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Credible Information Is Heart of 60-Day Rule; OIG: Self-Disclosure Pauses the Clock

By Nina Youngstrom

When a hospital realized it had been billing for annual wellness visits without documentation of opioid and substance use screening,^[1] it wasn't a heavy lift to calculate how much to repay Medicare in time to meet the deadline of the 60-day overpayment refund rule. The trail of breadcrumbs was followed to the effective date of the requirement and the hospital's failure to communicate it to physicians and nonphysician practitioners and/or build prompts in electronic medical records to capture documentation. "Sometimes the 60-day rule is easy," the compliance officer said. But often that's not the case, as the hospital is finding with clinical validation of diagnoses that drive MS-DRGs. "Where it is harder is those areas that are grey and not so straightforward." The compliance, health information management and legal departments are digging into diagnosis upcoding that could have caused higher-paying MS-DRGs. It's expected to take six months, and when the picture comes into focus, the 60-day countdown will begin, according to the compliance officer, who prefers not to be identified.

That captures one of the perennial challenges of compliance with the Medicare 60-day rule, which requires providers to return overpayments 60 days after identifying and quantifying them. The 2016 regulation^[2] interpreting the 60-day rule, which was created by the Affordable Care Act, requires providers to use reasonable diligence to identify overpayments by doing proactive compliance activities to monitor for overpayments and investigating potential overpayments in a timely manner. CMS defined "timely" as within six months of receiving "credible information" about an overpayment. Providers must look back six years when they find errors themselves or get credible information of overpayments.

"Understanding how to define credible information is the key to understanding this entire rule," said attorney Andrew Ruskin, with K&L Gates in Washington, D.C. Credible information "is the doctrine of whether you have the reasonable belief you might have an overpayment." That and other aspects of the 60-day rule, including when to start the clock, should be set forth in a policy, experts say. They also recommend a defined method for investigating credible information.

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