Report on Medicare Compliance Volume 29, Number 22. June 15, 2020
Provider Got Off Payment Suspension With Waiver; CMS Otherwise Holds Firm During COVID-19

By Nina Youngstrom

CMS has granted a provider's request to lift its Medicare payment suspension under Sec. 1135 waivers[1] that are available on a case-by-case basis during the public health emergency,[2] its attorney said. The provider, a surgery practice, asked for relief from the payment suspension, which was based on a "credible allegation of fraud," because it also has been crushed by COVID-19's suppression of nonemergency surgery.

"We were pleasantly surprised," said the attorney, Ross Burris, with Polsinelli in Atlanta, Georgia.

But other attorneys say CMS hasn't budged on payment suspensions, at least for hospices, even though "CMS has been working around the clock" to give providers regulatory relief so they can focus on COVID-19, said attorney Andy Ruskin, with Morgan Lewis in Washington, D.C. "CMS is not speaking with one voice." Audits of hospices have been heavy-handed, added Jacob Harper, also a lawyer with Morgan Lewis in Washington, D.C., and they could use the same consideration as other providers that have gotten a break.

Sec. 6402(h) of the Affordable Care Act[3] requires the suspension of Medicare and/or Medicaid payments to a provider when there's a credible allegation of fraud unless there's "good cause not to suspend payments." Payments are suspended when CMS or its unified program integrity contractors (UPICs) believe there's "reliable information that an overpayment exists," according to Medicare Transmittal 670.[4] Suspension means shutting down some or all of a provider's Medicare cash flow while the overpayment is quantified and/or the fraud allegation is investigated by the UPIC, Department of Justice or HHS Office of Inspector General (OIG). CMS is required to evaluate the payment suspension every 180 days to determine whether there are grounds to maintain it.

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