

Health Law

BLAW Q&A

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This Month: After two years of implementing the Affordable Care Act, the volume of new regulations and guidance documents has been extraordinary. Which of the ACA-related regulations or guidance documents had the most immediate impact on your health law practice?



ARNOLD & PORTER LLP

Allison W. Shuren, Arnold & Porter LLP

Section 6402(a) of PPACA establishing the new provision of the Social Security Act (§ 1128J(d)) that requires a person who has identified an overpayment to report and return the overpayment by later of (i) 60 days after the overpayment was identified or (ii) the date any corresponding cost report is due has an immediate and chilling impact on every provider and supplier participating in the Medicare program, and the proposed rule implementing

this section of the law that was recently published by the Centers for Medicare and Medicaid Services has increased this angst. Particularly since the knowing failure to return an overpayment is subject to liability under the False Claims Act.

No one would disagree that parties who know they have received Medicare dollars incorrectly should return the money to the fisc, but the devil is in the details, more specifically in the way CMS proposes to define “knowing,” “overpayment,” and “identified.” There also is concern regarding how far back in time suppliers and providers must reach to verify whether past payments may have been improper. This rule has significant implications for compliance officers and committees, auditors performing retrospective reviews of services billed to the Medicare program as well as lawyers who counsel clients who may have identified possible problems. The comment period for the proposed rule currently is open and we should expect an influx of opinions to CMS.

Allison Shuren is part of the FDA/Healthcare practice group at Arnold & Porter LLP. Her practice focuses on healthcare regulatory and government enforcement matters.

If you have a health law question that you'd like to ask, submit it to blawcontrib@bloomberg.net, subject line “Health Law Q&A.” Your question may be selected to be answered in a future column.

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