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New Proposed Rule by CMS Would Create a 10-Year Look Back Period for Reporting and Returning Medicare Overpayments

February 22, 2012 By: Michael Gennett

Now is the time to voice your opinion to Centers for Medicare & Medicaid Services (CMS) if you wish to oppose a new proposed rule which will require that providers and facilities who become aware of a potential Medicare overpayment investigate going back 10 years in determining how far back the overpayment goes and how much money needs to be returned to CMS. The proposed rule, which was published on February 16, 2012 in the Federal Register, implements Section 6402(a) of the Affordable Care Act, which has already been in effect since March 23, 2010. The Affordable Care Act makes a number of changes to the Medicare program which enhance CMS' efforts to recover overpayments and combat fraud. One of those changes requires that known overpayments be reported and returned to the Secretary, the applicable federal, state, or contracted payor by the later of – (1) the date which is 60 days after the date on which the overpayment was identified; or (2) the date any corresponding cost report is due, if applicable. Failure to return an overpayment within this time frame subjects the provider to False Claims Act liability, including trebel damages and civil money penalties in addition to returning the overpayment. The Affordable Care Act does not, however, dictate how far back a provider must look at the billing in question to determine the amount of the overpayment.

The 10-year look back period in the new rule is quite onerous, both in terms of the amount of the overpayment which may have to be returned, as well as the amount of investigative work the provider will incur. If you would like to voice your opinion to CMS on this proposed rule, you have until April 16, 2012 to do so. Submit your electronic comments to http://www.regulations.gov and follow the "Submit a comment" instructions. Please refer to file code CMS-6037-P.