

**§ 405.373**

**42 CFR Ch. IV (10–1–03 Edition)**

§ 405.375 apply. If by the end of the period specified in the notice no statement has been received, the suspension goes into effect automatically, and the procedures set forth in paragraph (c) of this section are followed.

(2) *If prior notice is not required.* If, under the provisions of paragraphs (a)(2) through (a)(4) of this section, a suspension of payment is put into effect without prior notice to the provider or supplier, the intermediary or carrier must, once the suspension is in effect, give the provider or supplier an opportunity to submit a rebuttal statement as to why the suspension should be removed.

(c) *Subsequent action.* If a suspension of payment is put into effect, the intermediary, carrier, or CMS takes timely action after the suspension to obtain the additional evidence it may need to make a determination as to whether an overpayment exists or the payments may be made. The intermediary, carrier, or CMS makes all reasonable efforts to expedite the determination. As soon as the determination is made, the intermediary or carrier informs the provider or supplier and, if appropriate, the suspension is rescinded or any existing recoupment or offset is adjusted to take into account the determination.

(d) *Duration of suspension of payment—(1) General rule.* Except as provided in paragraphs (d)(2) and (d)(3) of this section, a suspension of payment is limited to 180 days, starting with the date the suspension begins.

(2) *180-day extension.* (i) An intermediary, a carrier, or, in cases of fraud and misrepresentation, OIG or a law enforcement agency, may request a one-time only extension of the suspension period for up to 180 additional days if it is unable to complete its examination of the information or investigation, as appropriate, within the 180-day time limit. The request must be submitted in writing to CMS.

(ii) Upon receipt of a request for an extension, CMS notifies the provider or supplier of the requested extension. CMS then either extends the suspension of payment for up to an additional 180 days or determines that the suspended payments are to be released to the provider or supplier.

(3) *Exceptions to the time limits.* (i) The time limits specified in paragraphs (d)(1) and (d)(2) of this section do not apply if the case has been referred to, and is being considered by, the OIG for administrative action (for example, civil money penalties).

(ii) CMS may grant an extension in addition to the extension provided under paragraph (d)(2) of this section if the Department of Justice submits a written request to CMS that the suspension of payment be continued based on the ongoing investigation and anticipated filing of criminal and/or civil actions. At a minimum, the request must include the following:

(A) Identification of the entity under suspension.

(B) The amount of time needed for continued suspension in order to implement the criminal and/or civil proceedings.

(C) A statement of why and/or how criminal and/or civil actions may be affected if the requested extension is not granted.

(e) *Disposition of suspended payments.* Payments suspended under the authority of § 405.371(b) are first applied to reduce or eliminate any overpayments determined by the intermediary, carrier, or CMS, including any interest assessed under the provisions of § 405.378, and then applied to reduce any other obligation to CMS or to HHS. In the absence of a legal requirement that the excess be paid to another entity, the excess is released to the provider or supplier.

[61 FR 63746, Dec. 2, 1996]

**§ 405.373 Proceeding for offset or recoupment.**

(a) *General rule.* Except as specified in paragraph (b) of this section, if the intermediary, carrier, or CMS has determined that an offset or recoupment of payments under § 405.371(a)(2) should be put into effect, the intermediary or carrier must—

(1) Notify the provider or supplier of its intention to offset or recoup payment, in whole or in part, and the reasons for making the offset or recoupment; and

(2) Give the provider or supplier an opportunity for rebuttal in accordance with § 405.374.

(b) Paragraph (a) of this section does not apply if the intermediary, after furnishing a provider a written notice of the amount of program reimbursement in accordance with § 405.1803, recoups payment under paragraph (c) of § 405.1803. (For provider rights in this circumstance, see §§ 405.1809, 405.1811, 405.1815, 405.1835, and 405.1843.)

(c) *Actions following receipt of rebuttal statement.* If a provider or supplier submits, in accordance with § 405.374, a statement as to why an offset or recoupment should not be put into effect on the date specified in the notice, the intermediary or carrier must comply with the time limits and notification requirements of § 405.375.

(d) *No rebuttal statement received.* If, by the end of the time period specified in the notice, no statement has been received, the recoupment or offset goes into effect automatically.

(e) *Duration of recoupment or offset.* If a recoupment or offset is put into effect, it remains in effect until the earliest of the following:

(1) The overpayment and any assessed interest are liquidated.

(2) The intermediary or carrier obtains a satisfactory agreement from the provider or supplier for liquidation of the overpayment.

(3) The intermediary or carrier, on the basis of subsequently acquired evidence or otherwise, determines that there is no overpayment.

[61 FR 63747, Dec. 2, 1996]

**§ 405.374 Opportunity for rebuttal.**

(a) *General rule.* If prior notice of the suspension of payment, offset, or recoupment is given under § 405.372 or § 405.373, the intermediary or carrier must give the provider or supplier an opportunity, before the suspension, offset, or recoupment takes effect, to submit any statement (to include any pertinent information) as to why it should not be put into effect on the date specified in the notice. Except as provided in paragraph (b) of this section, the provider or supplier has at least 15 days following the date of notification to submit the statement.

(b) *Exception.* The intermediary or carrier may for cause—

(1) Impose a shorter period for rebuttal; or

(2) Extend the time within which the statement must be submitted.

[61 FR 63747, Dec. 2, 1996]

**§ 405.375 Time limits for, and notification of, administrative determination after receipt of rebuttal statement.**

(a) *Submission and disposition of evidence.* If the provider or supplier submits a statement, under § 405.374, as to why a suspension of payment, offset, or recoupment should not be put into effect, or, under § 405.372(b)(2), why a suspension should be terminated, CMS, the intermediary, or carrier must within 15 days, from the date the statement is received, consider the statement (including any pertinent evidence submitted), together with any other material bearing upon the case, and determine whether the facts justify the suspension, offset, or recoupment or, if already initiated, justify the termination of the suspension, offset, or recoupment. Suspension, offset, or recoupment is not delayed beyond the date stated in the notice in order to review the statement.

(b) *Notification of determination.* The intermediary or carrier must send written notice of the determination made under paragraph (a) of this section to the provider or supplier. The notice must—

(1) In the case of offset or recoupment, contain rationale for the determination; and

(2) In the case of suspension of payment, contain specific findings on the conditions upon which the suspension is initiated, continued, or removed and an explanatory statement of the determination.

(c) *Determination is not appealable.* A determination made under paragraph (a) of this section is not an initial determination and is not appealable.

[61 FR 63747, Dec. 2, 1996]

**§ 405.376 Suspension and termination of collection action and compromise of claims for overpayment.**

(a) *Basis and purpose.* This section contains requirements and procedures for the compromise of, or suspension or termination of collection action on, claims for overpayments against a provider or a supplier under the Medicare