

§ 405.375 Time limits for, and notification of, administrative determination after receipt of rebuttal statement.

(a) *Submission and disposition of evidence.* If the provider or supplier submits a statement, under § 405.374, as to why a suspension of payment, offset, or recoupment should not be put into effect, or, under § 405.372(b)(2), why a suspension should be terminated, CMS, the intermediary, or carrier must within 15 days, from the date the statement is received, consider the statement (including any pertinent evidence submitted), together with any other material bearing upon the case, and determine whether the facts justify the suspension, offset, or recoupment or, if already initiated, justify the termination of the suspension, offset, or recoupment. Suspension, offset, or recoupment is not delayed beyond the date stated in the notice in order to review the statement.

(b) *Notification of determination.* The Medicare contractor must send written notice of the determination made under paragraph (a) of this section to the provider or supplier. The notice must—

(1) In the case of offset or recoupment, contain rationale for the determination; and

(2) In the case of suspension of payment, contain specific findings on the conditions upon which the suspension is initiated, continued, or removed and an explanatory statement of the determination.

(c) *Determination is not appealable.* A determination made under paragraph (a) of this section is not an initial determination and is not appealable.

[61 FR 63747, Dec. 2, 1996]

§ 405.376 Suspension and termination of collection action and compromise of claims for overpayment.

(a) *Basis and purpose.* This section contains requirements and procedures for the compromise of, or suspension or termination of collection action on, claims for overpayments against a provider or a supplier under the Medicare program. It is adopted under the authority of the Federal Claims Collection Act (31 U.S.C. 3711). Collection and compromise of claims against Medicare

beneficiaries are explained at 20 CFR 404.515.

(b) *Definitions.* As used in this section, *debtor* means a provider of services or a physician or other supplier of services that has been overpaid under title XVIII of the Social Security Act. It includes an individual, partnership, corporation, estate, trust, or other legal entity.

(c) *Basic conditions.* A claim for recovery of Medicare overpayments against a debtor may be compromised, or collection action on it may be suspended or terminated, by the Centers for Medicare & Medicaid Services (CMS) if:

(1) The claim does not exceed \$100,000, or such higher amount as the Attorney General may from time to time prescribe, exclusive of interest; and

(2) There is no indication of fraud, the filing of a false claim, or misrepresentation on the part of the debtor or any director, partner, manager, or other party having an interest in the claim.

(d) *Basis for compromise.* A claim may be compromised for one or more of the following reasons:

(1) The debtor, or the estate of a deceased debtor, does not have the present or prospective ability to pay the full amount within a reasonable time;

(2) The debtor refuses to pay the claim in full and the United States is unable to collect the full amount within a reasonable time by legal proceedings;

(3) There is real doubt the United States can prove its case in court; or

(4) The cost of collecting the claim does not justify enforced collection of the full amount.

(e) *Basis for termination of collection action.* Collection action may be terminated for one or more of the following reasons:

(1) The United States cannot enforce collection of any significant sum;

(2) The debtor cannot be located, there is no security to be liquidated, the statute of limitations has run, and the prospects of collecting by offset are too remote to justify retention of the claim;

(3) The cost of further collection action is likely to exceed any recovery;

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(4) It is determined the claim is without merit; or

(5) Evidence to substantiate the claim is no longer available.

(f) *Basis for suspension of collection action.* Collection action may be suspended for either of the following reasons if future collection action is justified based on potential productivity, including foreseeable ability to pay, and size of claim:

(1) The debtor cannot be located; or

(2) The debtor is unable to make payments on the claim or to fulfill an acceptable compromise.

(g) *Factors considered.* In determining whether a claim will be compromised, or collection action terminated or suspended, CMS will consider the following factors:

(1) Age and health of the debtor, present and potential income, inheritance prospects, possible concealment or fraudulent transfer of assets, and the availability of assets which may be reached by enforced collection proceedings, for compromise under paragraph (d)(1) of this section, termination under paragraph (e)(1) of this section, and suspension under paragraph (f)(2) of this section;

(2) Applicable exemptions available to a debtor and uncertainty concerning the price of the property in a forced sale, for compromise under paragraph (d)(2) of this section and termination under paragraph (e)(1) of this section; and

(3) The probability of proving the claim in court, the probability of full or partial recovery, the availability of necessary evidence, and related pragmatic considerations, for compromise under paragraph (d)(3) of this section.

(h) *Amount of compromise.* The amount accepted in compromise will be reasonable in relation to the amount that can be recovered by enforced collection proceedings.

Consideration shall be given to the following:

(1) The exemptions available to the debtor under State or Federal law;

(2) The time necessary to collect the overpayment;

(3) The litigative probabilities involved; and

(4) The administrative and litigative costs of collection where the cost of

collecting the claim is a basis for compromise.

(i) *Payment of compromise—(1) Time and manner.* Payment of the amount that CMS has agreed to accept as a compromise in full settlement of a Medicare overpayment claim must be made within the time and in the manner prescribed by CMS. An overpayment claim is not compromised or settled until the full payment of the compromised amount has been made within the time and in the manner prescribed by CMS.

(2) *Failure to pay compromised amount.* Failure of the debtor or the estate to make payment as provided by the compromise reinstates the full amount of the overpayment claim, less any amounts paid prior to the default.

(j) *Effect of compromise, or suspension, or termination of collection action.* Any action taken by CMS under this section regarding the compromise of an overpayment claim, or termination or suspension of collection action on an overpayment claim, is not an initial determination for purposes of the appeal procedures under subparts G, H, and R of this part.

[43 FR 59381, Dec. 20, 1978, as amended at 57 FR 56998, Dec. 2, 1992. Redesignated and amended at 61 FR 63745, 63747, Dec. 2, 1996]

§ 405.377 Withholding Medicare payments to recover Medicaid overpayments.

(a) *Basis and purpose.* This section implements section 1885 of the Act, which provides for withholding Medicare payments to certain Medicaid providers that have not arranged to repay Medicaid overpayments as determined by the Medicaid State agency or have failed to provide information necessary to determine the amount (if any) of overpayments.

(b) *When withholding may be used.* CMS may withhold Medicare payment to offset Medicaid overpayments that a Medicaid agency has been unable to collect if—

(1) The Medicaid agency has followed the procedure specified in § 447.31 of this chapter; and

(2) The institution or person is one described in paragraph (c) of this section and either—