



CMS announces one-year delay in final 60-day overpayment rule

February 20, 2015

In a notice published in the Federal Register February 17, 2015, the Centers for Medicare & Medicaid Services (CMS) announced a one year extension until February 16, 2016, of its timeline for publication of the "Medicare Program; Reporting and Returning Overpayments" final rule.

The final rule will address policies and procedures for reporting and returning Part A and Part B overpayments to Medicare within 60 days of identifying the overpayment. The final rule was originally scheduled to be published in February 2015 to meet the requirement that final rules be published within three years of publication of a proposed or interim final rule.

CMS published the proposed rule regarding reporting and returning Part A and Part B overpayments to Medicare in February 2012. CMS is required to provide a notice if there are exceptional circumstances that cause it to publish a final rule more than three years after publication of a proposed rule.

In the notice, CMS cites the "complexity of the rule and scope of comments" as the reason for the one year extension. Public comments and stakeholder feedback identified significant policy and operational issues that will need to be resolved to address all of the concerns raised in the comments to the proposed rule. Adding to the timeline is that resolving these issues will require coordination between the Department of Health and Human Services Office of Inspector General and the Department of Justice.

Although CMS is delaying publication of the final rule, CMS cautions that even without a final rule, Section 6402(a) of the Affordable Care Act (codified at Section 1128J(d) of the Social Security Act) requires a person who has received an overpayment to report and return the overpayment to Medicare by the later of (i) 60 days after the date on which the overpayment was "identified" or (ii) the date any corresponding cost report is due, if applicable. In addition, a person who fails to do so "could face potential False Claims Act liability, civil Monetary Penalties Law liability, and exclusion from Federal health care programs for failure to report and return an overpayment." The statute also requires the person to notify Medicare in writing of the reason for the overpayment.

Industry stakeholders were critical of the proposed rule in several respects, including a ten year look back period for the reporting of overpayments (which is longer than the six year look back period used for other Medicare programs) and significant penalties of \$10,000 for each identified overpayment and potential exclusion from Medicare. The delay in issuance of the final rule leaves stakeholders uncertain about these issues for yet another year.

Authors



Shannon K. DeBra
Of Counsel

Cincinnati
513.870.6685
sdebra@bricker.com