

(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:

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.

Suspension of payment. The withholding of payment by an intermediary or carrier from a provider or supplier of an approved Medicare payment amount before a determination of the amount of the overpayment exists.

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

Appellant of beneficiary. assignee or other person or entity that has filed and pursued an appeal concerning a particular initial determination. Designation as an appellant does not in itself convey standing to appeal the determination in question.

Fiscal intermediary means an organization that has entered into a contract with CMS in accordance with section 1816 of the Act and is authorized to make determinations and payments for Part A of title XVIII of the Act, and Part B provider services as specified in § 421.5(c) of this chapter.

Medicare Appeals Council means the council within the Departmental Appeals Board of the U.S. Department of Health and Human Services.

Medicare contractor, unless the context otherwise requires, includes, but is not limited to, a fiscal intermediary, carrier, recovery audit contractor, and Medicare administrative contractor.

Party means an individual or entity listed in § 405.906 that has standing to

appeal an initial determination and/or a subsequent administrative appeal determination.

Qualified Independent Contractor (QIC) Qualified Independent Contractor (QIC) means an entity which contracts with the Secretary in accordance with section 1869 of the Act to perform reconsiderations under § 405.960 through § 405.978.

Remand means to vacate a lower level appeal decision, or a portion of the decision, and return the case, or a portion of the case, to that level for a new decision.

Vacate means to set aside a previous action.

[61 FR 63745, Dec. 2, 1996, as amended at 74 FR 47468, Sept. 16, 2009]

§ 405.371 Suspension, offset, and recoupment of Medicare payments to providers and suppliers of services.

(a) *General.* Medicare payments to providers and suppliers, as authorized under this subchapter (excluding payments to beneficiaries), may be—

(1) Suspended, in whole or in part, by CMS, an intermediary, or a carrier if CMS, the intermediary, or the carrier possesses reliable information that an overpayment or fraud or willful misrepresentation exists or that the payments to be made may not be correct, although additional evidence may be needed for a determination; or

(2) Offset or recouped, in whole or in part, by an intermediary or a carrier if the intermediary, carrier, or CMS has determined that the provider or supplier to whom payments are to be made has been overpaid.

(b) *Steps necessary for suspension of payment, offset, and recoupment.* Except as provided in paragraph (c) of this section, CMS, the intermediary, or carrier suspends payments only after it has complied with the procedural requirements set forth at § 405.372. The intermediary or carrier offsets or recoups payments only after it has complied with the procedural requirements set forth at § 405.373.

(c) *Suspension of payment in the case of unfiled cost reports.* If a provider has failed to timely file an acceptable cost report, payment to the provider is immediately suspended in whole or in

part until a cost report is filed and determined by the intermediary to be acceptable. In the case of an unfiled cost report, the provisions of § 405.372 do not apply. (See § 405.372(a)(2) concerning failure to furnish other information.)

[61 FR 63746, Dec. 2, 1996, as amended at 67 FR 66813, Nov. 1, 2002]

§ 405.372 Proceeding for suspension of payment.

(a) *Notice of intention to suspend*—(1) *General rule.* Except as provided in paragraphs (a)(2) through (a)(4) of this section, if the intermediary, carrier, or CMS has determined that a suspension of payments under § 405.371(a)(1) should be put into effect, the intermediary or carrier must notify the provider or supplier of the intention to suspend payments, in whole or in part, and the reasons for making the suspension.

(2) *Failure to furnish information.* The notice requirement of paragraph (a)(1) of this section does not apply if the intermediary or carrier suspends payments to a provider or supplier in accordance with section 1815(a) or section 1833(e) of the Act, respectively, because the provider or supplier has failed to submit information requested by the intermediary or carrier that is needed to determine the amounts due the provider or supplier. (See § 405.371(c) concerning failure to file timely acceptable cost reports.)

(3) *Harm to Trust Funds.* A suspension of payment may be imposed without prior notice if CMS, the intermediary, or carrier determines that the Medicare Trust Funds would be harmed by giving prior notice. CMS may base its determination on an intermediary's or carrier's belief that giving prior notice would hinder the possibility of recovering the money.

(4) *Fraud or misrepresentation.* If the intended suspension of payment involves suspected fraud or misrepresentation, CMS determines whether to impose the suspension and if prior notice is appropriate. CMS directs the intermediary or carrier as to the timing and content of the notification to the provider or supplier. CMS is the real party in interest and is responsible for the decision. CMS may base its decision on information from the intermediary, carrier, law enforcement agencies, or

other sources. CMS determines whether the information is reliable.

(b) *Rebuttal*—(1) *If prior notice is required.* If prior notice is required under paragraph (a) of this section, the intermediary or carrier must give the provider or supplier an opportunity for rebuttal in accordance with § 405.374. If a rebuttal statement is received within the specified time period, the suspension of payment goes into effect on the date stated in the notice, and the procedures and provisions set forth in § 405.375 apply. If by the end of the period specified in the notice no statement has been received, the suspension goes into effect automatically, and the procedures set forth in paragraph (c) of this section are followed.

(2) *If prior notice is not required.* If, under the provisions of paragraphs (a)(2) through (a)(4) of this section, a suspension of payment is put into effect without prior notice to the provider or supplier, the intermediary or carrier must, once the suspension is in effect, give the provider or supplier an opportunity to submit a rebuttal statement as to why the suspension should be removed.

(c) *Subsequent action.* If a suspension of payment is put into effect, the intermediary, carrier, or CMS takes timely action after the suspension to obtain the additional evidence it may need to make a determination as to whether an overpayment exists or the payments may be made. The intermediary, carrier, or CMS makes all reasonable efforts to expedite the determination. As soon as the determination is made, the intermediary or carrier informs the provider or supplier and, if appropriate, the suspension is rescinded or any existing recoupment or offset is adjusted to take into account the determination.

(d) *Duration of suspension of payment*—(1) *General rule.* Except as provided in paragraphs (d)(2) and (d)(3) of this section, a suspension of payment is limited to 180 days, starting with the date the suspension begins.

(2) *180-day extension.* (i) An intermediary, a carrier, or, in cases of fraud and misrepresentation, OIG or a law enforcement agency, may request a one-time only extension of the suspension period for up to 180 additional