

not required to estimate the change in reimbursement and return the estimated overpayment until the final reconciliation of that cost report.

(d) *Reporting.* (1) A person must use an applicable claims adjustment, credit balance, self-reported refund, or other reporting process set forth by the applicable Medicare contractor to report an overpayment, except as provided in paragraph (d)(2) of this section. If the person calculates the overpayment amount using a statistical sampling methodology, the person must describe the statistically valid sampling and extrapolation methodology in the report.

(2) A person satisfies the reporting obligations of this section by making a disclosure under the OIG's Self-Disclosure Protocol or the CMS Voluntary Self-Referral Disclosure Protocol resulting in a settlement agreement using the process described in the respective protocol.

(e) *Enforcement.* Any overpayment retained by a person after the deadline for reporting and returning the overpayment specified in paragraph (b) of this section is an obligation for purposes of 31 U.S.C. 3729.

(f) *Lookback period.* An overpayment must be reported and returned in accordance with this section if a person identifies the overpayment, as defined in paragraph (a)(2) of this section, within 6 years of the date the overpayment was received.

Subpart E [Reserved]

Subpart F—Claims Collection and Compromise

SOURCE: 48 FR 39064, Aug. 29, 1983, unless otherwise noted.

§ 401.601 Basis and scope.

(a) *Basis.* This subpart implements the following statutory provisions:

(1) For CMS the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) (DCIA), 110 Stat. 1321, 1358 (April 26, 1996) (codified at 31 U.S.C. 3711), and conforms to the regulations (31 CFR parts 900–904) issued jointly by the Department of the Treasury and the Department of Justice that generally prescribe claims collection standards and

procedures under the DCIA for the Federal government.

(2) Section 1893(f)(1) of the Act regarding the use of repayment plans.

(b) *Scope.* Except as provided in paragraphs (c) through (f) of this section, the regulations in this subpart describe CMS's procedures and standards for the collection of claims in any amount, and the compromise of, or the suspension or termination of collection action on, all claims for money or property that do not exceed \$100,000 or such higher amount as the Attorney General may from time to time prescribe, exclusive of interest, arising under any functions delegated to CMS by the Secretary.

(c) *Amount of claim.* CMS refers all claims that exceed \$100,000 or such higher amount as the Attorney General may from time to time prescribe, exclusive of interest, to the Department of Justice or the General Accounting Office for the compromise of claims, or the suspension or termination of collection action.

(d) *Related regulations*—(1) *Department regulations.* DHHS regulations applicable to CMS that generally implement the FCCA for the Department are located at 45 CFR part 30. These regulations apply only to the extent CMS regulations do not address a situation.

(2) *CMS regulations.* The following regulations govern specific debt management situations encountered by CMS and supplement this subpart:

(i) Claims against Medicare beneficiaries for the recovery of overpayments are covered in 20 CFR 404.515.

(ii) Adjustments in Railroad Retirement or Social Security benefits to recover Medicare overpayments to individuals are covered in §§ 405.350–405.358 of this chapter.

(iii) Claims against providers, physicians, or other suppliers of services for overpayments under Medicare and for assessment of interest are covered in §§ 405.377 and 405.378 of this chapter, respectively.

(iv) Claims against beneficiaries for unpaid hospital insurance or supplementary medical insurance premiums under Medicare are covered in § 408.110 of this chapter.

(v) State repayment of Medicaid funds by installments is covered in § 430.48 of this chapter.

(e) *Collection and compromise under other statutes and at common law.* The regulations in this subpart do not—

(1) Preclude disposition by CMS of claims under statutes, other than the FCCA, that provide for the collection or compromise of a claim, or suspension or termination of collection action.

(2) Affect any rights that CMS may have under common law as a creditor.

(f) *Fraud.* The regulations in this subpart do not apply to claims in which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of a debtor or any other party having an interest in the claim. CMS forwards these claims to the Department of Justice for disposition under 4 CFR 105.1.

(g) *Enforced collection.* CMS refers claims to the Department of Justice for enforced collection through litigation in those cases which cannot be compromised or on which collection action cannot be suspended or terminated in accordance with this subpart or the regulations issued jointly by the Attorney General and the Comptroller General.

[48 FR 39064, Aug. 29, 1983, as amended at 52 FR 48123, Dec. 18, 1987; 57 FR 56998, Dec. 2, 1992; 61 FR 49271, Sept. 19, 1996; 61 FR 63748, Dec. 2, 1996; 73 FR 36447, June 27, 2008]

§ 401.603 Definitions.

For purposes of this subpart—

Claim means any debt owed to CMS.

Debtor means any individual, partnership, corporation, estate, trust or other legal entity against which CMS has a claim.

Extended repayment schedule means installment payments to pay back a debt.

[48 FR 39064, Aug. 29, 1983, as amended at 73 FR 36447, June 27, 2008]

§ 401.605 Omissions not a defense.

The failure of CMS to comply with the regulations in this subpart, or with the related regulations listed in § 401.601(d), is not available as a defense to a debtor against whom CMS has a claim for money or property.

§ 401.607 Claims collection.

(a) *General policy.* CMS recovers amounts of claims due from debtors, including interest where appropriate, by—

(1) Direct collections in lump sums or in installments; or

(2) Offsets against monies owed to the debtor by the Federal government where possible.

(b) *Collection in lump sums.* Whenever possible, CMS attempts to collect claims in full in one lump sum. However, if CMS determines that a debtor is unable to pay the claim in one lump sum, CMS may instead enter into an agreement to accept regular installment payments.

(c) *Collection in installments.* Generally, CMS requires that all claims to be satisfied by installment payments must be liquidated in three years or less. If unusual circumstances exist, such as the possibility of debtor insolvency, an installment agreement that extends beyond three years may be approved.

(1) *Debtor request.* If a debtor desires to repay a claim in installments, the debtor must submit—

(i) A request to CMS; and

(ii) Any information required by CMS to make a decision regarding the request.

(2) *Extended repayment schedule.* (i) For purposes of this paragraph (c)(2), the following definitions apply:

Extreme hardship exists when a provider or supplier qualifies as being in “hardship” as defined in this paragraph and the provider’s or supplier’s request for an extended repayment schedule (ERS) is approved under paragraph (c)(3) of this section.

Hardship exists when the total amount of all outstanding outstanding overpayments (principal and interest and including overpayments reported in accordance with §§ 401.301 through 401.305) not included in an approved, existing repayment schedule is 10 percent or greater than the total Medicare payments made for the cost reporting period covered by the most recently submitted cost report for a provider filing a cost report, or for the previous calendar year for a supplier or non cost-report provider.