

## § 401.615

a claim under paragraph (c) of this section, CMS may further consider factors such as—

(1) The age and health of the debtor if the debtor is an individual;

(2) Present and potential income of the debtor; and

(3) Whether assets have been concealed or improperly transferred by the debtor.

(c) *Basis for compromise.* Bases on which CMS may compromise a claim include the following—

(1) *Inability to pay.* CMS may compromise a claim if it determines that the debtor, or the estate of a deceased debtor, does not have the present or prospective ability to pay the full amount of the claim within a reasonable time.

(2) *Litigative probabilities.* CMS may compromise a claim if it determines that it would be difficult to prevail in a case before a court of law as a result of the legal issues involved or inability of the parties to agree to the facts of the case. The amount that CMS accepts in compromise under this provision will reflect—

(i) The likelihood that CMS would have prevailed on the legal question(s) involved;

(ii) Whether and to what extent CMS would have obtained a full or partial recovery of a judgment, depending on the availability of witnesses, or other evidentiary support for CMS's claim; and

(iii) The amount of court costs that would be assessed to CMS.

(3) *Cost of collecting the claim.* CMS may compromise a claim if it determines that the cost of collecting the claim does not justify the enforced collection of the full amount. In this case, CMS may adjust the amount it accepts as a compromise to allow an appropriate discount for the costs of collection it would have incurred but for the compromise.

(d) *Enforcement policy.* CMS may compromise statutory penalties, forfeitures, or debts established as an aid to enforcement or to compel compliance, if it determines that its enforcement policy, in terms of deterrence and securing compliance both present and future, is adequately served by acceptance of the compromise amount.

## 42 CFR Ch. IV (10–1–10 Edition)

### § 401.615 Payment of compromise amount.

(a) *Time and manner of compromise.* Payment by the debtor of the amount that CMS has agreed to accept as a compromise in full settlement of a claim must be made within the time and in the manner prescribed by CMS. Accordingly, CMS will not settle a claim until the full payment of the compromise amount has been made.

(b) *Effect of failure to pay compromise amount.* Failure of the debtor to make payment, as provided by the compromise agreement, reinstates the full amount of the claim, less any amounts paid prior to the default.

(c) *Prohibition against grace periods.* CMS will not agree to inclusion of a provision in an installment agreement that would permit grace periods for payments that are late under the terms of the agreement.

### § 401.617 Suspension of collection action.

(a) *General conditions.* CMS may temporarily suspend collection action on a claim if the following general conditions are met—

(1) *Amount of future recovery.* CMS determines that future collection action may result in a recovery of an amount sufficient to justify periodic review and action on the claim by CMS during the period of suspension.

(2) *Statute of limitations.* CMS determines that—

(i) The applicable statute of limitations has been tolled, waived or has started running anew; or

(ii) Future collections may be made by CMS through offset despite an applicable statute of limitations.

(b) *Basis for suspension.* Bases on which CMS may suspend collection action on a particular claim include the following—

(1) A debtor cannot be located; or

(2) A debtor—

(i) Owns no substantial equity in property;

(ii) Is unable to make payment on CMS's claim or is unable to effect a compromise; and

(iii) Has future prospects that justify retention of the claim.

(c) *Locating debtors.* CMS will make every reasonable effort to locate missing debtors sufficiently in advance of the bar of an applicable statute of limitations to permit timely filing of a lawsuit to recover the amount of the claim.

(d) *Effect of suspension on liquidation of security.* CMS will liquidate security, obtained in partial recovery of a claim, despite a decision under this section to suspend collection action against the debtor for the remainder of the claim.

#### **§ 401.621 Termination of collection action.**

(a) *General factors.* After considering the bases for a decision to terminate collection action under paragraph (b) of this section, CMS may further consider factors such as—

(1) The age and health of the debtor if the debtor is an individual;

(2) Present and potential income of the debtor; and

(3) Whether assets have been concealed or improperly transferred by the debtor.

(b) *Basis for termination of collection action.* Bases on which CMS may terminate collection action on a claim include the following—

(1) *Inability to collect a substantial amount of the claim.* CMS may terminate collection action if it determines that it is unable to collect, or to enforce collection, of a significant amount of the claim. In making this determination, CMS will consider factors such as—

(i) Judicial remedies available;

(ii) The debtor's future financial prospects; and

(iii) Exemptions available to the debtor under State or Federal law.

(2) *Inability to locate debtor.* In cases involving missing debtors, CMS may terminate collection action if—

(i) There is no security remaining to be liquidated;

(ii) The applicable statute of limitations has run; or

(iii) The prospects of collecting by offset, whether or not an applicable statute of limitations has run, are considered by CMS to be too remote to justify retention of the claim.

(3) *Cost of collection exceeds recovery.* CMS may terminate collection action

if it determines that the cost of further collection action will exceed the amount recoverable.

(4) *Legal insufficiency.* CMS may terminate collection action if it determines that the claim is legally without merit.

(5) *Evidence unavailable.* CMS may terminate collection action if—

(i) Efforts to obtain voluntary payment are unsuccessful; and

(ii) Evidence or witnesses necessary to prove the claim are unavailable.

#### **§ 401.623 Joint and several liability.**

(a) *Collection action.* CMS will liquidate claims as quickly as possible. In cases of joint and several liability among two or more debtors, CMS will not allocate the burden of claims payment among the debtors. CMS will proceed with collection action against one debtor even if other liable debtors have not paid their proportionate shares.

(b) *Compromise.* Compromise with one debtor does not release a claim against remaining debtors. Furthermore, CMS will not consider the amount of a compromise with one debtor to be a binding precedent concerning the amounts due from other debtors who are jointly and severally liable on the claim.

#### **§ 401.625 Effect of CMS claims collection decisions on appeals.**

Any action taken under this subpart regarding the compromise of a claim, or suspension or termination of collection action on a claim, is not an initial determination for purposes of CMS appeal procedures.

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