

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 § 405.375 apply. If by the end of the pe-

riod 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