



HAWAII HEALTH SYSTEMS
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COMPLIANCE ALERT 10-26

Healthcare Reform Law Sets New 60-day Deadline to Repay and Report Overpayments

Since the passage of FERA in 2009, healthcare facilities have been scrambling to reconcile the new requirement for returning of overpayments. However, the FERA changes did not specify when an improper retention of an overpayment would trigger FCA liability. We now have a clear answer—60 days.

On March 23, 2010, HR 3590, the Patient Protection and Affordable Care Act (the PPACA), Pub. L. 111-148 Section 6402(a), establishes a 60-day deadline for providers to repay and report overpayments of federal funds. Interpreting this deadline, the attorneys at King & Spalding (a large national healthcare law firm) state that "...because the effective date of the statutory provision is March 23, 2010, providers who received and identified overpayments as of that date have until May 22, 2010 to comply with the obligations of the new deadline or face penalties under the False Claims Act." At the recent HFMA conference in Honolulu, one of the presenters stressed that the language in the PPACA was a deliberate reference back to the False Claims Act and FERA.

The PPACA states that "(a)ny overpayment retained by a person after the deadline for reporting and returning the overpayment. . . is an obligation (as defined in the False Claims Act)." PPACA also provides that "(a)n overpayment must be reported and returned" within "60 days after the date on which the overpayment was identified," or "the date any corresponding cost report is due," whichever is later. The word "identified" is not defined by the statute. However, *McDermott, Will & Emery, LLP* argue that the PPACA explicitly states that if the overpayment is retained beyond the 60-day period, it becomes an "obligation" sufficient for reverse false claim liability under the False Claims Act, and is therefore subject to treble damages and penalties of \$5,500 to \$11,000 per claim if there is a "knowing and improper" failure to return the overpayment.

Source: Patient Protection and Affordable Care Act (HR 3590)
Health Care and Education Reconciliation Act (HR 4872)
McDermott, Will & Emery, LLP, E-Briefings, May 2010, The Governance Institute
Robert E. Waters, King & Spalding, May 3, 2010