

Legal Alert

February 18, 2016

60 DAY OVERPAYMENT RULE

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CMS published the final 60-Day Overpayment Rule in the Federal Register on February 12, 2016. Among the changes, CMS clarified that the 60 day “clock” for repayment after a “credible allegation of overpayment” starts after the provider completes its investigation with “reasonable diligence,” and that the provider has up to 6 months for the investigation. If the provider does not conduct a reasonable investigation at all, the 60-day repayment clock starts at the time of the initial overpayment notification. Because “reasonable diligence” is a fact-specific assessment, a provider cannot simply wait until the end of 6 months to begin an investigation; 6 months may not be a reasonable time period in all cases. In relation to the administrative appeals process, CMS has stated that if a provide has appealed certain allegations of overpayment, it would be “reasonable” for a provider to conclude that it is premature to investigate new claims of the same “conduct” as those on appeal until the appeal process is concluded. However, CMS did not comment on whether this would apply if the appeal process takes more than 6 months. CMS also reduced the proposed 10-year “look back” period to 6 years.

The complete Final Rule, along with the CMS responses to public comments on the proposed rule (February 16, 2012, 77 Fed. Reg. 9179) can be found in the Federal Register, 81 Fed. Reg.

7654, <https://www.gpo.gov/fdsys/pkg/FR-2016-02-12/pdf/2016-02789.pdf>.

Please contact Susan Watchman or Heather Boysel if you have any questions.

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