

Report on Medicare Compliance Volume 27, Number 36. October 15, 2018

Hospitals May Be Able to Recover Overpayment Returns; Lawyers: Some Refunds Are Mistakes

By Nina Youngstrom

Hospitals are celebrating the fact that Medicare auditors (theoretically) won't deny claims for inpatient admissions solely because of problems with orders thanks to CMS's change in the 2019 inpatient prospective payment system (IPPS) regulation, but there may be more good news: If they refunded money within the past 120 days, hospitals can appeal and attempt to recover money they returned to Medicare for admissions they thought were invalid because the treating physician hadn't signed the inpatient order, an attorney says.

It may be a little hard for hospitals to get their heads around that because they're accustomed to filing appeals to get back money that Medicare has taken away. In this case, however, "you should immediately appeal that refund to get the money back," says David Glaser, an attorney with Fredrikson & Byron in Minneapolis. "CMS came out and said it was aware that perfectly good, medically necessary inpatient stays are being denied because of a technical issue with the signature missing." The final IPPS rule said Medicare auditors will no longer insist on a written admission order for Medicare Part A payments, although "hospitals and physicians are still required to document relevant orders in the medical record to substantiate medical necessity requirements" (RMC 8/6/18, p. 1).

So go forth and get that money back from Medicare administrative contractors (MACs) for medically necessary admissions that simply lack physician orders, Glaser suggested. There's no doubt hospitals have the authority to change their minds about voluntary refunds and appeal to get the money back, he said in an Oct. 10 webinar sponsored by his law firm.

In the preamble to the regulation interpreting the Medicare 60-day overpayment rule, which requires providers and suppliers to report and return overpayments within 60 days of identifying them, CMS stated, "To the extent that the return of any self-identified overpayment results in a revised initial determination of any specific claim or claims, a person would be afforded the appeal rights that currently exist. As is currently the case under the existing voluntary refund process, there are no appeal rights associated with the self-identified overpayments that do not involve identification of individual overpaid claims and individual claim adjustments" (81 Fed. Reg. 7668).

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