

§ 405.355 Waiver of adjustment or recovery.

(a) The provisions of § 405.352 may not be applied and there may be no adjustment or recovery of an incorrect payment (i.e., a payment made under § 405.350(a) or § 405.350(b)) in any case where such incorrect payment has been made with respect to an individual who is without fault, or where such adjustment or recovery would be made by decreasing payments to which another person who is without fault is entitled as provided in section 1870(b) of the Act where such adjustment or recovery would defeat the purpose of title II or title XVIII of the Act or would be against equity and good conscience. (See 20 CFR 404.509 and 404.512.)

(b) Adjustment or recovery of an incorrect payment (or only such part of an incorrect payment as may be determined to be inconsistent with the purposes of Title XVIII of the Act) against an individual who is without fault shall be deemed to be against equity and good conscience if the determination that such payment was incorrect was made subsequent to the third year following the year in which notice of such payment was sent to such individual. (See §§ 405.330–405.332 for conditions under which payment may be made for items or services furnished after October 30, 1972 which are noncovered by reasons of § 405.310 (g) and (k).)

[41 FR 1493, Jan. 8, 1976. Redesignated at 42 FR 52826, Sept. 30, 1977]

§ 405.356 Principles applied in waiver of adjustment or recovery.

The principles applied in determining waiver of adjustment or recovery (§ 405.355) are the applicable principles of § 405.358 and 20 CFR 404.507–404.509, 404.510a, and 404.512.

[61 FR 49271, Sept. 19, 1996]

§ 405.357 Notice of right to waiver consideration.

Whenever an initial determination is made that more than the correct amount of payment has been made, notice of the provisions of section 1870(c) of the Act regarding waiver of adjustment or recovery shall be sent to the overpaid individual and to any other individual against whom adjustment or

recovery of the overpayment is to be effected (see § 405.358).

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§ 405.358 When waiver of adjustment or recovery may be applied.

Section 1870(c) of the Act provides that there shall be no adjustment or recovery in any case where an incorrect payment under title XVIII (hospital and supplementary medical insurance benefits) has been made (including a payment under section 1814(e) of the Act with respect to an individual:

- (a) Who is without fault, and
- (b) Adjustment or recovery would either:
 - (1) Defeat the purposes of title II or title XVIII of the Act, or
 - (2) Be against equity and good conscience.

[61 FR 49271, Sept. 19, 1996]

§ 405.359 Liability of certifying or disbursing officer.

No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any provider of services or other person:

- (a) Where the adjustment or recovery of such amount is waived (see § 405.355), or
- (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.**

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 HCFA).

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