

(e) *Disposition of suspended payments.* Payments suspended under the authority of § 405.371(a) are first applied to reduce or eliminate any overpayments determined by the Medicare contractor, or CMS, including any interest assessed under the provisions of § 405.378, and then applied to reduce any other obligation to CMS or to HHS. In the absence of a legal requirement that the excess be paid to another entity, the excess is released to the provider or supplier.

[61 FR 63746, Dec. 2, 1996, as amended at 76 FR 5962, Feb. 2, 2011]

§ 405.373 Proceeding for offset or recoupment.

(a) *General rule.* Except as specified in paragraphs (b) and (f) of this section, if the Medicare Administrative Contractor or CMS has determined that an offset or recoupment of payments under § 405.371(a)(3) should be put into effect, the Medicare Administrative Contractor must—

(1) Notify the provider or supplier of its intention to offset or recoup payment, in whole or in part, and the reasons for making the offset or recoupment; and

(2) Give the provider or supplier an opportunity for rebuttal in accordance with § 405.374.

(b) *Exception to recouping payment.* Paragraph (a) of this section does not apply if the Medicare Administrative Contractor, after furnishing a provider a written notice of the amount of program reimbursement in accordance with § 405.1803, recoups payment under paragraph (c) of § 405.1803. (For provider rights in this circumstance, see §§ 405.1809, 405.1811, 405.1815, 405.1835, and 405.1843.)

(c) *Actions following receipt of rebuttal statement.* If a provider or supplier submits, in accordance with § 405.374, a statement as to why an offset or recoupment should not be put into effect on the date specified in the notice, the Medicare contractor must comply with the time limits and notification requirements of § 405.375.

(d) *No rebuttal statement received.* If, by the end of the time period specified in the notice, no statement has been received, the recoupment or offset goes into effect automatically.

(e) *Duration of recoupment or offset.* Except as provided in § 405.379, if a recoupment or offset is put into effect, it remains in effect until the earliest of the following:

(1) The overpayment and any assessed interest are liquidated.

(2) The Medicare contractor obtains a satisfactory agreement from the provider or supplier for liquidation of the overpayment.

(3) The Medicare contractor, on the basis of subsequently acquired evidence or otherwise, determines that there is no overpayment.

(f) *Exception to offset or recoupment of payments for shared Taxpayer Identification Number.* Paragraph (a) of this section does not apply in instances where the Medicare Administrative Contractor intends to offset or recoup payments to the applicable provider of services or supplier to satisfy an amount due from an obligated provider of services or supplier when the applicable and obligated provider of services or supplier share the same Taxpayer Identification Number.

[61 FR 63747, Dec. 2, 1996, as amended at 74 FR 47468, Sept. 16, 2009; 81 FR 80551, Nov. 15, 2016]

§ 405.374 Opportunity for rebuttal.

(a) *General rule.* If prior notice of the suspension of payment, offset, or recoupment is given under § 405.372 or § 405.373, the Medicare contractor must give the provider or supplier an opportunity, before the suspension, offset, or recoupment takes effect, to submit any statement (to include any pertinent information) as to why it should not be put into effect on the date specified in the notice. Except as provided in paragraph (b) of this section, the provider or supplier has at least 15 days following the date of notification to submit the statement.

(b) *Exception.* The Medicare contractor may for cause—

(1) Impose a shorter period for rebuttal; or

(2) Extend the time within which the statement must be submitted.

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