

Sixty Golden Days (to Pay Back the Feds) Corridors - News for North Carolina Hospitals Fall 2011

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As a sequel to our article “[T Minus Sixty Days and Counting](#)” in the Winter 2010, issue of *Corridors*, this article discusses some practical procedures for hospitals and other providers to handle overpayments and repayments. In the world of medicine, the “golden hour” is that small window of opportunity within which the lives of cardiac, stroke or trauma patients can be saved. Similarly, providers who are overpaid by Medicare or Medicaid have their own “golden hour” for reporting and returning such payments. Fortunately, providers do not have just an hour to respond concerning overpayments but instead have a golden 60 days. But the idea is the same—immediate action is the key to survival.

The Patient Protection and Affordable Care Act (PPACA) has instituted a “60-day rule” that requires any person who has received a Medicare or Medicaid “overpayment” to which the person “is not entitled” to report such overpayment and return it within “60 days after the date on which the overpayment was identified.” There is a separate rule for cost reports, which we do not address here.

By itself, this obligation to repay does not really change things. Certainly, the debt has to be repaid, but whether it is repaid now, or sooner, or later would not seem to matter very much. However, under PPACA, after the golden 60 days have passed, keeping the money becomes a



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federal false claim (a so-called “reverse false claim”), and civil money penalties and exclusions come into play. How severe are these penalties? The civil penalties can cost up to \$11,000 per claim, and damages can be two or three times the amount of the entire overpayment. So 1,000 false claims totaling \$1 million in overpayments (1,000 x \$11,000) equals \$11 million, plus 3 x \$1 million = \$3 million, equaling a total of \$14 million in civil penalties and damages. Add in the provisions exclusion from the programs, and suddenly those golden 60 days become terribly important.

Unfortunately, it can be hard to tell when the 60 days begin to run. The law says they start when the overpayment is “identified,” but it does not say how to spot that moment in time. Lawyers, consultants, and regulators disagree about what “identified” might mean. Consequently, providers have to make reasonable judgments and hope for the best.

In attempting to determine when your golden 60 days begin to run, ask yourself these four questions:

- When did my organization first have good cause to suspect (genuine, sensible reasons to suspect) there may have been specific overpayments?
- From the time my organization first had good cause to suspect such overpayments, did we work diligently to find out if we received overpayments and, if so, how much we were overpaid?
- Now, am I reasonably sure there were such overpayments?
- Now, am I reasonably sure about the amount of such overpayments?

If your organization works diligently on the problem from the time it first reasonably suspected something was amiss, then your 60-day reporting and repayment period should not start to run until you are reasonably certain there was an overpayment and reasonably certain of the amount. This means you still have another 60 days, calculate your actual overpayment, report it, and repay it.



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On the other hand, if your organization had reasons to suspect an overpayment but failed to investigate them diligently, all you can do is assume you are already into your golden days and complete the investigation, calculate the overpayment, report it, and repay it as soon as possible.

A good thing about these four questions is that they can be restated as standard policies for your organization, such as the following:

- Anyone who has reason to suspect the organization may have received reimbursement it should not have received must report the reasons for this suspicion to the compliance officer.
- All reasonably suspected overpayments will be carefully investigated, beginning immediately upon their being reported to the compliance officer.
- Once the investigators are reasonably certain an overpayment has occurred and are reasonably certain of the overpayment amount, the overpayment has been identified.
- The amount of the overpayment shall be calculated, reported, and repaid not more than 60 days after the overpayment is identified.

If the entire overpayment cannot be fully calculated in that time, whatever part of the overpayment can be calculated should be reported and refunded, and the remainder of the overpayment should be calculated, reported, and repaid as quickly as possible thereafter. If your organization's standard procedures allow some leeway in identifying overpayments, as the suggested policies above do, it would be best not to take any extra time to act after the overpayments are identified.

Eventually the government will give us better guidance about the 60-day rule. For now, however, every provider needs to treat overpayments as emergencies by returning them within the golden 60 days in order to avoid severe penalties.



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