

## Report on Medicare Compliance Volume 27, Number 33. September 17, 2018

### Court Vacates MA 60-Day Rule; It's a 'Case to Watch for Compliance'

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By Nina Youngstrom

A federal court Sept. 7 threw out the regulation on the Medicare 60-day overpayment refund rule for Medicare Advantage (MA) in a decision that could affect providers down the road. The U.S. District Court for the District of Columbia ruled in favor of UnitedHealth Group, saying the regulation interpreting the 60-day rule was invalid because it undermines “actuarial equivalence” between Original Medicare and Medicare Part C, and because the regulation imposed False Claims Act (FCA) liability under a standard not authorized by the FCA itself.

“This is a case to watch for compliance people,” says attorney Jeffrey Fitzgerald, with Polsinelli in Denver, Colorado. “While this case is limited to Part C, the legal analysis should equally apply to the 60-day Medicare refund rule for [Medicare Parts] A and B.”

The Affordable Care Act requires plans, providers and suppliers to report and return Medicare and Medicaid overpayments 60 days after identifying them. CMS issued a 2014 regulation interpreting the 60-day overpayment refund rule for Medicare Advantage, but the language is similar to the 2016 regulation on the 60-day overpayment refund rule for Medicare Parts A and B. The regulation for Medicare Parts A and B says 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” (RMC 2/15/16, p. 1), which is close to the 2014 Part C regulatory language. Failure to return overpayments puts them at risk of FCA lawsuits.

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