

§ 405.379

42 CFR Ch. IV (10–1–23 Edition)

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.

[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; 74 FR 47468, Sept. 16, 2009]

§ 405.379 Limitation on recoupment of provider and supplier overpayments.

(a) *Basis and purpose.* This section implements section 1893(f)(2)(A) of the Act which limits recoupment of Medicare overpayments if a provider of services or supplier seeks a reconsideration until a decision is rendered by a Qualified Independent Contractor (QIC). This section also limits recoupment of Medicare overpayments when a provider or supplier seeks a redetermination until a redetermination decision is rendered.

(b) *Overpayments subject to limitation.*

(1) This section applies to overpayments that meet the following criteria:

(i) Is one of the following types of overpayments:

(A) Post-pay denial of claims for benefits under Medicare Part A which is determined and for which a written demand for payment has been made on or after November 24, 2003; or

(B) Post-pay denial of claims for benefits under Medicare Part B which is determined and for which a written demand for payment has been made on or after October 29, 2003; or

(C) Medicare Secondary Payer (MSP) recovery where the provider or supplier received a duplicate primary payment and for which a written demand for

payment was issued on or after October 10, 2003; or

(D) Medicare Secondary Payer (MSP) recovery based on the provider's or supplier's failure to file a proper claim with the third party payer plan, program, or insurer for payment and, if Part A, demanded on or after November 24, 2003, or, if Part B, demanded on or after October 29, 2003; and

(ii) The provider or supplier can appeal the overpayment as a revised initial determination under the Medicare claims appeal process at 42 CFR parts 401 and 405 or as an initial determination for provider/supplier MSP duplicate primary payment recoveries.

(2) This section does not apply to all other overpayments including, but not limited to, the following:

(i) All Medicare Secondary Payer recoveries except those expressly identified in paragraphs (b)(1)(i)(C) and (D) of this section;

(ii) Beneficiary overpayments; and

(iii) Overpayments that arise from a cost report determination and are appealed under the provider reimbursement process of 42 CFR part 405 Subpart R—Provider Reimbursement Determinations and Appeals.

(c) *Rules of construction.* (1) For purposes of this section, what constitutes a valid and timely request for a redetermination is to be determined in accordance with § 405.940 through § 405.958.

(2) For purposes of this section, what constitutes a valid and timely request for a reconsideration is to be determined in accordance with § 405.960 through § 405.978.

(d) *General rules.* (1) Medicare contractors can begin recoupment no earlier than 41 days from the date of the initial overpayment demand but shall cease recoupment of the overpayment in question, upon receipt of a timely and valid request for a redetermination of an overpayment. If the recoupment has not yet gone into effect, the contractor shall not initiate recoupment.

(2) If the redetermination decision is an affirmation in whole or in part of the overpayment determination, recoupment may be initiated or resumed in accordance with paragraph (e) of this section.

(3) Upon receipt of a timely and valid request for a reconsideration of an

overpayment, the Medicare contractor shall cease recoupment of the overpayment in question. If the recoupment has not yet gone into effect, the contractor must not initiate recoupment.

(4) The contractor may initiate or resume recoupment following action by the QIC in accordance with paragraph (f) of this section.

(5) If the provider or supplier subsequently appeals the overpayment to the ALJ, the Medicare Appeals Council, or Federal court, recoupment remains in effect as provided in § 405.373(e).

(6) If an overpayment determination is appealed and recoupment stopped, the contractor may continue to recoup other overpayments owed by the provider or supplier in accordance with this section.

(7) Amounts recouped prior to a reconsideration decision may be retained by the Medicare contractor in accordance with paragraph (g) of this section.

(8) If either the redetermination or reconsideration decision is a full reversal of the overpayment determination or if the overpayment determination is reversed in whole or in part at subsequent levels of administrative or judicial appeal, adjustments shall be made with respect to the overpayment and the amount of interest charged.

(9) Interest accrues and is payable in accordance with the provisions of § 405.378.

(e) *Initiating or resuming recoupment after redetermination decision.* (1) Recoupment that has been deferred or stopped may be initiated or resumed if the debt (remaining unpaid principal balance and interest) has not been satisfied in full and the provider or supplier has been afforded the opportunity for rebuttal in accordance with the requirements of § 405.373 through § 405.375. Recoupment may be resumed under any of the following circumstances:

(i) Immediately upon receipt by the Medicare contractor of the provider's or supplier's request for a withdrawal of a request for a redetermination in accordance with § 405.952(a).

(ii) On the 60th calendar day after the date of the notice of redetermination issued under § 405.956 if the redetermination decision is an affirmation in

whole of the overpayment determination in question.

(iii) On the 60th calendar day after the date of the written notice to the provider or supplier of the revised overpayment amount, if the redetermination decision is an affirmation in part, which has the effect of reducing the amount of the overpayment.

(2) Notwithstanding paragraphs (e)(i), (ii) and (iii) of this section, recoupment must not be resumed, or if resumed, must cease upon receipt of a timely and valid request for a reconsideration by the QIC.

(f) *Initiating or resuming recoupment following action by the QIC on the reconsideration request.* (1) Recoupment may be initiated or resumed upon action by the QIC subject to the following limitations:

(i) The provider or supplier has been afforded the opportunity for rebuttal in accordance with the requirements of § 405.373 through § 405.375; and

(ii) The debt (remaining unpaid principal balance and interest) has not been satisfied in full; and

(iii) If the action by the QIC is the notice of the reconsideration, the reconsideration decision either affirms in whole or in part the overpayment determination, including the redetermination, in question.

(2) For purposes of this paragraph (f), the action by the QIC on the reconsideration request is the earliest to occur of the following:

(i) The QIC mails or otherwise transmits written notice of the dismissal of the reconsideration request in its entirety in accordance with § 405.972; or

(ii) The QIC receives a timely and valid request to withdraw the request for the reconsideration in accordance with § 405.972; or

(iii) The QIC transmits written notice of the reconsideration in accordance with § 405.976; or

(iv) The QIC notifies the parties in writing that the reconsideration is being escalated to an ALJ in accordance with § 405.970.

(g) *Disposition of funds recouped.* (1) If the Medicare contractor recouped funds before a timely and valid request for a redetermination was received, the amount recouped may be retained and applied first to accrued interest and

then to reduce or eliminate the principal balance of the overpayment subject to the following:

(i) If the redetermination results in a reversal, the amount recouped may be applied to any other debt, including interest, owed by the provider or supplier before any excess is released to the provider.

(ii) If the redetermination results in a partial reversal and the decision reduces the overpayment plus assessed interest below the amount already recouped, the excess may be applied to any other debt, including interest, owed by the provider or supplier before any excess is released to the provider or supplier.

(iii) If the redetermination results in an affirmation and the provider or supplier subsequently requests a reconsideration, the Medicare contractor may retain the amount recouped and apply the funds first to accrued interest and then to outstanding principal pending action by the QIC on the reconsideration request.

(2) If the Medicare contractor also recouped funds in accordance with paragraph (e) of this section, the amount recouped may be retained by the Medicare contractor and applied first to accrued interest and then to reduce or eliminate the outstanding principal balance pending action by the QIC on the reconsideration request.

(3) If the action by the QIC is a dismissal, receipt of a withdrawal, a notice that the reconsideration is being escalated to an ALJ, or a reconsideration which affirms in whole the overpayment determination, including the redetermination, in question, the amount recouped is applied to interest first, then to reduce the outstanding principal balance and recoupment may be resumed as provided under paragraph (f) of this section.

(4) If the action by the QIC is a reconsideration, which reverses in whole the overpayment determination, including the redetermination, in question, the amount recouped may be applied to any other debt, including interest, owed by the provider or supplier to CMS or to HHS before any excess is released to the provider or supplier.

(5) If the action by the QIC is a reconsideration which results in a partial re-

versal and the decision reduces the overpayment plus assessed interest below the amount already recouped, the excess may be applied to any other debt, including interest, owed by the provider or supplier to CMS or to HHS before any excess is released to the provider or supplier.

(h) *Relationship to extended repayment schedules.* Notwithstanding § 401.607 (c)(2)(v) of this chapter regarding an extended repayment schedule (ERS), a provider or supplier will not be deemed in default if recoupment of an overpayment is not effectuated or stopped in accordance with this section, and the following conditions are met:

(1) The provider or supplier has been granted an ERS under § 401.607(c) of this chapter.

(2) The ERS has been granted for an overpayment that is listed in paragraph (b) of this section.

(3) The provider or supplier has submitted a valid and timely request to the Medicare contractor for a redetermination of the overpayment in accordance with §§ 405.940 through 405.958 or reconsideration of the overpayment in accordance with §§ 405.960 through 405.978.

[74 FR 47469, Sept. 16, 2009]

REPAYMENT OF SCHOLARSHIPS AND LOANS

§ 405.380 Collection of past-due amounts on scholarship and loan programs.

(a) *Basis and purpose.* This section implements section 1892 of the Act, which authorizes the Secretary to deduct from Medicare payments for services amounts considered as past-due obligations under the National Health Service Corps Scholarship program, the Physician Shortage Area Scholarship program, and the Health Education Assistance Loan program.

(b) *Offsetting against Medicare payment.* (1) Medicare carriers and intermediaries offset against Medicare payments in accordance with the signed repayment agreement between the Public Health Service and individuals who have breached their scholarship or loan obligations and who—

(i) Accept Medicare assignment for services;