

CLIENT ALERTS

Paying it Backwards: Medicare and Medicaid Repayments

2.17.2016

Even prior to the passage of the Affordable Care Act, the return to CMS of overpayments to providers was an important issue for healthcare providers. With the passage of ACA, specifically Section 6402(a), repayment became required under a sixty (60) day rule. On February 11, 2016, CMS issued the final rule, addressing the key issues of when the clock starts ticking on the sixty (60) day repayment period, and how far back CMS can go to impose the sixty (60) day reporting period.

The rule provides that the key indicator in starting the clock on the sixty (60) day period is when the overpayment is “identified”. Identification occurs when a provider has, or should have through the exercise of reasonable diligence, determined that they received an overpayment and quantified the amount. The rule also finalized a six (6) year look back period.

A provider has time to exercise reasonable diligence before the clock starts ticking. Ignoring the issue is not an option as that would constitute reckless disregard under the rule. Absent extraordinary circumstances, the benchmark for how long the reasonable diligence should take is six (6) months as provided in the preamble to the final rule.

As we have indicated in prior alerts, a robust compliance program will go a long way in satisfying that the provider exercised reasonable diligence as long as the compliance plan addresses the issue and is followed. Actions taken under a compliance plan will support a provider’s position that it was not improperly concealing, avoiding, or decreasing an obligation to the government. The reverse, not having a compliance program, could allow the government to conclude that reasonable diligence was not exercised.

An overpayment from the government that is not reported and returned to the government within sixty (60) days of identification of the overpayment is considered an “obligation”

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and can result in False Claims Act liability and significant penalties.

If you have any questions about the interpretation or application of this new rule, or other questions about healthcare compliance plans, please contact the author of this alert or any member of Butzel Long's Healthcare Industry Practice Group.

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