to compromise any penalty and assessment as provided by § 402.115.

### § 402.113 When a penalty and assessment are collectible.

A civil money penalty and assessment become collectible after the earliest of the following:

(a) Sixty days after the respondent receives CMS's or OIG's notice of proposed determination under § 402.7, if the respondent has not requested a hearing before an ALJ.

(b) Immediately after the respondent abandons or waives his or her appeal right at any administrative level.

(c) Thirty days after the respondent receives the ALJ's decision imposing a civil money penalty or assessment under § 1005.20(d) of this title, if the respondent has not requested a review before the DAB.

(d) If the DAB grants an extension of the period for requesting the DAB's review, the day after the extension expires if the respondent has not requested the review.

(e) Immediately after the ALJ's decision denying a request for a stay of the effective date under § 1005.22(b) of this title.

(f) If the ALJ grants a stay under § 1005.22(b) of this title, immediately after the judicial ruling is completed.

(g) Sixty days after the respondent receives the DAB's decision imposing a civil money penalty if the respondent has not requested a stay of the decision under § 1005.22(b) of this title.

### § 402.115 Collection of penalty or assessment.

(a) Once a determination by HHS has become final, CMS is responsible for the collection of any penalty or assessment.

(b) The General Counsel may compromise a penalty or assessment imposed under this part, after consultation with CMS or OIG, and the Federal government may recover the penalty or assessment in a civil action brought in the United States district court for the district where the claim was presented or where the respondent resides.

(c) The United States or a State agency may deduct the amount of a penalty and assessment when finally determined, or the amount agreed upon in compromise, from any sum then or later owing to the respondent.

(d) Matters that were raised or that could have been raised in a hearing before an ALJ or in an appeal under section 1128A(e) of the Act may not be raised as a defense in a civil action by the United States to collect a penalty under this part.

## Subpart C—Exclusions

SOURCE: 72 FR 39752, July 20, 2007, unless otherwise noted.

### § 402.200 Basis and purpose.

(a) *Basis.* This subpart is based on the sections of the Act that are specified in § 402.1(e).

(b) *Purpose.* This subpart—

(1) Provides for the imposition of an exclusion from the Medicare and Medicaid programs (and, where applicable, other Federal health care programs) against persons that violate the provisions of the Act provided in § 402.1(e) (and further described in § 402.1(c)); and

(2) Sets forth the appeal rights of persons subject to exclusion and the procedures for reinstatement following exclusion.

### § 402.205 Length of exclusion.

The length of exclusion from participation in Medicare, Medicaid, and, where applicable, other Federal health care programs, is contingent upon the specific violation of the Medicare statute. A full description of the specific violations identified in the sections of the Act are cross-referenced in the regulatory sections listed in the table in paragraph (a) of this section.

(a) In no event will the period of exclusion exceed 5 years for violation of the following sections of the Act:

| Social Security Act paragraph | Code of Federal Regulations section |
|---|---|
| 1833(h)(5)(D) in repeated cases | § 402.1(c)(1) |
| 1833(q)(2)(B) in repeated cases | § 402.1(c)(3) |
| 1834(a)(11)(A) | § 402.1(c)(4) |
| 1834(a)(18)(B) | § 402.1(c)(5) |
| 1834(b)(5)(C) | § 402.1(c)(6) |
| 1834(c)(4)(C) | § 402.1(c)(7) |
| 1834(h)(3) | § 402.1(c)(8) |
| 1834(j)(4) | § 402.1(c)(10) |
| 1834(k)(6) | § 402.1(c)(31) |
| 1834(l)(6) | § 402.1(c)(32) |
| 1842(b)(18)(B) | § 402.1(c)(11) |
| 1842(k) | § 402.1(c)(12) |