

FEDERAL HEALTH CARE REFORM

WHAT IT MEANS FOR YOU TIME LIMITS ON RETURNING OVERPAYMENTS

This is the third in a series of Legal Alert emails highlighting some of the key provisions in the Patient Protection and Affordable Care Act, as modified by the Health Care and Education Reconciliation Act of 2010 (collectively, the "Health Care Reform Act"). This Legal Alert summarizes new requirements for health care providers to report and return overpayments received from the Medicare and Medicaid Programs.

The new statute specifically requires health care providers to report and return identified overpayments by the later of: (i) 60 days after the date on which the overpayment was identified; or (ii) the date any corresponding cost report is due, if applicable. The report must include a written explanation of the reason for the overpayment and be appropriately addressed to "the Secretary, the State, an intermediary, a carrier, or a contractor."

"Overpayment" is defined in the new statute to mean "any funds that a person receives or retains under Title XVIII or XIX [Medicare or Medicaid] to which the person, after applicable reconciliation, is not entitled."

Importantly, the statute links overpayments retained beyond the 60-day period to the Federal False Claims Act. Such inappropriately retained monies will be considered an "obligation" under the False Claims Act, which ascribes liability to providers who knowingly and improperly avoid or decrease an obligation to pay funds owed to the government. Each violation of the False Claims Act can potentially mean financial penalties involving \$5,500 to \$11,000, plus treble damages. In addition, providers who violate the False Claim Act face possible exclusion from participation in federal health care programs.

Although the overpayment reporting requirement became effective upon enactment of the Health Care Reform Act (March 23, 2010), the Centers for Medicare and Medicaid Services have not yet provided any guidance or implementing regulations at this time. Providers should nonetheless review their internal compliance systems now to ensure that overpayments identified through self-audits or other means are promptly reported and appropriately refunded in a timely manner in compliance with this new provision.

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If you have any questions, please contact the GW attorney with whom you regularly consult or send us an email at HCR@garfunkelwild.com.

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