



March 2015

Centers for Medicare and Medicaid Services Delays Overpayment Final Rule

The Centers for Medicare and Medicaid Services (CMS) [announced](#) on February 13, 2015, that it will delay publishing final regulations concerning the “60-Day Rule.” The final rule will be published on or before February 17, 2016. CMS cited the rule’s complexity and the scope of public comments as the cause of the delay. The proposed 60-Day Rule, originally published in February 2012, implements a requirement in the Patient Protection and Affordable Care Act (PPACA) that requires Medicare overpayments to be returned within 60 days of the date an overpayment is “identified.” If overpayments are not returned within the 60-day window, providers face potential treble damages and civil liability under the False Claims Act (FCA). Despite the final rule’s delay, CMS stated that stakeholders must comply with the 60-Day Rule requirements set forth in the PPACA or risk FCA and other liability, including potential exclusion from Medicare and Medicaid.

Since publication of the proposed rule, there has been significant debate and uncertainty over when an overpayment has been identified, thereby starting the 60-day clock for return of such overpayment. The proposed rule states that an “overpayment has been identified at the time that a person acts with actual knowledge of, in deliberate ignorance of, or with reckless disregard to the overpayment’s existence.” As previously reported in the *Health Law Pulse* ([here](#) and [here](#)), this is a central issue in a motion to dismiss currently pending in the Southern District of New York (SDNY). In *U.S. ex rel. Kane v. Continuum Health Partners*, the U.S. Department of Justice (DOJ) and the State of New York allege that the defendant, Mt. Sinai Health System (Mt. Sinai), failed to comply with the 60-Day Rule because it recklessly failed to take appropriate action after it received information about potential overpayments. Mt. Sinai has moved to dismiss the case, contending that an overpayment is “identified” on the date the overpayment is conclusively determined, and therefore, the DOJ miscalculated the 60-day repayment window.

The Mt. Sinai decision could affect CMS’ final rule on when an overpayment has been identified because CMS will likely have an opportunity to consider the SDNY’s decision and reasoning prior to issuing the final 60-Day Rule. We will continue to monitor this case and CMS’ issuance of a final rule and will provide updates on any further developments.

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