

amount of payment has been made, notice of the provisions of section 1870(c) of the Act regarding waiver of adjustment or recovery shall be sent to the overpaid individual and to any other individual against whom adjustment or recovery of the overpayment is to be effected (see § 405.358).

[61 FR 49271, Sept. 19, 1996]

**§ 405.358 When waiver of adjustment or recovery may be applied.**

Section 1870(c) of the Act provides that there shall be no adjustment or recovery in any case where an incorrect payment under title XVIII (hospital and supplementary medical insurance benefits) has been made (including a payment under section 1814(e) of the Act with respect to an individual:

- (a) Who is without fault, and
- (b) Adjustment or recovery would either:
  - (1) Defeat the purposes of title II or title XVIII of the Act, or
  - (2) Be against equity and good conscience.

[61 FR 49271, Sept. 19, 1996]

**§ 405.359 Liability of certifying or disbursing officer.**

No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any provider of services or other person:

- (a) Where the adjustment or recovery of such amount is waived (see § 405.355), or
- (b) Where adjustment (see § 405.352) or recovery is not completed prior to the death of all persons against whose benefits such adjustment is authorized.

**SUSPENSION AND RECOUPMENT OF PAYMENT TO PROVIDERS AND SUPPLIERS AND COLLECTION AND COMPROMISE OF OVERPAYMENTS**

**§ 405.370 Definitions.**

(a) For purposes of this subpart, the following definitions apply:

*Credible allegation of fraud.* A credible allegation of fraud is an allegation from any source, including but not limited to the following:

- (1) Fraud hotline tips verified by further evidence
- (2) Claims data mining.

(3) Patterns identified through provider audits, civil false claims cases, and law enforcement investigations. Allegations are considered to be credible when they have indicia of reliability.

*Fraud hotline tip.* A complaint or other communications that are submitted through a fraud reporting phone number or a website intended for the same purpose, such as the Federal Government's HHS OIG Hotline or a health plan's fraud hotline.

*Medicare contractor.* Unless the context otherwise requires, includes, but is not limited to the any of following:

- (1) A fiscal intermediary.
- (2) A carrier.
- (3) Program safeguard contractor.
- (4) Zone program integrity contractor.
- (5) Part A/Part B Medicare administrative contractor.

*Offset.* The recovery by Medicare of a non-Medicare debt by reducing present or future Medicare payments and applying the amount withheld to the indebtedness. (Examples are Public Health Service debts or Medicaid debts recovered by CMS).

*Recoupment.* The recovery by Medicare of any outstanding Medicare debt by reducing present or future Medicare payments and applying the amount withheld to the indebtedness.

*Resolution of an investigation.* An investigation of credible allegations of fraud will be considered resolved when legal action is terminated by settlement, judgment, or dismissal, or when the case is closed or dropped because of insufficient evidence to support the allegations of fraud.

*Suspension of payment.* The withholding of payment by a Medicare contractor from a provider or supplier of an approved Medicare payment amount before a determination of the amount of the overpayment exists, or until the resolution of an investigation of a credible allegation of fraud.

(b) For purposes of §§ 405.378 and 405.379, the following terms apply:

*Appellant* means the beneficiary, assignee or other person or entity that has filed and pursued an appeal concerning a particular initial determination. Designation as an appellant does