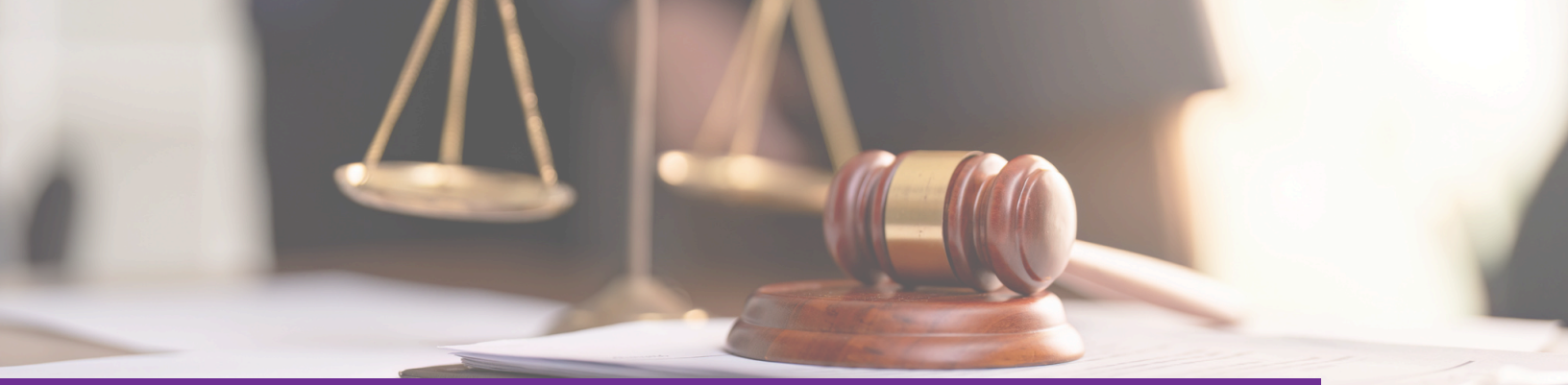


Voluntary Medicare Extrapolated Overpayments: Legal and Compliance Considerations in 2025

Medicare overpayments represent one of the most significant compliance and legal risks for providers in 2025.

The Centers for Medicare and Medicaid Services (CMS) has clarified the "knowledge" standard that triggers the 60-day repayment obligation, and the Department of Justice (DOJ) has relaunched its False Claims Act (FCA) Working Group, intensifying scrutiny on delayed repayments. Providers now face increased exposure under FCA if they fail to act promptly.

We will explore:

- The regulatory framework governing Medicare overpayments.
- The 2025 CMS rule change on the "knowledge" standard.
- Operational mechanics of extrapolated voluntary repayments.
- FCA enforcement trends and whistleblower actions.
- LW Consulting, Inc. (LWCI)'s observations on emerging provider practices.
- A comparison of Kane v. Healthfirst (2016) and a 2025 Department of Justice (DOJ) settlement.

Medicare Overpayments and the "Knowledge" Standard

Overpayment occurs when CMS pays a provider more than what is due under applicable laws and regulations. Once identified, an overpayment is a debt to the federal government that must be repaid.

Effective January 1, 2025, CMS clarified that the 60-day repayment clock begins as soon as the provider becomes aware of an overpayment—even if the exact amount is not yet calculated. "Knowledge" includes actual knowledge, reckless disregard, or deliberate ignorance, consistent with the FCA scienter standard (31 U.S.C. § 3729(b)(1)).

Failure to repay within 60 days may lead to liability under the FCA, exposing providers to treble damages, civil penalties, or even criminal sanctions. Some providers enter Corporate Integrity Agreements (CIAs) as part of settlements to avoid exclusion from Medicare.

Extrapolation and Repayment Timelines

For large volumes of claims, CMS allows a good-faith investigation period of up to 180 days, effectively extending repayment to 240 days total. Attorneys should ensure investigations are timely, documented, and defensible.

Key attorney considerations:

- Document when knowledge was acquired.
- Protect privilege in audit processes.
- Ensure extrapolation methodology aligns with CMS standards.

How Overpayments Are Detected

Overpayments often surface through:

- Ongoing compliance audits of coding and documentation.
- Claim denial or Additional Document Request (ADR) patterns suggesting systemic issues.
- Hotline tips that may also become whistleblower complaints.
- Targeted Probe and Educate (TPE) audits conducted by Medicare Administrative Contractors (MAC).

TPE audits involve up to three rounds of review and education. If the provider fails to improve, CMS may escalate to prepayment review, Recovery Auditor referral, or extrapolation. Importantly, if errors pre-date a TPE audit, repayment obligations may extend up to six years.

Voluntary Overpayment Process and Extrapolation Mechanics

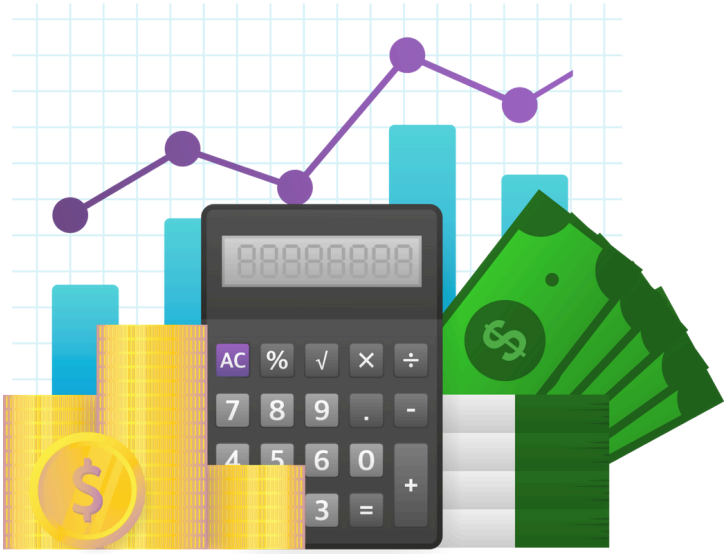
Step 1: Define the Claims Universe – The "claims universe" should encompass all potentially impacted claims. Attorneys should help narrow scope.

Step 2: Select a Random Sample – Typically, 100 claims are selected using CMS-approved statistical software such as RAT-STATS.

Step 3: Audit the Sample – Each claim is manually reviewed for accuracy and documentation sufficiency. Findings must be well-documented and preferably attorney-directed.

Step 4: Extrapolate the Overpayment – RAT-STATS extrapolates findings across the claims universe. Providers often repay based on the lower limit of a one-sided 90% confidence interval.

Step 5: Calculate and Repay – The repayment amount is determined and submitted, often alongside documentation of methodology and findings.



FCA and Enforcement Landscape in 2025

Recent developments include:

- DOJ–Health and Human Services (HHS) FCA Working Group: Relaunched July 2025 to sharpen healthcare fraud enforcement.
- Whistleblower activity: Relators continue to drive settlements, citing delayed repayments.
- Anti-kickback Statute (AKS)-FCA interplay: Courts are clarifying whether claims "result from" kickbacks, expanding FCA exposure.

LW Consulting, Inc.'s (LWCI) Observations: Emerging Trends in 2025

LWCI has observed that providers in 2025 are acting more proactively:

- Initiating voluntary extrapolated repayments following internal audits, TPE audits or compliance hotline tips.
- Commissioning probe audits earlier to limit lookback periods.
- Seeking legal guidance before CMS involvement.

This shift is motivated by CMS's clarified knowledge standard and DOJ's heightened enforcement activity.

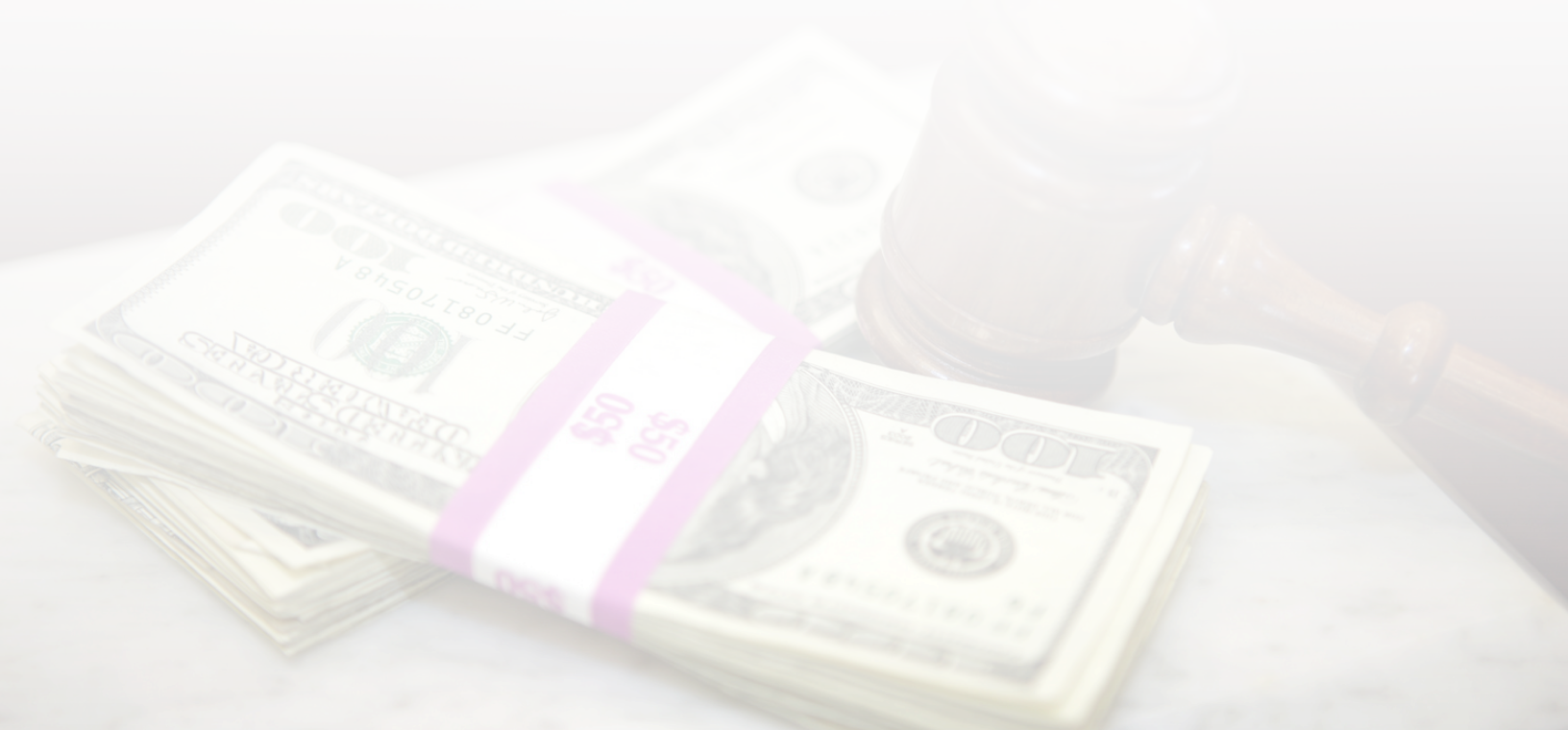
Case Law & Enforcement Examples

Historic Case: United States ex rel. Kane v. Healthfirst, Inc. (2016)

- Court held that the 60-day repayment clock begins when a provider is put on notice of potential overpayments, even if not yet quantified.
- Established awareness as the trigger for FCA liability.

Fresh Example: DOJ Settlement with Regional Hospital System (May 2025)

- $22 million settlement for delayed repayment of known upcoding overpayments.
- Executives sat on probe audit findings for nearly a year.
- Settlement required a five-year CIA with mandatory extrapolated audits.



Comparison Chart

Element	Kane v. Healthfirst (2016)	DOJ Regional Hospital Settlement (2025)
Triggering Event	Internal emails flagged Medicaid overpayments.	Probe audit revealed systemic upcoding.
Legal Question	When does the 60-day repayment clock begin?	Does delayed quantification = knowing retention?
Outcome	Court: awareness triggers repayment; case survived dismissal.	$22M settlement + 5-year CIA.
Principle	Identification = awareness, not final dollar calculation.	DOJ enforcing Kane's principle in real time.
Attorney Takeaway	Awareness creates a legal duty under FCA.	Counsel must ensure timely, defensible voluntary disclosure.

Key Takeaways for Attorneys

- Awareness triggers liability: The clock starts at knowledge, not quantification.
- Extrapolation magnifies risk: Small sample errors can extrapolate into millions.
- Privilege is defense: Internal audits should be attorney-directed.
- Whistleblowers drive cases: Delay in disclosure fuels qui tam suits.
- Trend shift: Providers are disclosing earlier—attorneys must advise on privileged, strategic investigations.

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About LW Consulting, Inc.

For nearly two decades, LWCI has delivered operational and compliance improvements to acute, post-acute, and sub-acute providers and government entities involved in healthcare. This expertise is also applied to compliance actions and legal proceedings, with a specialty in serving as an independent review organization (IRO).

As part of our practice, LWCI offers interim staffing, executive placement, and compensation review services for healthcare organizations, with positions across all levels of the business. Harnessing the power of data, coupled with our real-world, provider-side experience in senior living, our consultants are poised to assist your organization in a variety of ways.

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