

## § 405.355

### § 405.355 Waiver of adjustment or recovery.

(a) The provisions of § 405.352 may not be applied and there may be no adjustment or recovery of an incorrect payment (i.e., a payment made under § 405.350(a) or § 405.350(b)) in any case where such incorrect payment has been made with respect to an individual who is without fault, or where such adjustment or recovery would be made by decreasing payments to which another person who is without fault is entitled as provided in section 1870(b) of the Act where such adjustment or recovery would defeat the purpose of title II or title XVIII of the Act or would be against equity and good conscience. (See 20 CFR 404.509 and 404.512.)

(b) Adjustment or recovery of an incorrect payment (or only such part of an incorrect payment as may be determined to be inconsistent with the purposes of Title XVIII of the Act) against an individual who is without fault shall be deemed to be against equity and good conscience if the determination that such payment was incorrect was made subsequent to the third year following the year in which notice of such payment was sent to such individual. (See §§ 405.330–405.332 for conditions under which payment may be made for items or services furnished after October 30, 1972 which are noncovered by reasons of § 405.310 (g) and (k).)

[41 FR 1493, Jan. 8, 1976. Redesignated at 42 FR 52826, Sept. 30, 1977]

### § 405.356 Principles applied in waiver of adjustment or recovery.

The principles applied in determining waiver of adjustment or recovery (§ 405.355) are the applicable principles of § 405.358 and 20 CFR 404.507–404.509, 404.510a, and 404.512.

[61 FR 49271, Sept. 19, 1996]

### § 405.357 Notice of right to waiver consideration.

Whenever an initial determination is made that more than the correct amount of payment has been made, notice of the provisions of section 1870(c) of the Act regarding waiver of adjustment or recovery shall be sent to the overpaid individual and to any other individual against whom adjustment or

## 42 CFR Ch. IV (10–1–04 Edition)

recovery of the overpayment is to be effected (see § 405.358).

[61 FR 49271, Sept. 19, 1996]

### § 405.358 When waiver of adjustment or recovery may be applied.

Section 1870(c) of the Act provides that there shall be no adjustment or recovery in any case where an incorrect payment under title XVIII (hospital and supplementary medical insurance benefits) has been made (including a payment under section 1814(e) of the Act with respect to an individual:

- (a) Who is without fault, and
- (b) Adjustment or recovery would either:
  - (1) Defeat the purposes of title II or title XVIII of the Act, or
  - (2) Be against equity and good conscience.

[61 FR 49271, Sept. 19, 1996]

### § 405.359 Liability of certifying or disbursing officer.

No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any provider of services or other person:

- (a) Where the adjustment or recovery of such amount is waived (see § 405.355), or
- (b) Where adjustment (see § 405.352) or recovery is not completed prior to the death of all persons against whose benefits such adjustment is authorized.

## SUSPENSION AND RECOUPMENT OF PAYMENT TO PROVIDERS AND SUPPLIERS AND COLLECTION AND COMPROMISE OF OVERPAYMENTS

### § 405.370 Definitions.

For purposes of this subpart, the following definitions apply:

*Offset.* The recovery by Medicare of a non-Medicare debt by reducing present or future Medicare payments and applying the amount withheld to the indebtedness. (Examples are Public Health Service debts or Medicaid debts recovered by CMS).

*Recoupment.* The recovery by Medicare of any outstanding Medicare debt by reducing present or future Medicare payments and applying the amount withheld to the indebtedness.

*Suspension of payment.* The withholding of payment by an intermediary

or carrier from a provider or supplier of an approved Medicare payment amount before a determination of the amount of the overpayment exists.

[61 FR 63745, Dec. 2, 1996]

**§ 405.371 Suspension, offset, and recoupment of Medicare payments to providers and suppliers of services.**

(a) *General.* Medicare payments to providers and suppliers, as authorized under this subchapter (excluding payments to beneficiaries), may be—

(1) Suspended, in whole or in part, by CMS, an intermediary, or a carrier if CMS, the intermediary, or the carrier possesses reliable information that an overpayment or fraud or willful misrepresentation exists or that the payments to be made may not be correct, although additional evidence may be needed for a determination; or

(2) Offset or recouped, in whole or in part, by an intermediary or a carrier if the intermediary, carrier, or CMS has determined that the provider or supplier to whom payments are to be made has been overpaid.

(b) *Steps necessary for suspension of payment, offset, and recoupment.* Except as provided in paragraph (c) of this section, CMS, the intermediary, or carrier suspends payments only after it has complied with the procedural requirements set forth at § 405.372. The intermediary or carrier offsets or recoups payments only after it has complied with the procedural requirements set forth at § 405.373.

(c) *Suspension of payment in the case of unfiled cost reports.* If a provider has failed to timely file an acceptable cost report, payment to the provider is immediately suspended in whole or in part until a cost report is filed and determined by the intermediary to be acceptable. In the case of an unfiled cost report, the provisions of § 405.372 do not apply. (See § 405.372(a)(2) concerning failure to furnish other information.)

[61 FR 63746, Dec. 2, 1996, as amended at 67 FR 66813, Nov. 1, 2002]

**§ 405.372 Proceeding for suspension of payment.**

(a) *Notice of intention to suspend—(1) General rule.* Except as provided in paragraphs (a)(2) through (a)(4) of this

section, if the intermediary, carrier, or CMS has determined that a suspension of payments under § 405.371(a)(1) should be put into effect, the intermediary or carrier must notify the provider or supplier of the intention to suspend payments, in whole or in part, and the reasons for making the suspension.

(2) *Failure to furnish information.* The notice requirement of paragraph (a)(1) of this section does not apply if the intermediary or carrier suspends payments to a provider or supplier in accordance with section 1815(a) or section 1833(e) of the Act, respectively, because the provider or supplier has failed to submit information requested by the intermediary or carrier that is needed to determine the amounts due the provider or supplier. (See § 405.371(c) concerning failure to file timely acceptable cost reports.)

(3) *Harm to Trust Funds.* A suspension of payment may be imposed without prior notice if CMS, the intermediary, or carrier determines that the Medicare Trust Funds would be harmed by giving prior notice. CMS may base its determination on an intermediary's or carrier's belief that giving prior notice would hinder the possibility of recovering the money.

(4) *Fraud or misrepresentation.* If the intended suspension of payment involves suspected fraud or misrepresentation, CMS determines whether to impose the suspension and if prior notice is appropriate. CMS directs the intermediary or carrier as to the timing and content of the notification to the provider or supplier. CMS is the real party in interest and is responsible for the decision. CMS may base its decision on information from the intermediary, carrier, law enforcement agencies, or other sources. CMS determines whether the information is reliable.

(b) *Rebuttal—(1) If prior notice is required.* If prior notice is required under paragraph (a) of this section, the intermediary or carrier must give the provider or supplier an opportunity for rebuttal in accordance with § 405.374. If a rebuttal statement is received within the specified time period, the suspension of payment goes into effect on the date stated in the notice, and the procedures and provisions set forth in