

TIME EQUALS MONEY: RECENT CHANGE TO MEDICARE OVERPAYMENT RECOVERY PERIOD

EXECUTIVE SUMMARY

The recently passed American Taxpayer Relief Act of 2012 ("Act") contains a provision that extends the recovery period for the collection of certain Medicare overpayments. Specifically, Section 638 of the Act amends Section 1870 of the Social Security Act ("SSA") to extend the recovery period for "without fault" overpayments from three years to five years. Outlined below are the current Medicare program requirements relating to collection of overpayments and a summary of the new changes under the Act.

RECOVERY OF OVERPAYMENTS PRIOR TO THE ACT

Prior to the Act, the Centers for Medicare & Medicaid Services ("CMS") could recover "without fault" overpayments for up to three years following the calendar year in which an overpayment was made. In essence, this gave CMS the ability to go back four years to recoup "without fault" overpayments.

Generally, a provider or beneficiary will be considered "without fault" unless there is evidence to the contrary. In the absence of evidence of fault, CMS would not be allowed to collect an overpayment after the three-year window. It is important to note that SSA Section 1870 allows CMS to decide on a shorter time period of not less than one year if it is consistent with the other sections of the SSA.

CMS is also permitted by statute to determine the time period for the reopening and revising of initial or reconsidered determinations. CMS implemented this statutory authority by allowing Medicare contractors to reopen an initial determination within four years from the date of the initial determination (i.e., the date of the payment) or redetermination or three years from the date of the final determination (i.e., the Notice of Amount of Program Reimbursement), unless the determination was made due to fraud or similar fault. Therefore, Medicare contractors were arguably only allowed to collect overpayments during the three-year statutory window unless the provider was considered at fault.

CHANGES MADE BY THE ACT

The Act revised SSA Section 1870 to allow CMS up to five years after the year of payment to collect "without fault" overpayments. CMS is still permitted to determine a shorter collection period for overpayments if it is consistent with other sections of the SSA. The new statutory change is inconsistent with the overpayment recovery time periods permitted by the current regulations; therefore, it is unclear at this time how CMS intends to reconcile the conflicting time periods.

OVERPAYMENT ISSUES NOT AFFECTED BY THE ACT

The new statutory change is limited to the collection of overpayments covered by Section 1870 of the SSA and does not impact existing overpayment requirements outside this section. For example, the Patient Protection and Affordable Care Act ("PPACA") broadly outlined the requirement that health care providers report and return overpayments within 60 days after the date on which the overpayment was identified or the date any corresponding cost report is due, if applicable, and submit a written notification providing the reason for the overpayment. This requirement is not impacted by the Act. Further, in a February 2012 proposed rule, CMS proposed that providers report and repay any overpayment identified within ten years of the date the overpayment was received. This period is based on the outer limit of the statute of limitations in the federal False Claims Act. Those regulations received much industry criticism as they were viewed as inconsistent with SSA Section 1870 and have not yet been finalized.

PRACTICAL TAKEAWAYS

- The Act extends the time period for the collection of overpayments made without fault from three years to five years after the calendar year in which the payments are made.
- The Act does not change the period in which CMS or a Medicare contractor may reopen an initial determination, redetermination or final determination.

- The Act does not change the requirements under the False Claims Act to return any overpayments identified by the provider.

CONCLUSION

Providers should be aware of the changes to the overpayment collection period made by the Act, especially if they are undergoing a reopening by CMS or a contractor. The Act is the latest effort to extend the period in which CMS may collect overpayments for Medicare services and may be a sign of future changes to the collections and reopening periods under the Medicare regulations.

The full text of the Act is available [here](#).

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