

## Top 10 Things you Need to Know About Voluntary Disclosures and Government Refunds

Article By:

Jeffrey C. Thrope

---

In February 2016, **CMS** issued the highly anticipated Final Rule on reporting and returning **Medicare Part A** and B *overpayments*. The Final Rule was meant to clear up some of the confusion among providers regarding such overpayments.

Summarized below is our Top 10 list of the things you need to know:

- **Basics of the 60-Day Rule.** The Affordable Care Act sets forth the statutory 60-day overpayment requirement. The statute requires a person who has received an overpayment to (1) report and return the overpayment to the government agency/contractor; and (2) notify the agency/contractor in writing of the reason(s) why the overpayment was returned. The statute states that the overpayment must be reported and returned by the later of (a) the date which is 60 days after the date on which the overpayment was identified; or (b) the date any corresponding cost report is due, if applicable. On February 12, 2016, CMS published the Medicare Parts A and B Final Rule, which will be the focus of this blog post.
- **Lookback Period.** CMS imposed a 6-year lookback period, which was effective as of March 14, 2016, and is counted back from the date the overpayment was identified. The lookback period is not retroactive, which means that the lookback period applicable to reviews pending as of March 14, 2016 could potentially be longer.
- **Meaning of “Identify.”** An overpayment is not “identified” until the amount of refund has been “quantified.” The 60-day clock does not start running until after the reasonable diligence period has concluded, which may take “at most 6 months from receipt of credible information, absent extraordinary circumstances.”
- **Notification and Refund Process.** Providers can use any appropriate process to return overpayments, including claims adjustments, credit balances, voluntary offsets, OIG Self-Disclosure Protocol, and CMS Self-Referral Disclosure Protocol. CMS is considering creating a standardized notification form.

- **Underpayments.** CMS declined to extend a one-year period to rebill a claim and declined to permit offsets of identified underpayments from identified overpayments. Underpayments must continue to be resolved under existing reopening rules.
- **Overpayment Policies.** It is important to review your existing overpayment policy or develop one if you do not have one. The overpayment policy should incorporate the key aspects of the Final Rule discussed above.
- **Document Retention Policies.** It is also important to review your document retention policies or develop them if you do not have them. These policies should incorporate the new 6-year lookback period as discussed above.
- **Internal Investigations.** Evaluate your processes for conducting internal investigations, and revise such processes to incorporate the process, timing, and reporting expectations of the Final Rule.
- **Training.** Employees involved in the process of identifying and refunding overpayments should receive updated/supplemental training on the Final Rule and changes to overpayment policies. These employees include the accounting department, audit department, administrative staff, compliance department, and legal department. The records department and IT staff should receive updated/supplemental training on any changes to document retention policies. The compliance department, legal department and audit department should receive updated/supplemental training on changes to any internal investigation processes.
- **Appeals.** A provider may appeal a contractor overpayment determination. The Final Rule declined to create explicit appeal rights for self-identified overpayments.