

Sample Language for Overpayment Policy to Address CMS 60 Day Rule

The following is an example of language that can be included in a provider's overpayment policy to ensure compliance with the False Claims Act and CMS's 60-Day Rule which requires Medicare and Medicaid overpayments be returned within 60 days of identification:

Employees must report any potential overpayment by a patient or third-party payer to _____ so the issue can be appropriately reviewed and any confirmed overpayment promptly returned to the patient or applicable payer in a timely manner and generally within 60 days of identifying the overpayment. Similarly, billing errors and compliance issues which could impact the amount of payment the Provider receives, including from Medicare and Medicaid, must be appropriately reported to _____ so they can be appropriately investigated and any resulting overpayments returned.

If the underlying issue involved in a reported overpayment, billing error, or compliance issue requires investigation to determine whether and to what extent the Provider has received overpayments, _____, or his/her designee, will conduct or coordinate a timely, good faith investigation to (i) determine whether the issue resulted in overpayments to the Provider, and (ii) if so, quantify and return the overpayments. This investigation should be completed within a reasonable period of time so that if overpayments were received, they can be quantified and returned within 240 days of the date the Provider first became aware of the initial overpayment or the issue giving rise to the overpayments.

While the Provider endeavors to complete investigations in a timely manner in accordance with this policy and applicable laws and regulations, it recognizes that in some cases due to the complexity or extent of the issues involved or because of extenuating circumstances beyond its reasonable control, the 240-day timeframe may not be achievable. If in the course of the investigation, _____ or his or her designee determines that it will be unable to complete the investigation and quantify and return the overpayments within 240 days of identifying the initial overpayment or issue giving rise to an overpayment, he/she should consult the Provider's legal counsel to consider what additional measures may be appropriate under the circumstances, such as prioritizing overpayments from Medicare, Medicaid, and other government healthcare programs; proactively notifying payer representatives of the issue and measures being taken by the Provider to quantify and return the resulting overpayments; or returning overpayments identified up to that date while the Provider continues to investigate and quantify the remaining overpayments. Overpayments will typically be returned using the processes identified by the specific payer for returning overpayments.

If at any time during the investigation, _____ or his/her designee has concerns about the overpayments resulting from potential fraud, the Provider's legal counsel should be immediately contacted to determine whether the issue should be reported using the OIG's self-disclosure protocol.