

## Eli's Hospice Insider

### Regulations: Your Understanding Of 'Identification' Is Critical For 60-Day Rule Compliance

**'Reasonable diligence' shouldn't take more than 6 months.**

Ignoring "credible evidence" of an overpayment won't buy you any more time under the 60-day rule's deadline for repayment.

One of the most contested elements of Medicare's proposed 60-day rule was the meaning of "identified" in terms of when the clock starts ticking for reporting and returning overpayments. The final rule does provide additional helpful guidance regarding when an overpayment is "identified" and thus when the 60-day time period begins for returning the overpayment.

**Rule of thumb:** Under the Affordable Care Act, a provider must report and return an overpayment by the later of:

- The date which is 60 days after the date on which the overpayment was identified; or
- The date any corresponding cost report is due, if applicable.

"The final rule makes clear that the 60-day clock starts only after the provider, using reasonable diligence, determines and quantifies the amount of the overpayment," note attorneys **Stephanie Sprague Sobkowiak** and **Daniel Kagan** with **Murtha Cullina** in analysis. And "reasonable diligence" means the timely, good-faith investigation of credible information, which would take at most six months following the receipt of the credible information, except in extraordinary circumstances (i.e., complicated self-referral law violations, natural disasters, or states of emergency).

Although the **Centers for Medicare & Medicaid Services'** commentary indicates that "reasonable diligence may include an audit and subsequent extrapolation to arrive at the reasonable overpayment amount," CMS also makes clear that providers must engage in proactive measures to determine whether they've received overpayments, Sobkowiak and Kagan note. "Simply waiting for a problem to come to light is not enough."

**Pitfall:** "As you would expect, maintaining documentation of all investigatory efforts is critical and should not be overlooked," Sobkowiak and Kagan stress. "Of course, if the provider did in fact receive an overpayment and fails to conduct reasonable diligence, the 60-day clock starts to tick on the date that the provider received credible evidence of the overpayment."