

(ii) Evidence or witnesses necessary to prove the claim are unavailable.

**§ 401.623 Joint and several liability.**

(a) *Collection action.* CMS will liquidate claims as quickly as possible. In cases of joint and several liability among two or more debtors, CMS will not allocate the burden of claims payment among the debtors. CMS will proceed with collection action against one debtor even if other liable debtors have not paid their proportionate shares.

(b) *Compromise.* Compromise with one debtor does not release a claim against remaining debtors. Furthermore, CMS will not consider the amount of a compromise with one debtor to be a binding precedent concerning the amounts due from other debtors who are jointly and severally liable on the claim.

**§ 401.625 Effect of CMS claims collection decisions on appeals.**

Any action taken under this subpart regarding the compromise of a claim, or suspension or termination of collection action on a claim, is not an initial determination for purposes of CMS appeal procedures.

**PART 402—CIVIL MONEY PENALTIES, ASSESSMENTS, AND EXCLUSIONS**

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AUTHORITY: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

SOURCE: 63 FR 68690, Dec. 14, 1998, unless otherwise noted.

**Subpart A—General Provisions**

**§ 402.1 Basis and scope.**

(a) *Basis.* This part is based on the sections of the Act that are specified in paragraph (c) of this section.

(b) *Scope.* This part—

(1) Provides for the imposition of civil money penalties, assessments, and exclusions against persons that violate the provisions of the Act specified in paragraph (c), (d), or (e) of this section; and

(2) Sets forth the appeal rights of persons subject to penalties, assessments, or exclusion and the procedures for reinstatement following exclusion.

(c) *Civil money penalties.* CMS or OIG may impose civil money penalties against any person or other entity specified in paragraphs (c)(1) through (c)(33) of this section under the identified section of the Act. (The authorities that also permit imposition of an assessment or exclusion are noted in the applicable paragraphs.)

(1) Sections 1833(h)(5)(D) and 1842(j)(2)—Any person that knowingly and willfully, and on a repeated basis, bills for a clinical diagnostic laboratory test, other than on an assignment-related basis. This provision includes tests performed in a physician's office but excludes tests performed in a rural