

in paragraph (b) of this section) nor CMS's review (described in paragraph (c) of this section) constitute an initial determination for purposes of the Medicare appeals processes under part 405, subpart G or subpart H, or parts 417, 473, or 498 of this chapter.

(b) *Request to FDA.* A sponsor that does not agree with the FDA's categorization of its device may submit a written request to the FDA at any time requesting re-evaluation of its original categorization decision, together with any information and rationale that it believes support recategorization. The FDA notifies both CMS and the sponsor of its decision.

(c) *Request to CMS.* If the FDA does not agree to recategorize the device, the sponsor may seek review from CMS. A device sponsor must submit its request in writing to CMS. CMS obtains copies of relevant portions of the application, the original categorization decision, and supplementary materials. CMS reviews all material submitted by the sponsor and the FDA's recommendation. CMS reviews only information in the FDA record to determine whether to change the categorization of the device. CMS issues a written decision and notifies the sponsor of the IDE and the FDA.

[60 FR 48423, Sept. 19, 1995, as amended at 78 FR 74810, Dec. 10, 2013]

#### **§ 405.215 Confidential commercial and trade secret information.**

To the extent that CMS relies on confidential commercial or trade secret information in any judicial proceeding, CMS will maintain confidentiality of the information in accordance with Federal law.

### **Subpart C—Suspension of Payment, Recovery of Overpayments, and Repayment of Scholarships and Loans**

**AUTHORITY:** Secs. 1102, 1815, 1833, 1842, 1862, 1866, 1870, 1871, 1879 and 1892 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395y, 1395cc, 1395gg, 1395hh, 1395pp and 1395ccc) and 31 U.S.C. 3711.

**SOURCE:** 31 FR 13534, Oct. 20, 1966, unless otherwise noted. Redesignated at 42 FR 52826, Sept. 30, 1977.

**EDITORIAL NOTE:** Nomenclature changes to subpart C of part 405 appear at 76 FR 5961, Feb. 2, 2011.

#### **GENERAL PROVISIONS**

##### **§ 405.301 Scope of subpart.**

This subpart sets forth the policies and procedures for handling of incorrect payments and recovery of overpayments.

[54 FR 41733, Oct. 11, 1989]

#### **LIABILITY FOR PAYMENTS TO PROVIDERS OR SUPPLIERS AND HANDLING OF INCORRECT PAYMENTS**

##### **§ 405.350 Individual's liability for payments made to providers and other persons for items and services furnished the individual.**

Any payment made under title XVIII of the Act to any provider of services or other person with respect to any item or service furnished an individual shall be regarded as a payment to the individual, and adjustment shall be made pursuant to §§ 405.352 through 405.358 where:

(a) More than the correct amount is paid to a provider of services or other person and the Secretary determines that:

(1) Within a reasonable period of time, the excess over the correct amount cannot be recouped from the provider of services or other person, or

(2) The provider of services or other person was without fault with respect to the payment of such excess over the correct amount, or

(b) A payment has been made under the provisions described in section 1814(e) of the Act, to a provider of services for items and services furnished the individual.

(c) For purposes of paragraph (a)(2) of this section, a provider of services or other person must, in the absence of evidence to the contrary, be deemed to be without fault if the determination of the carrier, the intermediary, or the Centers for Medicare & Medicaid Services that more than the correct amount was paid was made subsequent to the fifth year following the year in