CMS Issues Proposed Rule on 60-Day Reporting/Repayment Obligation for Overpayments to Medicare Providers

02.22.2012

BY: MARCUS C. HEWITT

As part of 2010's Affordable Care Act, a new section was added to the Social Security Act (Section 1128J(d)), which requires providers to report and return any overpayments they receive from Medicare or Medicaid within 60 days (see http://www.ssa.gov/OP_Home/ssact/title11/1128J.htm). Any overpayment that is not reported and returned within 60 days constitutes an "obligation" for purposes of the Federal False Claims Act. Therefore, concealing or improperly avoiding repayment of the overpayment could result in False Claims Act liability, including civil penalties of $5,500-$11,000 per violation and triple damages.

The Centers for Medicare and Medicaid Services (CMS) published a proposed rule on 16 February 2012 implementing this new obligation for providers of services under Medicare Parts A and B. The proposed rules would be codified as 42 CFR Parts 401 and 405. In particular, the proposed rule contains a provision that a provider must report and return any overpayment that it has "identified," meaning "if the person has actual knowledge of the existence of the overpayment or acts in reckless disregard or deliberate ignorance of the existence of the overpayment." The 60-day timeline begins to run from the date the overpayment is identified, and overpayments up to 10 years old must be reported and returned within the 60-day period.

The commentary with the proposed rule also gives instructive examples of the various ways in which an overpayment might be "identified," which providers should be aware of since identification triggers the obligation to report and repay. There is a two-month period in which providers may submit comments to CMS on the proposed rule, ending 16 April 2012.

For more information about this topic, please contact the author or any member of the Williams Mullen Health Care Team.

Related People

Related Services

- Health Care Litigation
- Health Care