levels of appeal.

Appeal Level 3

Most providers are reporting that they do not receive favorable determinations until the third appeal level.

At the third level, many providers who pursue RAC appeals are reporting success rates in excess of 90%. If your money has been recouped by HDI and you end up prevailing on appeal, Medicare will refund your money plus interest.

Deadlines to Prevent Paying Interest

To avoid paying interest on a denied claim, you have the option to pay the audit amount in full within 30 calendar days of the date of the initial demand letter from HDI. However, paying back this money immediately has some implications:

These funds will not be paid back to you unless you prevail in your appeal.

If you do make such a voluntary payment and do prevail on your appeal at the third level of appeal or thereafter, your voluntary payment will be returned to you but you will not collect interest.

Further rulemaking on whether a Medicare provider can delay the RAC auditor from recouping funds pending an appeal is being considered, so this area of the law may change in the very near future.