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Health Care Update

PROVIDER BEWARE: IF YOU FIND A MEDICARE OVERPAYMENT, GIVE IT BACK - FAST!

The Patient Protection and Affordable Care Act requires that providers report and return a Medicare overpayment no later than 60 days after the overpayment is identified. Failure to do so exposes the provider to liability under the Federal False Claims Act, which can result in having to repay three times the overpayment as a penalty, plus other draconian fines and costs. On February 16th, CMS published a proposed rule to clarify this obligation.

You have "identified" an overpayment if you have actual knowledge of it or you act in reckless disregard or deliberate ignorance of the overpayment. Overpayments are those to which you are not entitled, and include payments in excess of the allowable amount, payment based on incorrect coding, duplicates, payment for non-covered services, and Medicare payment when another payer was primary. If you received payment for services rendered by an unlicensed or excluded person, that too is an overpayment.

If you have reason to think you might have been overpaid — as for example, when claims formerly paid start getting rejected or when a staff member expresses a concern about incorrect billing — you have a duty to investigate the information. It may take you more than 60 days to "identify" the overpayment and possibly even longer to determine the exact amount of the overpayment, but you should start the investigation immediately and initiate the reporting and refund process within the 60 day window if at all possible.

Repayment is done through an existing voluntary refund process that will be renamed the “self-reported overpayment refund process” (SRORP). Providers report overpayments to their Medicare administrative contractor (MAC) using a form found on its website (National Government Services in Connecticut). The form requires information sufficient to allow CMS to identify the affected claims. THE SRORP requires a summary of why the refund is being made including: (1) how the error was discovered; (2) a description of the corrective action plan to ensure the error does not re-occur; (3) the reason for the refund; (4) whether the provider or supplier already has a corporate integrity agreement (CIA) with the OIG or is under the OIG Self-Disclosure Protocol (in other words, is already under scrutiny); (5) the timeframe and the total amount of refund for the period during which the problem occurred; (6) Medicare claim control number; (7) NPI number; (8) a refund in the amount of the overpayment; and (9) if a statistical sampling was used to determine the overpayment amount, a description of the statistically valid methodology used to determine the overpayment must be provided. Many MAC forms provide a “check the box” format that allows easy identification of the reason for the overpayment.

In some cases it may be necessary to use statistical sampling if the overpayment has resulted from a repetitive error and has lasted many years, because the look back
period on overpayments is ten (10) years. If this is your situation, you may need to work with a consultant and your MAC on something this complex. CMS recognizes a provider may not be financially able to return the full amount of the overpayment within the 60-day period, and has a process called the Extended Repayment Schedule to help with this.

The point is to be diligent and timely when you think you have a problem, and to work with your MAC towards resolution. The MAC merely wants money back for the Medicare Trust Fund. It could—but will most likely not—report the overpayment as a red flag to the Office of the Inspector General for further inquiry. But if you are transparent and prompt about addressing an error, the MAC has every reason to work with you.

The government wants to move away from what it calls “pay and chase”—Medicare pays claims without much scrutiny and the government later has the burden of auditing and trying to collect and punish you. One way to do that is to give you an incentive to catch and disclose your own mistakes. The best protection is to have internal or external billing audits that identify overpayments before the government finds them. If you find errors: repay now or risk repayment times three for the FCA penalty! The only wrong choice: put your head in the sand and do nothing about Medicare billing errors. That’s the reckless disregard/deliberate ignorance standard that’s enough for the government to establish False Claims Act liability.

If you have any further questions or concerns regarding Medicare overpayment issues, please contact:

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