Government sends a $2.95 million warning to health care providers with announcement of settlement in 60-day overpayment rule case

August 29, 2016

Shannon K. DeBra
Of Counsel
Cincinnati
513.870.6685
sdebra@bricker.com

The first federal lawsuit involving interpretation and application of the 60-day overpayment refund rule, which was discussed in previous Bricker & Eckler publications (see "Department of Justice wins federal court ruling on 60-day overpayment rule" from August 2015 and "DOJ intervenes in False Claims Act suit over ACA's 60-day overpayment rule" from July 2014), has been settled. On August 24, 2016, the government sent a powerful message when the New York Attorney General announced that Mount Sinai Health System agreed to pay $2.95 million to settle allegations that three of its hospitals held onto approximately $844,000 in Medicaid overpayments beyond the 60-day deadline for reporting and returning identified overpayments. The overpayments stemmed from the hospitals' incorrect billing of Medicaid as a secondary payor for claims for services rendered to Medicaid managed care patients. According to the New York Attorney General's press release announcing the settlement, the hospitals became aware of the overpayments in 2009 and 2010 but "avoided fully reimbursing Medicaid for those patients until March 2013." The government's investigation was initiated by a whistleblower who filed a qui tam lawsuit after his employment was terminated days after he brought the errors to the attention of management at the hospitals. The whistleblower will receive $354,000 as his share of the settlement proceeds for bringing this case on behalf of the government.

The Centers for Medicare & Medicaid Services (CMS) final rule on Medicare Part A and Part B overpayments was published in the Federal Register on February 11, 2016, and requires health care providers to report and return overpayments within 60 days of "identifying" the overpayment. In the final rule, CMS clarified what "identifying" an overpayment means, explaining 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." However, in the final rule, CMS cautioned that providers and suppliers cannot avoid liability by failing to

investigate possible overpayments. According to the final rule, 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.

This settlement should serve as a warning to health care providers that once a possible overpayment situation is reported or discovered, they must investigate the matter and not bury their heads in the sand. In this case, the failure of the hospitals to promptly investigate and report/return the $844,000 overpayment to the Medicaid agency resulted in costing them over three times the original overpayment amount.