

## Report on Medicare Compliance Volume 32, Number 34. September 25, 2023 OIG: Hospitals Will Repay \$41M for PACT Errors; 'Credible Information' is Questioned Here

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By Nina Youngstrom

Hospitals will face another round of overpayment recovery stemming from the post-acute care transfer (PACT) payment policy in the wake of a new HHS Office of Inspector General (OIG) report.<sup>[1]</sup> The report said Medicare overpaid hospitals \$41.4 million over four years and suggested that CMS recover the money and tell hospitals to identify and repay more they may owe under the 60-day overpayment refund rule—and CMS agreed. That's nothing new—PACT compliance is a longtime thorn in hospital sides—but retrospective audits in this area are in a different league, an attorney said.

"It's impractical what they're suggesting," contends attorney Andrew Ruskin, with K&L Gates in Washington, D.C.

The fact that the report considers the PACT report "credible information"—the magic words starting the clock on the 60-day rule—set off a three-alarm fire at one hospital that takes its compliance efforts very seriously, Ruskin said. It was troubled by the idea of going back six years on thousands of claims when hospitals have no way to determine retrospectively whether patients were discharged to post-acute care as planned without an insane amount of legwork. Like other providers, hospitals have no direct access to the common working file in a way that would be practical in a large-scale audit, Ruskin said. "The problem is they are suggesting that providers have credible information regarding potential overpayments in an area as broad as the night sky," Ruskin said. "How is it the provider's responsibility to be omniscient? If the provider doesn't have total visibility into what the patient actually does, why is it not CMS's responsibility and not the provider's responsibility?"

According to the PACT payment policy, acute-care hospital patients who receive post-acute care after discharge are considered transfers. Medicare pays hospitals per diems for these patients instead of MS-DRGs up to the full amount of the MS-DRG—although the PACT policy only applies to 280 MS-DRGs. Hospitals may be overpaid if they report patients as discharges when they're considered transfers to post-acute care.

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