

Supporting Statement  
Withholding Medicare Payments to Recover Medicaid Overpayments  
and Supporting Regulations in 42 CFR 447.31  
CMS-R-21, OMB 0938-0287

A. BACKGROUND

A substantial number of providers furnish health care services under both the Medicare and Medicaid programs, and are reimbursed according to the specific rules applicable to each program. Overpayments may occur in either program, at times resulting in a situation where an institution or person that provides services owes a repayment to one program while still receiving reimbursement from the other. This is appropriate since Federal funds support both.

In the past, when Medicaid overpayments occurred resulting in a situation where a provider of services owed a repayment to the Medicaid program, the Federal Government had very limited authority under the Social Security Act to attempt recovery of overpayments.

Certain Medicaid providers that are subject to offsets for the collection of Medicaid overpayments may terminate or substantially reduce their participation in Medicaid, leaving the State Medicaid Agency unable to recover the amounts due. The recovery procedures allow for determining the amount of Medicaid overpayments and offsetting these overpayments by withholding the provider's Medicare payments. CMS will remit the amounts withheld to the Medicaid State Agency to offset the overpayment under Title XIX (Medicaid).

To effectuate the withholding, the Medicaid State Agency must furnish the CMS Regional Office (RO) with certain documentation that identifies the provider and the Medicaid overpayment amount (that is, statement of reason for withholding, amount and type of overpayment, date overpayment was determined, closing date of pertinent cost reports, quarter in which overpayment was reported on quarterly expenditure report, as needed, names and addresses of provider's officers and owners at time of overpayment, reports of attempted contact with provider concerning overpayment recovery, and a copy of the provider's agreement with CMS). The Medicaid State Agency must also furnish documentation to show that the provider was notified of the overpayment and that demand for the overpayment was made. The data being requested is normally already accumulated in one form or another by the states and territories. Additionally, an opportunity to appeal the overpayment determination must have been afforded the provider by the Medicaid State Agency. Lastly, Medicaid State Agencies must notify CMS when to terminate the withholding.

B. JUSTIFICATION

1. Need and legal basis

Section 2104 of the Omnibus Reconciliation Act of 1981 (Pub.L. 97-35) provides CMS with the authority to withhold Federal Medicare payments to recover Medicaid overpayments that the Medicaid State Agency has been unable to recover.

Effective June 10, 1985, regulation BPO-20-F was implemented to provide a remedy to this problem. The section of the regulation pertaining to recovery of Medicaid overpayments is codified at 42 CFR 447.31. It contains provisions giving CMS the authority to recover Medicaid overpayments by offsetting payments due to a provider under Medicare.

2. Information Users

When the CMS RO receives an overpayment case from the State Agency, the case file is examined to determine whether the conditions for withholding have been met. If the RO determines the case is appropriate for withholding Medicare payments, the RO will contact the institution's intermediary or individual's carrier to determine the amount of Medicare payments to which the entity would otherwise be entitled. The RO will then give notice to the intermediary/carrier to withhold the entity's Medicare payment.

3. Improved Information Technology

The occurrence of uncollectible overpayment cases is infrequent, and the information provided in each case will be different; therefore, this collection does not lend itself to computerization.

4. Duplication Similar Information

This collection does not duplicate any other collection.

5. Small Business

The respondents to this collection are Medicaid State Agencies, thus there is no effect on small businesses.

6. Less Frequent Collection

The information is reported on an as-needed basis. If the information was collected less frequently, CMS would not be able to implement this withholding procedure to recoup the Medicaid overpayment and the need for litigation in these overpayment situations would increase. Litigation is a more costly collection method.

7. Special Circumstances

This collection is consistent with guidelines in 5 CFR 1320.6.

8. Federal Register Notice / Outside Consultation

CMS published a 60-day Federal Register notice on February 11, 2011 (76 FR 7863). No comments were received.

9. Payment or Gift to Respondents

There are no provisions for any payment or gift to respondents.

10. Confidentiality

While there are no assurances of confidentiality, the information is strictly for program use.

11. Sensitive Questions

There are no questions of a sensitive nature associated with this collection

12. Burden Estimate (Hours and Wages)

The recovery procedure is part of 42 CFR 447.31(b), (c), (d) and contains the following reporting requirements that are subject to the Paperwork Reduction Act of 1995:

42 CFR 447.31(b)

This section requires that Medicaid State Agencies give providers specific 30-day notice, by certified mail, before requesting CMS to offset Medicare payments.

42 CFR 447.31(c)

This section describes documentation that Medicaid State Agencies must submit to CMS when requesting an offset to recover Medicaid overpayments.

42 CFR 447.31(d)

This section requires Medicaid State Agencies that have requested withholding to notify CMS to terminate withholding if the following occurs:

1. The Medicaid provider makes an agreement satisfactory to the Medicaid State Agency to repay the overpayment;
2. The Medicaid overpayment is completely recovered; or
3. The Medicaid State Agency determines that there is no overpayment, based on newly acquired evidence or subsequent audit.

Burden is calculated as follows:

There are 54 Medicaid State Agencies providing Medicaid services. Based on past experience, we estimate that States and territories will utilize the provision at 42 CFR 447.31(b), (c), and (d) 27 times a year.

Agency experience with similar overpayment cases indicates that the time needed by a Medicaid State Agency to notify providers of offset, submit documentation to CMS and to notify CMS when to terminate withholding is 3 person hours (2 hours for analyst and 1 hour for clerical) per Medicaid overpayment case.

Burden is calculated as follows:

|            |   |
|------------|---|
| 54         | Respondents (Medicaid State Agencies and territories) |
| 27         | Total responses annually                              |
| <u>X 3</u> | Hours per response                                    |
| 81         | Total Hours   |

\*Some State Agencies will not have occasion to use this provision. However, for burden calculation purposes the average number of responses for each State Agency is assumed to be .5 cases per State. Thus, .5 per State multiplied by 54 State Agencies equals 27 cases multiplied by 3 hours per case.

Costs to Medicaid State Agencies are computed at the standard hourly rate of \$15 per hour for clerical and \$35 per hour for analyst. Thus, the annual cost is \$2,295 (\$70 per analyst response + \$15 per clerical response x 27 responses per year).

13. Capital Costs

There are no capital or annual operating costs associated with this collection.

14. Cost to Federal Government - \$3,915

The estimated time needed by the RO to perform their review function is 4 persons hours (3 hours for analyst and 1 hour for clerical) per overpayment case. The intermediary/carrier will also need 1 analyst hour to facilitate the withholding. Therefore, assuming the analysts' rate is \$40 per hour and the clerical's rate is \$25 per hour, the Federal reporting cost per overpayment case is \$145. The estimated cost to the Federal government is \$3,915 (27 cases @ \$145).

15. Program/Burden Changes

There are no program/burden changes

16. Publication and Tabulation Dates

There are no publication or tabulation dates.

17. Expiration Date Publication

These ICRs do not lend themselves to an expiration date.

18. Certification Statement

There are no exceptions to the certification statement.

C. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

These ICRs do not employ statistical methods.