



## Fiscal Cliff Bill Changes “Provider Without Fault” Time Period: The Potential Effect on Audits

As part of the [recent legislation](#) passed to avoid the “Fiscal Cliff”—the American Taxpayer Relief Act of 2012—Congress extended the time period of the “without fault” provision of the Social Security Act (SSA) from three years to five. The “without fault” provision of the SSA creates a presumption that a provider who has been overpaid is “without fault” after a certain time period—previously, three years. Section 638 of the “fiscal cliff” bill, titled “Removing Obstacles to Collection of Overpayments,” expands the “without fault” time frame to five years. This provision of the bill received little attention in comparison to other Medicare payment and policy changes, but it has the potential to significantly increase the amount of overpayments that Medicare auditors can identify and collect.

At this point, it is not clear whether Medicare auditors, such as Recovery Audit Contractors (RACs), will attempt to expand their audits from claims of up to three (3) years old to claims up to five (5) years old. For instance, the RAC Statement of Work still limits the RACs’ authority to audit claims that are less than three years old, and Medicare Manuals still list four years as the time frame in which Medicare Administrative Contractors (MACs) have to reopen paid claims. In February 2012, CMS proposed a ten-year “lookback” period for identified overpayments. It is unclear how this recent legislative change will affect that proposal, but it may be an indication of the “lookback” period CMS intends to use in its final overpayment regulations, which have not yet been issued.

HDJN will continue to monitor this issue closely and provide updates as they become available. If you have questions about what this recent change means for your organization, please contact a member of HDJN’s Reimbursement Team: Mary C. Malone ([mmalone@hdjn.com](mailto:mmalone@hdjn.com)), Emily W.G. Towey ([etowey@hdjn.com](mailto:etowey@hdjn.com)), Michelle E. Calloway ([mcalloway@hdjn.com](mailto:mcalloway@hdjn.com)), or Colin McCarthy ([cmccarthy@hdjn.com](mailto:cmccarthy@hdjn.com)). They can also be reached by phone at (866) 967-9604. Additional information about Hancock, Daniel, Johnson & Nagle, P.C., is available on the firm’s website at [www.hdjn.com](http://www.hdjn.com).

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