

74-4-4.3A(2) and 74-4-4.3F), 74-4-4.7B, 74-4-4.7C, 74-4-5, 74-4-7, 74-4-10, 74-4-10.1 (except 74-4-10.1C), 74-4-11 through 74-4-14.

(iii) Title 20, Chapter 4, Part 1, New Mexico Administrative Code (20 NMAC 4.1), effective September, 23, 1994, Subpart IX, Section 902 (except 902.B.1

through 902.B.6); and Subpart XI, Sections 1101, 1105, and 1106.

(3)(i) The following statutory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(ii) New Mexico Statutes 1978 Annotated, Hazardous Waste Act,

Chapter 74, Article 4, (1993 Replacement Pamphlet), Sections 74-4-3.3 and 74-4-4.2J.

(4) *Unauthorized State Provisions:* The State's adoption of the Federal rules listed below is not approved by EPA and are, therefore, not enforceable:

Federal requirement	Federal Register reference	Publication date
Biennial Report	48 FR 3977	01/28/83
Permit Rules; Settlement Agreement	48 FR 39611	09/01/83
Interim Status Standards; Applicability	48 FR 52718	11/22/83
Chlorinated Aliphatic Hydrocarbon Listing (F024)	49 FR 5308	02/10/84
National Uniform Manifest	49 FR 10490	03/20/84
Recycled Used Oil	57 FR 41566: Amendments to 40 CFR Parts 260, 261 and 266	09/10/92
Management Standards	58 FR 26420: Amendments to 40 CFR Parts 261, 264 and 265	05/03/93

Additionally, New Mexico has adopted but is not authorized to implement the HSWA rules that are listed below in lieu

of EPA. EPA will continue to enforce the Federal HSWA standards for which New Mexico is not authorized until the

State receives specific authorization from EPA.

Federal requirement	Federal Register reference	Publication date
Toxicity Characteristic;	55 FR 40834	10/05/90
Hydrocarbon Recovery	56 FR 3978	02/01/91
Operations	56 FR 13406	04/02/91
Toxicity Characteristic; Chlorofluorocarbon Refrigerants	56 FR 5910	02/13/91
Revisions to the Petroleum Refining Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038).	56 FR 21955	05/13/91

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the State of New Mexico signed by the EPA Regional Administrator on December 18, 1995 is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of New Mexico on January, 1985, and revisions, supplements and addenda to that Statement dated April 13, 1988, September 14, 1988, July 19, 1989, July 23, 1992, February 14, 1994, July 18, 1994, July 20, 1994, August 11, 1994, November 28, 1994, and August 24, 1995, are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

Appendix A to Part 272—[Amended]

3. Appendix A to part 272, State Requirements, is amended by revising the listing for "New Mexico" to read as follows:

New Mexico

The statutory provisions include: New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4 (1993 Replacement Pamphlet), Sections 74-4-2, 74-4-3 (except 74-4-3L, 74-4-3O and 74-4-3R), 74-4-3.1, 74-4-4.2A, 74-4-4.2B, 74-4-4.2G introductory paragraph, 74-4-4.2G(2), 74-4-4.3F, 74-4-4.7 (except 74-4-4.7B and 74-4-4.7C), 74-4-9 and 74-4-10.1C, as published by the Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, Virginia 22906-7587.

The regulatory provisions include: Title 20, Chapter 4, Part 1, New Mexico Annotated Code (20 NMAC 4.1), Subparts I through Subpart VIII; Subpart IX, Sections 901, 902.B.1 through 902.B.6; and Subpart XI, Section 1103. Copies of the New Mexico regulations can be obtained from the New Mexico Commission of Public Records, State Records Center and Archives, State Rules Division, 404 Montezuma, Santa Fe, NM 87501.

[FR Doc. 96-23910 Filed 9-18-96; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 401 and 405

[BPD-869-F]

Medicare Program; Waiver of Recovery of Overpayments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule duplicates in HCFA's regulations the content of two sections of the Social Security Administration's regulations concerning waiver of recovery of overpayments. In the past, regulations in 20 CFR part 404 were applicable to both the Federal Old-Age, Survivors and Disability Insurance program (OASDI), which provides monthly Social Security checks directly to beneficiaries or their representatives, and the Medicare program. Since the Social Security Administration (SSA) is now independent of HHS, and SSA is restructuring its regulations to apply only to the OASDI program, we are establishing the content of these sections in 42 CFR part 405 to preserve

provisions that are applicable to the Medicare program.

EFFECTIVE DATE: These regulations are effective on October 21, 1996.

FOR FURTHER INFORMATION CONTACT: David Walczak, (410) 786-4475.

SUPPLEMENTARY INFORMATION:

I. Background

Until 1977, HCFA was a part of SSA and all Medicare rules were located in title 20 of the Code of Federal Regulations (20 CFR). Since then, we have developed separate Medicare rules in title 42. However, some Medicare rules remain in 20 CFR, and we have been working with SSA to restructure those rules.

Recently, we and SSA mutually agreed to restructure regulations on recovery or adjustment of overpayments in the OASDI program (title II) and the Medicare program (title XVIII). The overpayment recovery provisions for both the OASDI and Medicare programs have historically been located in 20 CFR part 404, subpart F. The SSA project revises part 404, subpart F, so that it applies only to the OASDI program, and removes all reference to the Medicare program. We are developing separate regulations, which would, similarly, apply only to the Medicare program and provide more specific criteria for applying waiver authority.

Unfortunately, our regulations are not yet ready for publication, whereas SSA has already published a proposed rule on June 2, 1995 (60 FR 28767), and the SSA final rule revising several of its provisions is in preparation. With the publication of the SSA final rule, all references to the Medicare program are removed from 20 CFR 404.502a and 404.506, thus eliminating certain regulatory authorities necessary for continuation of these provisions in the Medicare program. Therefore, until we publish final regulations, we are moving the content of those two sections of the regulations from 20 CFR part 404 to 42 CFR part 405 so that this content is preserved until our final rule is published.

II. Provisions of the Rule

We are incorporating the content of 20 CFR 404.502a, "Notice of right to waiver consideration," as new 42 CFR 405.357, and the content of 20 CFR 404.506, "When waiver of adjustment or recovery may be applied," as new 42 CFR 405.358, with minor editorial changes. In new §§ 405.357 and 405.358, we are removing reference to section 204(b) of the Act, since it is the basis for the OASDI provisions. In § 405.358, we are adding another reference (in paragraph

(b)(1)) to the Medicare program (title XVIII) to conform to the actual wording of the Medicare statute (section 1870(c) of the Social Security Act). We are also making conforming changes to existing §§ 401.601(d)(2)(ii), 401.607(d)(2), 405.350, and 405.356 to revise cross-references that reflect the addition of §§ 405.357 and 405.358.

This is a technical regulation and no changes in Medicare policies concerning waiver result from this action. Any restructuring or expansion of the applicability of waiver to Medicare would be issued as a proposed rule.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the Federal Register and invite prior public comment on proposed rules. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

Since this rule merely incorporates, with minor editorial changes, content from one part of the CFR to another, we believe that it is unnecessary to publish a proposed rule. Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule.

IV. Regulatory Impact Statement

A. Introduction

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan

Statistical Area and has fewer than 50 beds.

B. Provisions of the Final Regulations

This is a technical rule that makes no changes to Medicare policy. It incorporates in 42 CFR part 405, with only minor editorial changes, the content of 20 CFR 404.502a and 404.506. This rule also makes conforming changes to cross references in 42 CFR parts 401 and 405 resulting from the transfer of content from 20 CFR part 404 to 42 CFR part 405. We are not preparing analyses for either the RFA or section 1102(b) of the Act, since we have determined, and the Secretary certifies, that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals.

This rule is not a major rule as defined at 5 U.S.C. 804(2).

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

C. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

List of Subjects

42 CFR Part 401

Claims, Freedom of information, Health facilities, Medicare, Privacy.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR chapter IV is amended as follows:

A. Part 401 is amended as set forth below:

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 401 continues to read as follows:

Authority: Secs 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1895hh). Subpart F is also issued under the authority of the Federal Claims Collection Act (31 U.S.C. 3711).

2. Section 401.601 is amended by revising paragraph (d)(2)(ii) to read as follows:

§ 401.601 Basis and scope.

* * * *

(d) * * *

(2) * * *

(ii) Adjustments in Railroad Retirement or Social Security benefits to recover Medicare overpayments to individuals are covered in §§ 405.350–405.358 of this chapter.

* * * *

3. Section 401.607 is amended by revising paragraph (d)(2) to read as follows:

§ 401.607 Claims collection.

* * * *

(d) * * *

(2) Under regulations at § 405.350–405.358 of this chapter, HCFA may initiate adjustments in program payments to which an individual is entitled under title II of the Act (Federal Old Age, Survivors, and Disability Insurance Benefits) or under the Railroad Retirement Act of 1974 (45 U.S.C. 231) to recover Medicare overpayments.

B. Part 405 is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for part 405 subpart C continues to read as follows:

Authority: Secs. 1102, 1862, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395y, and 1895hh).

2. Section 405.350 is amended by revising the introductory paragraph to read as follows:

§ 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:

* * * *

3. Section 405.356 is revised to read as follows:

§ 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.

4. New § 405.357 is added to subpart C to read as follows:

§ 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).

5. New § 405.358 is added to subpart C to read as follows:

§ 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.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 1, 1996.

Bruce C. Vladeck,
Administrator, Health Care Financing Administration.

[FR Doc. 96–23957 Filed 9–18–96; 8:45 am]

BILLING CODE 4120–01–P

42 CFR Part 421

[BPO–105–F]

RIN 0938–AF85

Medicare Program; Part B Advance Payments to Suppliers Furnishing Items or Services Under Medicare Part B

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule establishes requirements and procedures for advance payments to suppliers of Medicare Part B services. An advance payment will be made only if the carrier is unable to process a claim timely; the supplier requests advance payment; we determine that payment of interest is insufficient to compensate the supplier for loss of the use of the funds; and, we

expressly approve the advance payment in writing.

These rules are necessary to address deficiencies noted by the General Accounting Office in its report analyzing current procedures for making advance payments. The intent of this rule is to ensure more efficient and effective administration of this aspect of the Medicare program.

EFFECTIVE DATE: This rule is effective October 21, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Shaw, (410) 786–3312.

SUPPLEMENTARY INFORMATION:**I. Background****A. General**

The Medicare Supplementary Medical Insurance (Part B) program is a voluntary program that pays all or part of the costs for physicians' services; outpatient hospital services; certain home health services; services furnished by rural health clinics, ambulatory surgical centers and comprehensive outpatient rehabilitation facilities; and certain other items or medical and hospital health services not covered by the Medicare Hospital Insurance program (Part A).

B. Use of Carriers

1. **Statutory basis.** Under section 1842(a) of the Social Security Act (the Act), public and private organizations and agencies may participate in the administration of the Medicare program under contracts entered into with the Secretary. These Medicare contractors, known as "carriers," process and pay Part B claims.

Usually, these payments are made on a claim-by-claim basis. Regulations at 42 CFR part 421, subpart C—Carriers, set forth the functions performed by Medicare carriers, which include the following:

- Determining the eligibility status of a beneficiary.
- Determining whether the services for which payment is claimed are covered under Medicare, and if so, the correct payment amounts.
- Making correct payment to the beneficiary or the supplier of the items or services, as appropriate.

Carriers must also observe the "prompt payment" requirements set forth in section 1842(c) of the Act. As amended by section 13568 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) (Public Law 103–66), enacted on August 10, 1993, this provision currently requires interest to be paid on all "clean" claims for which payment is not issued within 30 calendar days.