




Final Rule—Refund of Medicare Overpayments

HCCA Rocky Mountain Regional
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Agenda

- Brief History
- Key Themes of the Final Rule
 - Identification of Overpayments
 - Applicable Lookback Period
 - Mechanics of Reporting and Returning Overpayments
- Deeper Dive: Impact on Investigations and audits
- Action Items



BRIEF HISTORY

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Brief History

- Affordable Care Act (Act) – SSA § 1128J(d)
- Proposed Rule (77 FR 9179; Feb. 16, 2012)
 - “Reckless disregard”, “deliberate ignorance”
 - 10-year lookback period
 - No clear “identification” standard to trigger 60-day clock

Brief History

- *U.S. ex rel. Kane v. Healthfirst, Inc.* (Aug. 3, 2015)
 - First case involving alleged failure to refund Medicaid overpayments
 - Motion to dismiss denied and court read duty to inquire broadly
 - Settled for \$3M in Sept. 2016 (overpayment was ~\$850,000)

Brief History

- Final Rule effective March 14, 2016
 - Overpayments under Medicare Parts A and B must be reported and returned within 60 days of identification or the date any corresponding cost report is due
 - An overpayment is “identified” when a provider or supplier has or should have, through the exercise of reasonable diligence, determined that it has received an overpayment **and** quantified the amount of the overpayment
 - Refund overpayments identified “within six years of the date” overpayment was received

Brief History

- Three key themes:
 - Identification of overpayments
 - Lookback period
 - Mechanics of reporting and returning overpayments



IDENTIFICATION OF OVERPAYMENTS

Identification of Overpayments

- An overpayment must be reported and returned by –
 - Claims-based overpayments: 60 days after the date on which the overpayment was “identified”
 - Cost-report-based overpayments: the date any corresponding cost report is due

Claims-Based Overpayments

- Identified when
 - “Has determined [it] received an overpayment and quantified the amount” or
 - Should have determined/quantified “through the exercise of reasonable diligence”
- *Exercise of reasonable diligence* is a multi-step process
 - Credible information
 - Reasonable diligence
 - Identification and quantification
 - Report and return

Claims-Based Overpayments

- Credible Information: information that supports a reasonable belief that an overpayment may have been received
 - Triggers duty of “reasonable diligence” inquiry
 - Many potential sources of credible information
 - (Final) Medicare contractor audit findings (e.g., RAC, MAC)
 - Hotline reports
 - Unusual payment patterns

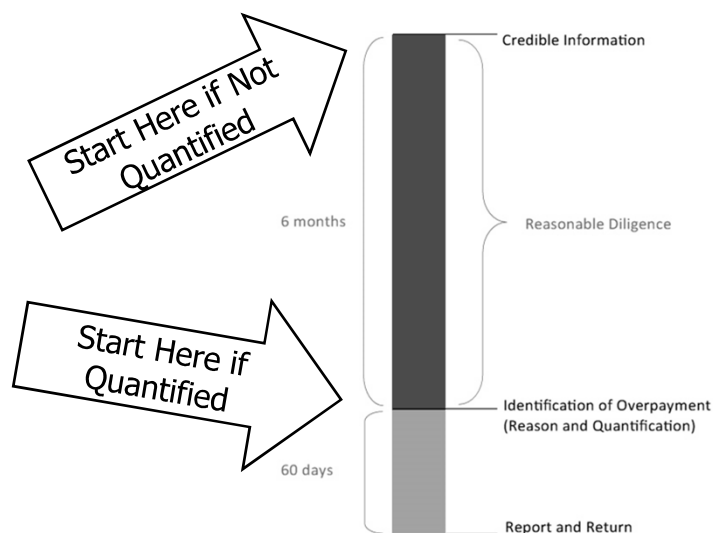
Claims-Based Overpayments

- Reasonable Diligence: demonstrated through timely, good faith investigation – “at most six months from receipt of the credible information”
 - Replaces “reckless disregard,” “deliberate ignorance” and “all deliberate speed”
 - Requires proactive and reactive investigative activities
 - Six months is guidance in CMS preamble, not it rule itself

★ Claims-Based Overpayments

- Identification & Quantification
 - An overpayment is “identified” only following reasonable diligence inquiry **and** quantification
 - No materiality or *de minimus* threshold
 - For probe samples, an overpayment is not “quantified” until the entire claim universe is analyzed
- Report and Return
 - Use existing MAC or self-reporting process

★ Claims-Based Overpayments



Cost Report-Based Overpayments

- Reconcile and refund
 - At the time the cost report is due
 - At the time the Notice of Program Reimbursement is issued
- Adjustments made by a MAC on retrospective audit = “credible information”
 - May trigger obligation to review prior years’ cost reports



LOOKBACK PERIOD

Lookback Period

- Lookback period is six years
 - Refund overpayments identified “within six years of the date” overpayment was received
- Reopening Rules
 - New § 405.980(c)(4) allows providers to request six-year reopening to address overpayments
 - No change to time periods for contractor-initiated reopenings
- Rule is not retroactive—does not apply to amounts refunded prior to March 14, 2016



MECHANICS OF REPORTING & RETURNING OVERPAYMENTS

The Mechanics

- Clarified the acceptable reporting method
 - MAC voluntary refund process
 - Requesting a claim adjustment or offset
- Clock is tolled for providers/suppliers who
 - Request an Extended Repayment Schedule, or
 - Use another approved disclosure method (e.g., OIG Protocol, CMS Stark Process)
- Repay after full review, not after probe sample

The Mechanics

- Permits MAC voluntary refunds to be submitted with one form with spreadsheet identifying all claims
- Does not require providers/supplies to submit specific data points with each refund
 - Exception: Overpayments calculated through extrapolation must include details of the statistical sampling method



DEEPER DIVE: IMPACT ON INVESTIGATIONS AND AUDITS

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Overpayments

- Overpayments can be discovered through
 - Proactive compliance activities (like routine internal audits)
 - Reactive compliance activities (like investigations)

Proactive Compliance

- Robust and appropriate compliance program
 - More than just policies on paper
 - Buy-in from top of the organization
 - Clear lines of communication / reporting
 - Qualified compliance officer
- Risk Assessments
 - Identify risk areas, determine how to assess, and implement mitigation as needed
- Audit protocols and work plans
 - Plans for what is being audited internally each year
 - Operational departments can review themselves—not just limited to compliance department reviews

Reactive Compliance

- Allegations of noncompliance and overpayment can arise from anywhere
 - Reactive compliance two step: *credible evidence* and *reasonable diligence*
- *Credible evidence*—When are you on notice of need to investigate?
 - Externally raised: subpoena, audit request or audit finding, MAC concern
 - Internal reporting (hotline, informal complaints, etc.)
 - Existence of such evidence is a factual determination

Scope of Investigation

- Scope of investigation
 - Have template plans / protocols ready
 - Know your internal resources
 - Review past concerns and understand when you may need outside resources to assist (consultants, auditors, attorneys)
 - Identify your look back period
 - Period when alleged conduct may have occurred
 - May be less than 6 years

Scope of Investigation

- Certain investigations may need to be conducted under the attorney-client privilege
 - Consider at the beginning of the review
 - Use privilege if *probability* of uncovering *significant* misconduct
- How much time?
 - Need to be diligent
 - CMS suggest that 6 months should be adequate



ACTION ITEMS

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Action Items

- Develop a process to:
 - Identify credible information relating to possible overpayments and the date received
 - Conduct reasonable diligence to identify overpayments
- Update documentation policies, if needed, to support reasonable diligence reviews looking back six years

Action Items

- Establish (or improve) lines of communication between internal audit and external audit response teams
 - Critical as external audit findings (from RACs, MACs, etc.) represent “credible information” and trigger six-month timeline
- Maintain documentation of all refunds including: retraction requests, revised claims, form and check submissions and extrapolation methodologies

