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Medicare

'Fiscal Cliff' Law Increases Recovery Period For Provider Overpayments to Five Years

A provision in the American Taxpayer Relief Act of 2012, the "fiscal cliff" legislation signed into law Jan. 2, extends the statute of limitations on Medicare overpayment recoveries from three years to five years.

Section 638 of ATRA amends Section 1870 of the Social Security Act, which covers the acceptable time frame under which the Centers for Medicare & Medicaid Services can recover a Medicare overpayment.

Before ATRA, a provider who received an overpayment was "to be deemed without fault" if the determination of an overpayment "was made subsequent to the third year following the year in which notice was sent to such individual that such amount had been paid," according to the Social Security Act.

Under Section 638 of ATRA, "third year" was replaced with "fifth year." The provision went into effect Jan. 2.

Adverse Effects on Providers. Laurence J. Freedman, an attorney with Patton Boggs, Washington, told BNA that the statute of limitations extension negatively affects providers, both in terms of increasing provider uncertainty and increasing costs associated with defending and appealing old claims.

Kirk Ogrosky, an attorney with Arnold & Porter LLP, Washington, and former deputy chief of the Fraud Section in the Department of Justice's Criminal Division, also told BNA that providers can expect more uncertainty due to the extension.

"Providers need more certainty to help stabilize the market, and this sort of extension allows Medicare to further delay what it is more than capable of handling within three years," Ogrosky said.

"The notion that allowing Medicare more time to collect overpayments will somehow be helpful is misguided," he said.

Ogrosky said providers already are struggling to address issues that arise from reviewing medical files that are three years old. He said it is much easier "to discuss clinical decisionmaking and thought processes close in time to the actual treatment."

Brian Roark, an attorney with Bass, Berry & Sims PLC, Nashville, Tenn., told BNA the statute of limitations extension will increase potential exposure for providers and impose greater burdens, as providers will have to monitor an additional two years for overpayments.

"The change is another example of the federal government seeking to offset growing costs of the Medicare program through expanded enforcement efforts," Roark said.

Kirk Nahra, an attorney with Wiley Rein, Washington, told BNA that the extension will help increase the government's leverage over providers in any negotiations involving overpayment.

"It increases a worst-case scenario for the provider," Nahra said.

By JAMES SWANN

The American Taxpayer Relief Act of 2012 is at <http://op.bna.com/der.nsf/r?Open=csaz-93jjh5>.

Section 1870 of the Social Security Act is at http://www.socialsecurity.gov/OP_Home/ssact/title18/1870.htm.