

**§ 405.215**

**42 CFR Ch. IV (10–1–11 Edition)**

the sponsor and the FDA's recommendation. CMS reviews only information in the FDA record to determine whether to change the categorization of the device. CMS issues a written decision and notifies the sponsor of the IDE and the FDA.

**§ 405.215 Confidential commercial and trade secret information.**

To the extent that CMS relies on confidential commercial or trade secret information in any judicial proceeding, CMS will maintain confidentiality of the information in accordance with Federal law.

**Subpart C—Suspension of Payment, Recovery of Overpayments, and Repayment of Scholarships and Loans**

AUTHORITY: Secs. 1102, 1815, 1833, 1842, 1862, 1866, 1870, 1871, 1879 and 1892 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395y, 1395cc, 1395gg, 1395hh, 1395pp and 1395ccc) and 31 U.S.C. 3711.

SOURCE: 31 FR 13534, Oct. 20, 1966, unless otherwise noted. Redesignated at 42 FR 52826, Sept. 30, 1977.

EDITORIAL NOTE: Nomenclature changes to subpart C appear at 76 FR 5961, Feb. 2, 2011.

**GENERAL PROVISIONS**

**§ 405.301 Scope of subpart.**

This subpart sets forth the policies and procedures for handling of incorrect payments and recovery of overpayments.

[54 FR 41733, Oct. 11, 1989]

**LIABILITY FOR PAYMENTS TO PROVIDERS OR SUPPLIERS AND HANDLING OF INCORRECT PAYMENTS**

**§ 405.350 Individual's liability for payments made to providers and other persons for items and services furnished the individual.**

Any payment made under title XVIII of the Act to any provider of services or other person with respect to any item or service furnished an individual shall be regarded as a payment to the individual, and adjustment shall be made pursuant to §§ 405.352 through 405.358 where:

(a) More than the correct amount is paid to a provider of services or other person and the Secretary determines that:

(1) Within a reasonable period of time, the excess over the correct amount cannot be recouped from the provider of services or other person, or

(2) The provider of services or other person was without fault with respect to the payment of such excess over the correct amount, or

(b) A payment has been made under the provisions described in section 1814(e) of the Act, to a provider of services for items and services furnished the individual.

(c) For purposes of paragraph (a)(2) of this section, a provider of services or other person shall, in the absence of evidence to the contrary, be deemed to be without fault if the determination of the carrier, the intermediary, or the Centers for Medicare & Medicaid Services that more than the correct amount was paid was made subsequent to the third year following the year in which notice was sent to such individual that such amount had been paid.

[41 FR 1492, Jan. 8, 1976. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 61 FR 49271, Sept. 19, 1996]

**§ 405.351 Incorrect payments for which the individual is not liable.**

Where an incorrect payment has been made to a provider of services or other person, the individual is liable only to the extent that he has benefited from such payment.

**§ 405.352 Adjustment of title XVIII incorrect payments.**

Where an individual is liable for an incorrect payment (i.e., a payment made under § 405.350(a) or § 405.350(b)) adjustment is made (to the extent of such liability) by:

(a) Decreasing any payment under title II of the Act, or under the Railroad Retirement Act of 1937, to which the individual is entitled; or

(b) In the event of the individual's death before adjustment is completed, by decreasing any payment under title II of the Act, or under the Railroad Retirement Act of 1937 payable to the estate of the individual or to any other