BROOKS PIERCE

CMS Proposes Overpayment Refund Rule

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The Affordable Care Act ("ACA") requires that Medicare and Medicaid "overpayments" be reported and returned by the later of (i) 60 days after the overpayment was "identified" or (ii) the date any corresponding cost report is due (if applicable). ACA § 6402(a).

This requirement became effective on March 23, 2010—so, health care providers have been subject to it for nearly two years.

It applies to providers of services, suppliers, Medicaid managed care organizations, Medicare Advantage organizations, and Prescription Drug Plan sponsors. Violations can result in liability under the False Claims Act and the Civil Monetary Penalties Law, and exclusion.

Health care providers have questions about how the ACA requirement will be interpreted and enforced. The questions arose because of the steep penalties, the short 60-day reporting period, and uncertainty about the meaning of certain key phrases—e.g., when is an overpayment "identified"?

On February 16, 2012, CMS issued a long-awaited proposed rule to implement the overpayment requirement. Although the rule is only proposed and not yet final, it provides certain insights about how CMS views the refund obligation. (77 Fed. Reg. 9179 (Feb. 16, 2012).)

These insights may help providers. However, the rule is not final and CMS may modify its position in the final rule. Also, the ACA's refund obligation remains in effect, irrespective of whether any rule is finalized.

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