CMS publishes final 60-day overpayment rule for self-identified overpayments

February 11, 2016

On February 11, 2016, the Centers for Medicare & Medicaid Services (CMS) published the long-awaited final rule, Reporting and Returning of Overpayments. The rule requires health care providers and suppliers to report and return overpayments within 60 days of the date the overpayment is identified or the due date of any corresponding cost report, whichever is later. CMS published the final rule nearly four full years after it published the proposed rule on this topic. (In a prior publication, Bricker & Eckler discussed concerns regarding the proposed rule.) The final rule is scheduled to be published in the Federal Register on February 12, 2016, and is effective March 14, 2016.

The final rule clarifies that the 60-day clock for reporting and returning overpayments begins when the person "has or should have, through the exercise of reasonable diligence, determined that the person has received an overpayment and quantified the amount of the overpayment." This is good news, because it makes clear that the 60-day clock does not start until the amount of the overpayment has been quantified.

The final rule also has good news regarding the applicable lookback period. Under the final rule, providers must report and return overpayments identified within six years of the date the overpayment was received, whereas CMS had proposed a 10-year lookback period, which caused significant concern from industry stakeholders.

CMS cautions that providers and suppliers cannot avoid liability by failing to investigate possible overpayments, however. CMS will deem a provider or supplier to "have determined that [it] received an overpayment and quantified the amount of the overpayment if the person fails to exercise reasonable diligence and the person in fact received an overpayment." The 60-day clock for reporting and returning the overpayment begins when the reasonable diligence is completed "…or on the day the person received credible information of a potential overpayment if the person failed to conduct reasonable diligence and the person in fact received an overpayment." CMS explains that reasonable diligence includes both good faith proactive compliance activities to monitor the receipt of overpayments and timely investigations in response to obtaining credible information of a potential overpayment.

Bricker & Eckler will follow up with a full Health Care Analysis summarizing the newly announced final rule.

Authors