PUBLICATION

Physician Practice Penalized by DOJ for 60-Day Overpayment Rule Violation

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The Department of Justice (DOJ) imposed False Claims Act penalties against First Coast Cardiovascular Institute (FCCI) for failing to work credit balances and repay overpayments to federal health care programs. On October 13, 2017, DOJ announced that FCCI agreed to pay $448,821 to resolve False Claims Act allegations brought by a former employee of FCCI. The qui tam lawsuit alleged that FCCI wrongfully delayed repayment of approximately $175,000 in potential overpayments to federal health care programs beyond 60 days. This settlement represents a warning to providers who intentionally drag their feet in the face of a potential overpayment, and fail to diligently investigate and repay monies owed to federal health care programs.

Section 1128J(d) of the Social Security Act, the "60-Day Rule," was added when the Affordable Care Act was enacted on March 23, 2010. It imposes a requirement on providers and suppliers receiving funds under Part A and Part B of the Medicare program to timely report and return overpayments. Specifically, the 60-Day Rule provides that an overpayment must be reported and returned by the later of (i) the date that is 60 days after the date on which the overpayment was identified or (ii) the date any corresponding cost report is due, if applicable. The retention of an overpayment after these deadlines creates an "obligation" for purposes of potential liability under the federal False Claims Act (FCA). See 31 U.S.C. § 3729, et seq. A February 12, 2016 final rule articulated additional principles about the required diligence in investigating a potential overpayment, and the triggering of the 60-day timeline from the date the overpayment is "identified."

In the case of FCCI, the alleged overpayments were the result of FCCI retaining accrued credit balances spanning several years, a fact which the relator, the former executive director, claimed was known to practice leadership for more than 60 days. Typically, medical practices accrue such credit balances when two insurers are responsible for a particular bill and one pays too much (in this case, a federal payor), or a credit balance may be carried when a practice must adjust a patient's bill or return improper upfront payments. Practices may delay repayment of the overages and further fail to reflect the credit on financial statements, as was the case for FCCI. The relator alleged that FCCI leadership was unresponsive to his attempts to investigate and return the overpayments.

Indeed, perhaps driving the near two and one-half times penalties here, the relator allegedly made several well-documented attempts to encourage leadership to acknowledge and repay the accrued balances, but was ignored. It took government intervention to ultimately investigate and settle the FCA allegations.

This marks only the second 60-Day Rule settlement since the final rule was promulgated. One should not read too much into this case and assume any federal health care program overpayment will result in a penalty. On the other hand, this case should serve as a reminder that the DOJ can (and will) impose penalties under the FCA when a provider turns a blind eye to a potential overpayment, particularly in the face of an employee sounding the alarm internally.