(2)(i) If a suspension of payment is based upon credible allegations of fraud in accordance with §405.371(a)(2), subsequent action must be taken by CMS or the Medicare contractor to make a determination as to whether an overpayment exists.

(ii) The rescission of the suspension and the issuance of a final overpayment determination to the provider or supplier may be delayed until resolution of the investigation.

(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 days if it is unable to complete its examination of the information or investigation, as appropriate, within the 180-day time limit. The request must be submitted in writing to CMS.

(ii) Upon receipt of a request for an extension, CMS notifies the provider or supplier of the requested extension. CMS then either extends the suspension of payment for up to an additional 180 days or determines that the suspended payments are to be released to the provider or supplier.

(3) *Exceptions to the time limits.* (i) The time limits specified in paragraphs (d)(1) and (d)(2) of this section do not apply if the suspension of payments is based upon credible allegations of fraud under §405.371(a)(2).

(ii) Although the time limits specified in paragraphs (d)(1) and (d)(2) of this section do not apply to suspensions based on credible allegations of fraud, all suspensions of payment in accordance with §405.371(a)(2) will be temporary and will not continue after the resolution of an investigation, unless a suspension is warranted because of reliable evidence of an overpayment or that the payments to be made may not be correct, as specified in §405.371(a)(1).

(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 paragraph (b) of this section, if the intermediary, carrier, or CMS has determined that an offset or recoupment of payments under §405.371(a)(2) should be put into effect, the Medicare 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) Paragraph (a) of this section does not apply if the intermediary, 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.

[61 FR 63747, Dec. 2, 1996, as amended at 74 FR 47468, Sept. 16, 2009]

§ 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.

[61 FR 63747, Dec. 2, 1996]

§ 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