

§ 405.378

42 CFR Ch. IV (10–1–09 Edition)

applied against the Medicaid overpayment made by the State agency.

[61 FR 63747, Dec. 2, 1996]

§ 405.378 Interest charges on overpayment and underpayments to providers, suppliers, and other entities.

(a) *Basis and purpose.* This section, which implements sections 1815(d) and 1833(j) of the common law and Act, and authority granted under the Federal Claims Collection Act, provides for the charging and payment of interest on overpayments and underpayments to Medicare providers, suppliers, HMOs, competitive medical plans (CMPs), and health care prepayment plans (HCPPs).

(b) *Basic rules.* (1) CMS will charge interest on overpayments, and pay interest on underpayments, to providers and suppliers of services (including physicians and other practitioners), except as specified in paragraphs (f) and (h) of this section.

(2) Interest accrues from the date of the final determination as defined in paragraph (c) of this section, and either is charged on the overpayment balance or paid on the underpayment balance for each full 30-day period that payment is delayed.

(c) *Definition of final determination.* (1) For purposes of this section, any of the following constitutes a final determination:

(i) A Notice of Amount of Program Reimbursement (NPR) is issued, as discussed in §§ 405.1803, 417.576, and 417.810, and either—

(A) A written demand for payment is made; or

(B) A written determination of an underpayment is made by the intermediary after a cost report is filed.

(ii) In cases in which an NPR is not used as a notice of determination (that is, primarily under part B), one of the following determinations is issued—

(A) A written determination that an overpayment exists and a written demand for payment;

(B) A written determination of an underpayment; or

(C) An Administrative Law Judge (ALJ) decision that reduces the amount of an overpayment below the amount that CMS has already collected.

(iii) Other examples of cases in which an NPR is not used are carrier reasonable charge determinations under subpart E of this part, interim cost settlements made for HMOs, CMPs, and HCPPs under §§ 417.574 and 417.810(e) of this chapter, and initial retroactive adjustment determinations under § 413.64(f)(2) of this chapter. In the case of interim cost settlements and initial retroactive adjustment determinations, if the debtor does not dispute the adjustment determination within the timeframe designated in the notice of the determination (generally at least 15 days), a final determination is deemed to have been made. If the provider or supplier does dispute portions of the determination, a final determination is deemed to have been made on those portions when the intermediary issues a new determination in response to the dispute.

(iv) The due date of a timely-filed cost report that indicates an amount is due CMS, and is not accompanied by payment in full. (If an additional overpayment or underpayment is determined by the carrier or intermediary, a final determination on the additional amount is made in accordance with paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii), of this section.)

(v) With respect to a cost report that is not filed on time, the day following the date the cost report was due (plus a single extension of time not to exceed 30 days if granted for good cause), until the time as a cost report is filed. (When the cost report is subsequently filed, there is an additional determination as specified in paragraphs (c)(1) (i), (ii), (iii), or (iv) of this section.)

(2) Except as required by any subsequent administrative or judicial reversal, interest accrues from the date of final determination as specified in this subsection.

(d) *Rate of interest.* (1) The interest rate on overpayments and underpayments is the higher of—

(i) The rate as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date of final determination as defined in paragraph

(c) of this section (this rate is published quarterly in the FEDERAL REGISTER by the Department under 45 CFR 30.13(a)); or

(ii) The current value of funds rate (this rate is published annually in the FEDERAL REGISTER by the Secretary of the Treasury, subject to quarterly revisions).

(2) [Reserved]

(e) *Accrual of interest.* (1) If a cost report is filed that does not indicate an amount is due CMS but the intermediary makes a final determination that an overpayment exists, or if a carrier makes a final determination that an overpayment to a physician or supplier exists, interest will accrue beginning with the date of such final determination. Interest will continue to accrue during periods of administrative and judicial appeal and until final disposition of the claim.

(2)(i) If a cost report is filed and indicates that an amount is due CMS, interest on the amount due will accrue from the due date of the cost report unless—

(A) Full payment on the amount due accompanies the cost report; or

(B) The provider and the intermediary agree in advance to liquidate the overpayment through a reduction in interim payments over the next 30-day period.

(ii) If the intermediary determines an additional overpayment during the cost settlement process, interest will accrue from the date of each determination.

(iii) The interest rate on each of the final determinations of an overpayment will be the rate of interest in effect on the date the determination is made.

(3) In the case of a cost report that is not filed on time, interest also will accrue on a determined overpayment from the day following the due date of the report (plus a single extension of time not to exceed 30 days if granted for good cause, as specified in §413.24(f)) of this chapter, to the time the cost report is filed.

(4) If an intermediary or a carrier makes a final determination that an underpayment exists, interest to the provider or the supplier will accrue

from the date of notification of the underpayment.

(f) *Waiver of interest charges.* (1) When an intermediary or a carrier makes a final determination that an overpayment or underpayment exists, as specified in paragraphs (e)(1), (e)(2)(ii), and (e)(4)—

(i) Interest charges will be waived if the overpayment or underpayment is completely liquidated within 30 days from the date of the final determination.

(ii) CMS may waive interest charges if it determines that the administrative cost of collecting them exceeds the interest charges.

(2) Interest will not be waived for that period of time during which the cost report was due but remained unfiled for more than 30 days, as specified in paragraph (e)(3) of this section.

(g) *Rules applicable to partial payments.* If an overpayment is repaid in installments or recouped by withholding from several payments due the provider or supplier of services—

(1) Each payment or recoupment will be applied first to accrued interest and then to the principal; and

(2) After each payment or recoupment, interest will accrue on the remaining unpaid balance.

(h) *Exceptions to applicability.* (1) The provisions of this section do not apply to the time period for which interest is payable under §413.64(j) of this chapter because the provider seeks judicial review of a decision of the Provider Reimbursement Review Board, or a subsequent reversal, affirmance, or modification of that decision by the Administrator. Prior to that time, until the provider seeks judicial review, interest accrues at the rate specified in this section on outstanding unpaid balances resulting from final determinations as defined in paragraph (c) of this section.

(2) If an overpayment or an underpayment determination is reversed administratively or judicially, and the reversal is no longer subject to appeal, appropriate adjustments will be made with respect to the overpayment or underpayment and the amount of interest charged.

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(i) *Nonallowable cost.* As specified in §§ 412.113 and 413.153 of this chapter, interest accrued on overpayments and interest on funds borrowed specifically to repay overpayments are not considered allowable costs, up to the amount of the overpayment, unless the provider had made a prior commitment to borrow funds for other purposes (for example, capital improvements).

(See § 413.153(a)(2) of this chapter for exceptions based on administrative or judicial reversal.)

[47 FR 54814, Dec. 6, 1982, as amended at 49 FR 36102, Sept. 14, 1984; 49 FR 44472, Nov. 7, 1984; 51 FR 34792, Sept. 30, 1986; 56 FR 31336, July 10, 1991. Redesignated at 61 FR 63745, Dec. 2, 1996; 69 FR 45607, July 30, 2004]

EFFECTIVE DATE NOTE: At 74 FR 47468, Sept. 16, 2009, § 405.378 was amended by revising paragraphs (a), (b)(2), (c)(1)(ii), and (2), redesignating paragraphs (h) and (i) as (i) and (h), and adding paragraph (j), effective November 16, 2009. For the convenience of the user, the added and revised text is set forth as follows:

§ 405.378 Interest charges on overpayment and underpayments to providers, suppliers, and other entities.

(a) *Basis and purpose.* This section, which implements sections 1815(d), 1833(j) and 1893(f)(2)(B) of the Act and common law, and authority granted under the Federal Claims Collection Act, provides for the charging and payment of interest on overpayments and underpayments to Medicare providers, suppliers, HMOs, competitive medical plans (CMPs), and health care prepayment plans (HCPPs).

(b) * * *

(2) Except as provided in paragraph (j) of this section, interest accrues from the date of the final determination as defined in paragraph (c) of this section, and either is charged on the overpayment balance or paid on the underpayment balance for each full 30-day period that payment is delayed.

(c) * * * (1) * * * * *

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(ii) In cases in which an NPR is not used as a notice of determination (that is, primarily under part B), one of the following constitutes a final determination –

(A) A written determination that an overpayment exists and a written demand for payment; or

(B) A written determination of an underpayment.

* * * * *

(2) Except as required by any subsequent administrative or judicial reversal and specifically as provided in paragraphs (i) and (j) of this section, interest accrues from the date of final determination as specified in this section.

* * * * *

(j) *Special rule for provider or supplier overpayments subject to § 405.379.* If an overpayment determination subject to the limitation on recoupment under § 405.379 is reversed in whole or in part by an Administrative Law Judge (ALJ) or at subsequent administrative or judicial levels of appeal and if funds have been recouped and retained by the Medicare contractor, interest will be paid to the provider or supplier as follows:

(1) The applicable rate of interest is that provided in paragraph (d) of this section.

(2) The interest rate in effect on the date the ALJ, the Medicare Appeals Council, the Federal district court or subsequent appellate court issues a decision reversing the overpayment determination in whole or in part is the rate used to calculate the interest due the provider or supplier.

(3) Interest will be calculated as follows:

(i) Interest will be paid on the principal amount recouped only.

(ii) Interest will be calculated on a simple rather than a compound basis.

(iii) Interest will be calculated in full 30-day periods and will not be payable on amounts recouped for any periods of less than 30 days in which the Medicare contractor had possession of the funds.

(iv) In calculating the period in which the amount was recouped, days in which the ALJ's adjudication period to conduct a hearing are tolled under 42 CFR 405.1014 shall not be counted.

(v) In calculating the period in which the amount was recouped, days in which the Medicare Appeals Council's adjudication period to conduct a review are tolled under 42 CFR 405.1106 shall not be counted.

(4) If the decision by the ALJ, Medicare Appeals Council, Federal district court or a subsequent Federal reviewing court, reverses the overpayment determination, as modified by prior levels of administrative or judicial review, in part, the Medicare contractor in effectuating the decision may allocate recouped monies to that part of the overpayment determination affirmed by the decision. Interest will be paid to the provider or supplier on recouped amounts that remain after this allocation in accordance with this paragraph (j) of this section.