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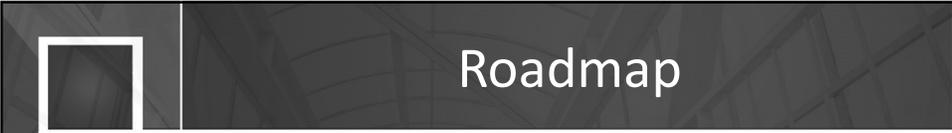
November 11, 2016

**Reporting and Returning of
Overpayments
CMS 60-Day Repayment Rule**

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Roadmap

- Brief History of 60-Day Rule
- Key Themes of the Final Rule
 - Identification of Overpayments
 - Applicable Lookback Period
 - Mechanics of Reporting and Returning Overpayments
- Preventative Measures

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Brief History

- Affordable Care Act (Act) – SSA § 1128J(d)

- Proposed Rule (77 Fed. Reg. 9,179; Feb. 16, 2012)
 - “Reckless disregard”, “deliberate ignorance”
 - 10-year lookback period
 - No clear “identification” standard to trigger 60-day clock

- *U.S. ex rel. Kane v. Healthfirst, Inc.* (Aug. 3, 2015)

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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)

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Brief History

- Final Rule (Feb. 12, 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.
- Effective Date: March 14, 2016

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Brief History

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

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Key Concepts

- An overpayment is not identified until it is quantified
- Reasonable diligence to identify overpayments starts with “credible information” that an overpayment may exist and should take no more than six months
- The lookback period is 6 years, not 10
- Providers must report and return overpayments within 60 days of the date of identification
- The methods to report and return overpayments are considerably more flexible

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Identification of Overpayments

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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

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Examples of Causes of Overpayments

- Insufficient Documentation
- Lack of Medical Necessity
- Credit Balances
- Non-covered Services
- In Excess Of Allowable
- Duplicate Payments

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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

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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 Complaints
 - Improper Coding Identified
 - Sudden Increase In Revenue
 - Internal/External Audits

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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

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Claims-Based Overpayments

- CMS Notes “undertaking no or minimal compliance activities to monitor the accuracy and appropriateness of a provider or supplier’s Medicare claims” would fall short of the “reasonable diligence” standard.
- If provider receives credible information that an overpayment may exist, and fails to exercise reasonable diligence to determine if there is an overpayment, 60-day period begins when provider received the credible information.

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Claims-Based Overpayments

▪ Identification & Quantification

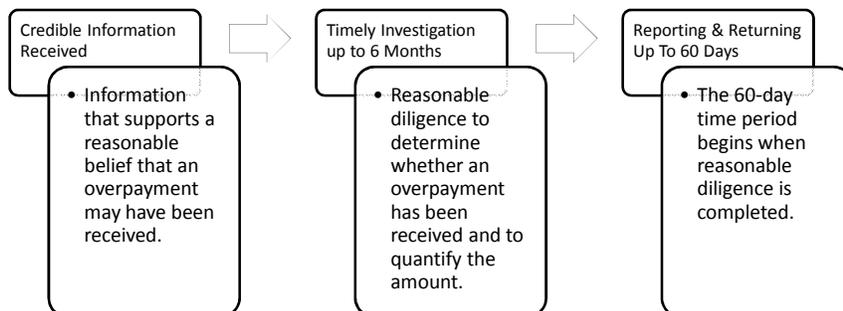
- An overpayment is “identified” only following reasonable diligence inquiry **and** quantification
- No materiality or *de minimus* threshold
- For probe samples, an overpayment is not “quantified” until the entire claim universe is analyzed

▪ Report and Return

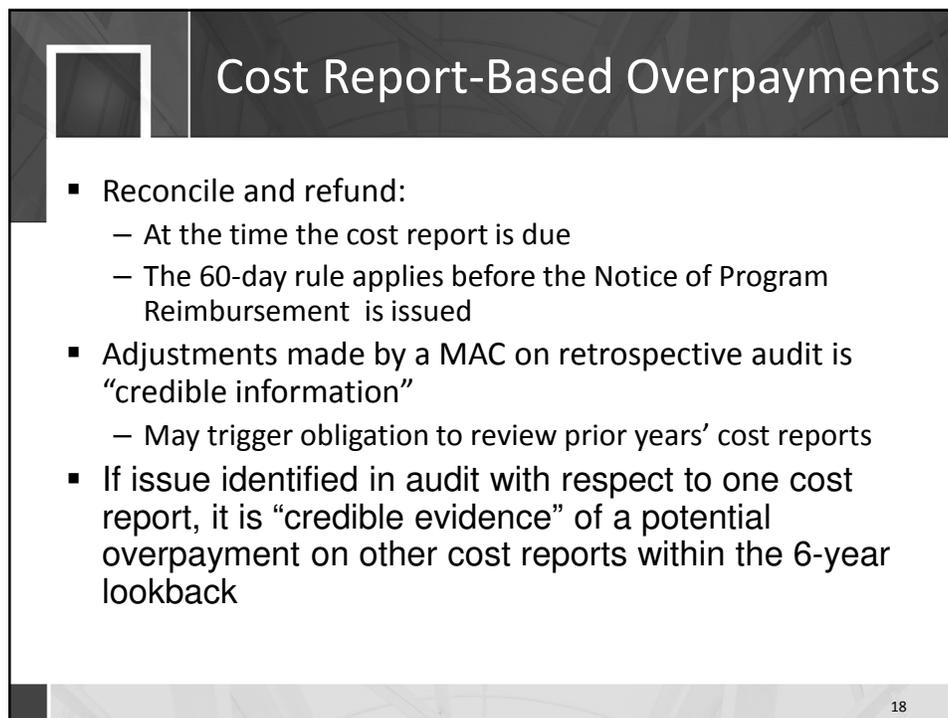
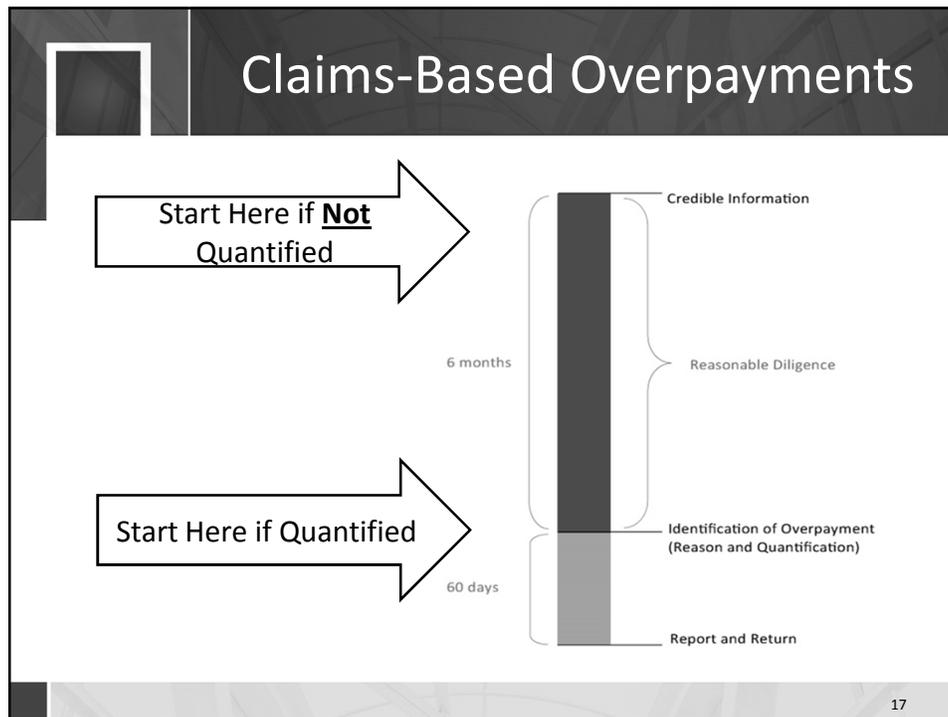
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Claims-Based Overpayments

Basic Process



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Cost Report Overpayments

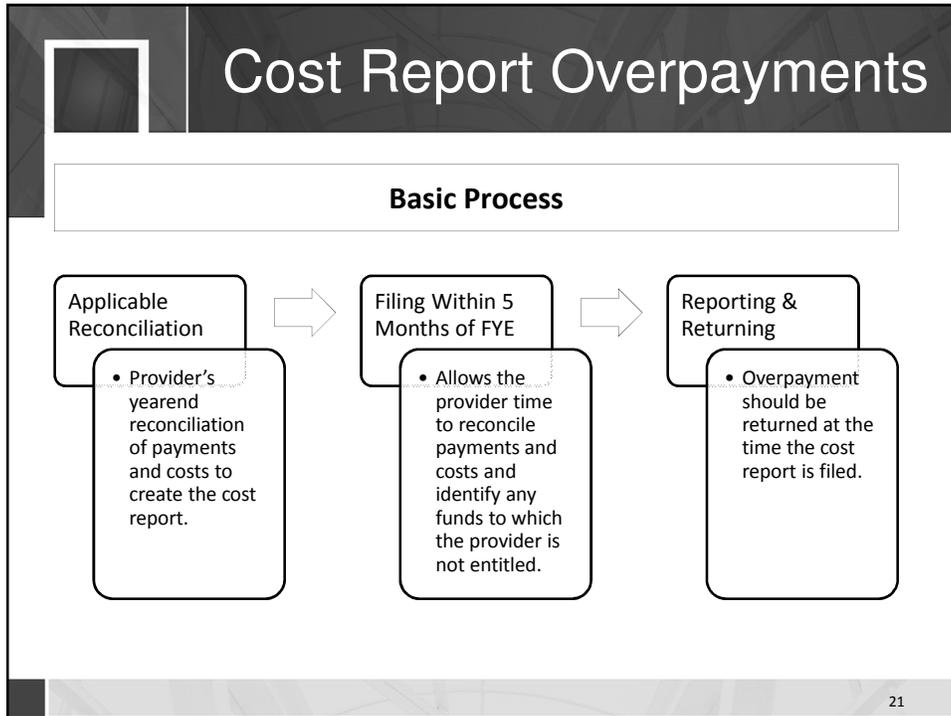
- Where interim payments are made based on estimated costs, an overpayment is not deemed to exist until ***applicable reconciliation***
- Applicable reconciliation occurs and refunds due when:
 - The cost report is filed (initial or amended),
 - If related to updated SSI ratios from CMS, the final reconciliation of the cost report,
 - If part of an outlier reconciliation, the final reconciliation of the cost report

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Cost Report Overpayments

- No change in reopening rules, but given timing in getting a Notice of Program Reimbursement (NPR) (3-4 years) and subsequent 3-year reopening period, 6 year lookback period likely covered
- Examples:
 - Overpayment discovered during preparation of cost report → Reconcile and refund when cost report submitted
 - Overpayment discovered prior to Notice of Program Reimbursement (NPR) → Submit amended cost report and refund
 - Overpayments discovered after NPR → Seek reopening to amend and refund

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Lookback Period

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Lookback Period

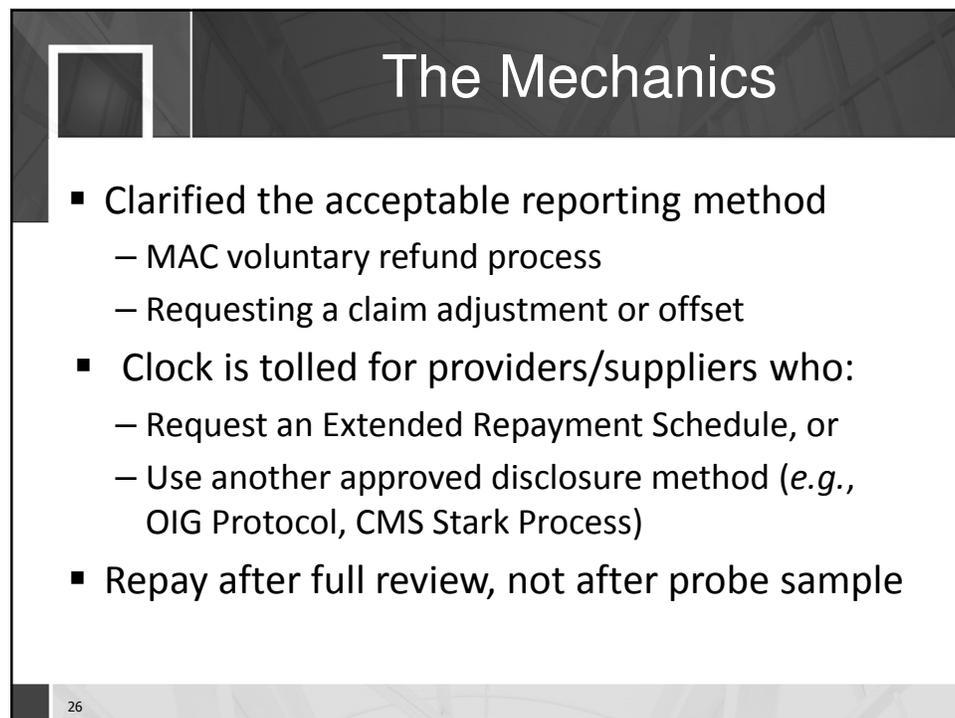
- Lookback period is six years (not 10 years)
 - Refund overpayments identified “within six years of the date” overpayment was received
- Reopening Rules
 - New 42 C.F.R. § 405.980(c)(4) allows providers to request six-year reopening to address overpayments
 - No change to time periods for contractor-initiated reopenings

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Lookback Period

- Final Rule is not retroactive
 - Does not apply to amounts actually refunded prior to March 14, 2016
 - Applies to amounts refunded after March 14, 2016—*even for overpayments received prior to that date*
- Important implications for provider/supplier audits currently in-process

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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

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Impact on Other Payors

- Final Rule applies only to Medicare Parts A & B
- What is lookback period for other payer
- Medicare Advantage Organizations
 - Medicaid FFS
 - Medicaid MCO
- Considerations:
 - Application of ACA
 - Contracted Status
 - State Law
 - Operational/Administrative Burden

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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 *high probability* of uncovering *significant* misconduct
- How much time?
 - Need to be diligent
 - CMS suggest that 6 months should be adequate
 - 6 months can go quickly

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Case Study

After Submission?

- What if provider self-identifies an overpayment after the submission and applicable reconciliation of the Medicare cost report?

Answer

- Submit an amended cost report.
- Report and return overpayment within 60 days of identification.

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Impact of Affordable Care Act on 60-Day Rule

Affordable Care Act	Medicaid and Whistleblowing
<ul style="list-style-type: none"> <input type="checkbox"/> Requires any entity that receives or makes payments to the State Medicaid Program of at least \$5,000,000 annually, to provide federal False Claims Act education to their employees. 	<ul style="list-style-type: none"> <input type="checkbox"/> Affordable Care Act requirement to provide False Claims Act education to employees.

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Key Communication Controls

Effective Communication	Effective Controls
<ul style="list-style-type: none"> <input type="checkbox"/> Internal Reporting Polices <input type="checkbox"/> Event Reporting Systems <input type="checkbox"/> Confidential Hotlines <input type="checkbox"/> Monitoring 	<ul style="list-style-type: none"> <input type="checkbox"/> Training <input type="checkbox"/> Supervision <input type="checkbox"/> Monitoring <input type="checkbox"/> Office Morale <input type="checkbox"/> No Retaliation

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Preventative Measures

1. Take stock of all audits currently in-process
 - If possible, quantify and refund prior to March 14, 2016
 - For all others, consider modification for six-year lookback
2. Develop a process to:
 - Identify credible information relating to possible overpayments and the date received
 - Conduct reasonable diligence to identify overpayments
3. Update documentation policies, if needed, to support reasonable diligence reviews looking back six years

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Preventative Measures

4. Revise existing audit policies to ensure compliance with six-month reasonable diligence and 60-day refund timeframes
5. Establish (or improve) lines of communication internally 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
6. Maintain documentation of all refunds including: retraction requests, revised claims, form and check submissions and extrapolation methodologies

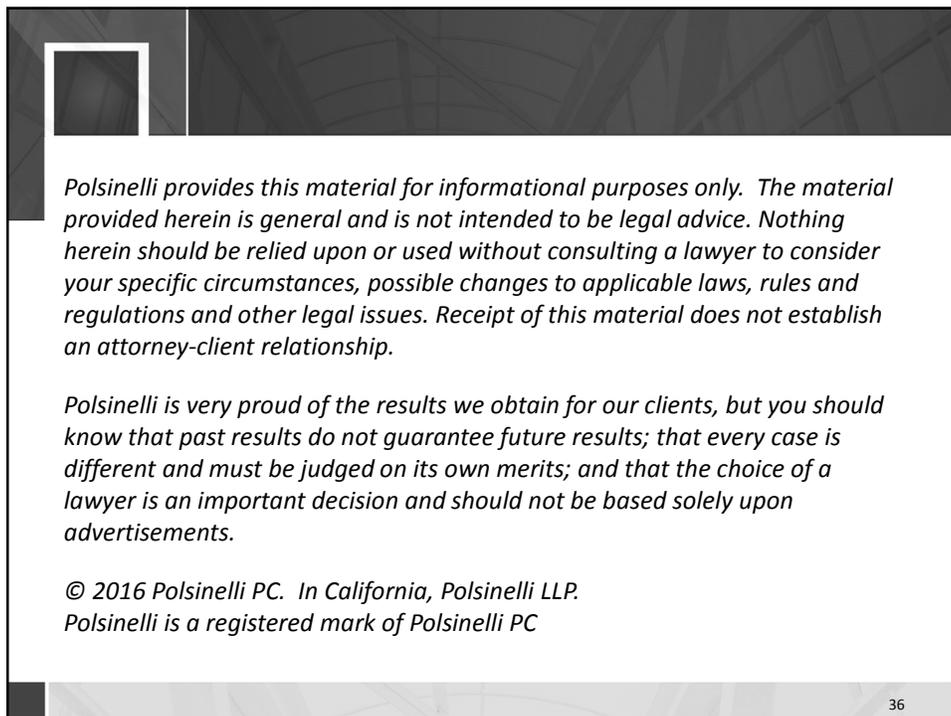
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Questions?

Thank You

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