

**661—402.202(97A) Errors in payments.** If an error in payments already made to a member or beneficiary is discovered, arrangements shall be made to correct the error, either through recovery of overpayments from the member or beneficiary or through additional compensation paid to the member or beneficiary to adjust for underpayments. Schedules referenced in this rule shall commence only after presentation to and approval by the board of trustees.

**402.202(1)** As soon as practical after being discovered, underpayments shall be corrected through a lump-sum payment to the member or beneficiary in an amount equal to the total amount of underpayments to date and an amount of interest such that the total lump-sum payment is actuarially equivalent to the total amount of underpayments. The member or beneficiary may request a method of repayment other than a lump-sum payment, in which case a repayment schedule may be mutually agreed upon between the board and the member or beneficiary.

**402.202(2)** Overpayments other than those which resulted from fraudulent acts on the part of the member or beneficiary receiving the payments shall be recovered from the member or beneficiary. The preferred method of recovery, if the member or beneficiary is continuing to receive payments from the system, shall be withholding monthly an amount equivalent to the monthly average of the amount of overpayments during the period in which the overpayments were made, until total repayments equal a sum actuarially equivalent to the total amount of overpayment. If the member or beneficiary is not receiving payments from the system, the board may seek repayment in a lump sum including the amount of overpayments and interest in an amount such that the total repayment is actuarially equivalent to the total amount of overpayments, although the member or beneficiary may request a repayment schedule be established and the board may agree to do so.

**402.202(3)** An overpayment which resulted in whole or in part from a fraudulent act or acts on the part of the member or beneficiary receiving the payments shall be repaid to the system in an amount which is actuarially equivalent to the amount of the overpayment plus a reasonable assessment of the administrative costs to the system and the department to recover the overpayment. The preferred method of repayment is a lump-sum payment collected as soon as practical after the overpayment and the fraudulent act are discovered, although the board shall accept a repayment schedule established by a court which orders restitution in relation to a conviction stemming from the fraudulent act or acts. The board may agree to an alternative payment schedule at the request of the member or beneficiary if there is no applicable order of restitution.

The board may find, on the basis of clear and convincing evidence, that an overpayment resulted from a fraudulent act or acts on the part of a member or beneficiary. A conviction based upon a fraudulent act or acts committed in relation to the receipt of benefits from the system shall be prima facie evidence of fraud for purposes of this subrule.