

## Centers for Medicare & Medicaid Services, HHS

## § 405.357

which notice was sent to such individual that such amount had been paid.

[41 FR 1492, Jan. 8, 1976. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 61 FR 49271, Sept. 19, 1996; 78 FR 74810, Dec. 10, 2013]

### **§ 405.351 Incorrect payments for which the individual is not liable.**

Where an incorrect payment has been made to a provider of services or other person, the individual is liable only to the extent that he has benefited from such payment.

### **§ 405.352 Adjustment of title XVIII incorrect payments.**

Where an individual is liable for an incorrect payment (i.e., a payment made under § 405.350(a) or § 405.350(b)) adjustment is made (to the extent of such liability) by:

(a) Decreasing any payment under title II of the Act, or under the Railroad Retirement Act of 1937, to which the individual is entitled; or

(b) In the event of the individual's death before adjustment is completed, by decreasing any payment under title II of the Act, or under the Railroad Retirement Act of 1937 payable to the estate of the individual or to any other person, that are based on the individual's earnings record (or compensation).

[31 FR 13534, Oct. 20, 1966, as amended at 41 FR 1492, Jan. 8, 1976. Redesignated at 42 FR 52826, Sept. 30, 1977]

### **§ 405.353 Certification of amount that will be adjusted against individual title II or railroad retirement benefits.**

As soon as practicable after any adjustment is determined to be necessary, the Secretary, for purposes of this subpart, shall certify the amount of the overpayment or payment (see § 405.350) with respect to which the adjustment is to be made. If the adjustment is to be made by decreasing subsequent payments under the Railroad Retirement Act of 1937, such certification shall be made to the Railroad Retirement Board.

### **§ 405.354 Procedures for adjustment or recovery—title II beneficiary.**

The procedures applied in making an adjustment or recovery in the case of a

title II beneficiary are the applicable procedures of 20 CFR 404.502.

[31 FR 13534, Oct. 20, 1966, as amended at 32 FR 18027, Dec. 16, 1967. Redesignated at 42 FR 52826, Sept. 30, 1977]

### **§ 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 will be deemed to be against equity and good conscience if the incorrect payment was made for items and services that are not payable under section 1862(a)(1) or (a)(9) of the Act and if the determination that such payment was incorrect was made subsequent to the fifth year following the year in which notice of such payment was sent to such individual.

[41 FR 1493, Jan. 8, 1976. Redesignated at 42 FR 52826, Sept. 30, 1977; 78 FR 74810, Dec. 10, 2013]

### **§ 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