

# Issue Brief

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## KEY POINTS

Major provisions include the following.

- overpayments must be reported and returned if identified within six years of the date of overpayment
- defining “identification” of an overpayment
- clarification and definition of an overpayment
- how to report and return overpayments

## CMS Issues Final Rule for Medicare Reporting and Returning of Self-Identified Overpayments

The Centers for Medicare & Medicaid Services has issued a final rule that requires Medicare Parts A and B health care providers and suppliers to report and return overpayments by the later of the date that is 60 days after the date an overpayment was identified, or the due date of any corresponding cost report, if applicable. CMS notes that a separate final rule was published in the May 23, 2014, *Federal Register* that addresses Medicare Parts C and D overpayments.

The rule is effective in 30 days.

A copy of the 132-page rule is currently at: <https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-02789.pdf>. Publication is scheduled for Feb. 12. The above link will be superseded upon publication.

Section 6402(a) of the Affordable Care Act established a new section 1128J(d) of the Act.

## MAJOR PROVISIONS

### Meaning of “Identification”

This final rule states that a person has identified an overpayment when the person has, or should have through the exercise of reasonable diligence, received an overpayment and quantified the

amount of the overpayment. Creating this standard for identification provides needed clarity and consistency for health care providers and suppliers regarding the actions they need to take to comply with requirements for reporting and returning of self-identified overpayments.

### Lookback Period

Overpayments must be reported and returned only if a person identifies the overpayment within six years of the date the overpayment was received.

### How to Report and Return Overpayments

This final rule states that providers and suppliers must use an applicable claims adjustment, credit balance, self-reported refund, or another appropriate process to satisfy the obligation to report and return overpayments.

This rule also provides that if a health care provider or supplier has reported a self-identified overpayment to either the Self-Referral Disclosure Protocol managed by CMS or the Self-Disclosure Protocol managed by the Office of the Inspector General, that the provider or supplier is considered to be in compliance with the provisions of this rule, as long as they are actively engaged in the respective protocol.

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## COMMENT

This rule may be easier to understand by simply referring to the regulation text as noted below:

### § 401.303 Definitions

For purposes of this subpart, Medicare contractor means a Part A/Part B Medicare Administrative Contractor (A/B MAC) or a Durable Medical Equipment Medicare Administrative Contractor (DME MAC).

Overpayment means any funds that a person has received or retained under title XVIII of the Act to which the person, after applicable reconciliation, is not entitled under such title.

Person means a provider (as defined in § 400.202 of this chapter) or a supplier (as defined in § 400.202 of this chapter).

### § 401.305 Requirements for reporting and returning of overpayments:

(a) General. (1) A person who has received an overpayment must report and return the overpayment in the form and manner set forth in this section. (2) A person has identified an overpayment 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. A person should have determined that the person 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.

(b) Deadline for reporting and returning overpayments. (1) A person who has received an overpayment must report and return the overpayment by the later of either of the following:

- (i) The date which is 60 days after the date on which the overpayment was identified.
- (ii) The date any corresponding cost report is due, if applicable.

(2) The deadline for returning overpayments will be suspended when the following occurs:

- (i) OIG acknowledges receipt of a submission to the OIG Self-Disclosure Protocol and will remain suspended until such time as a settlement agreement is entered, the person withdraws from the OIG Self-Disclosure Protocol, or the person is removed from the OIG Self-Disclosure Protocol.
- (ii) CMS acknowledges receipt of a submission to the CMS Voluntary Self-Referral Disclosure Protocol and will remain suspended until such time as a settlement agreement is entered, the person withdraws from the CMS Voluntary Self-Referral Disclosure Protocol, or the person is removed from the CMS Voluntary Self-Referral Disclosure Protocol.
- (iii) A person requests an extended repayment schedule as defined in § 401.603 and will remain suspended until such time as CMS or one of its contractors rejects the extended repayment schedule request or the provider or supplier fails to comply with the terms of the extended repayment schedule.

(c) Applicable reconciliation. (1) The applicable reconciliation occurs when a cost report is filed; and (2) In instances when the provider:

- (i) Receives more recent CMS information on the SSI ratio, the provider is not required to return any overpayment resulting from the updated information until the final reconciliation of the provider's cost report occurs; or
- (ii) Knows that an outlier reconciliation will be performed, the provider is not required to estimate the change in reimbursement and return the estimated overpayment until the final reconciliation of that cost report.

(d) Reporting. (1) A person must use an applicable claims adjustment, credit balance, self-reported refund, or other reporting process set forth by the applicable Medicare contractor to report an overpayment, except as provided in paragraph (d)(2) of this section. If the person calculates the overpayment amount using a statistical sampling methodology, the person must describe the statistically valid sampling and extrapolation methodology in the report. (2) A person satisfies the reporting obligations of this section by making a disclosure under the OIG's Self-Disclosure Protocol or the CMS Voluntary Self-Referral Disclosure Protocol resulting in a settlement agreement using the process described in the respective protocol.

(e) Enforcement. Any overpayment retained by a person after the deadline for reporting and returning the overpayment specified in paragraph (b) of this section is an obligation for purposes of 31 U.S.C. 3729.

(f) Lookback period. An overpayment must be reported and returned in accordance with this section if a person identifies the overpayment, as defined in paragraph (a)(2) of this section, within six years of the date the overpayment was received.

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*Analysis provided for MHA  
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