

Government Enforcement and Investigation Trends Impacting Physician Practices and the Art of Staying Compliant

David M. Blank

Senior Counsel
Office of Counsel to the Inspector General
Administrative and Civil Remedies Branch Division
Department of Health and Human Services

Special Assistant United States Attorney
United States Attorney's Office
Southern District of Mississippi
Department of Justice

Overview

- Office of Inspector General
- Historical health care investigations and enforcement actions.
- Future of health care investigations and enforcement actions.
- How to stay compliant.

Enforcement

- Who's Investigating?
 - Department of Justice
 - Office of Inspector General
 - Fiscal Intermediaries/Carriers
 - Program Safeguard Contractors
 - MFCU
 - State Attorney General Offices
- What are the enforcement tools?
 - Criminal Statutes
 - Civil Authorities
 - Administrative Remedies

Office of Inspector General

- Mission: To protect the integrity of Department of Health and Human Services (HHS) programs, as well as the health and welfare of the beneficiaries of those programs.
 - 80% of OIG's resources are focused on:
 - Promoting efficiency and effectiveness of the Medicare and Medicaid programs; and
 - Protecting Federal beneficiaries from fraud, waste, and abuse.
- OIG Components
 - Office of Audit Services (OAS)
 - Office of Evaluation and Inspections (OEI)
 - Office of Investigations (OI)
 - Office of Counsel to the Inspector General (OCIG)

Office of Inspector General

- United States spends in excess of \$2 trillion annually on health care.
 - Experts estimate 3% or \$60 billion is lost to fraud.
- OIG recovery (FY2006-FY2008):
 - Investigative receivables: \$2.04 billion/yr.
 - Audit disallowance: \$1.22 billion/yr.
 - Program recommendations: \$16.72 billion saved.

H.E.A.T

- Health Care Fraud Prevention and Enforcement Action Team (HEAT)
 - What is it?
 - DOJ/OIG interagency initiative
 - Created May 20, 2009
 - How does it work?
 - Targeted analysis and enforcement on particular industries
 - Increased provider training
 - Increased data sharing
 - Strengthening program integrity activities
 - Citizen Outreach
- Strike Force
 - South Florida
 - 146 criminal convictions and \$186 million in criminal fines and civil recoveries.
 - Los Angeles
 - 37 individuals indicted and \$55 million order in program restitution.

The Five Principles for Combating Fraud, Waste, and Abuse

1. Scrutinize individuals and entities that want to participate as providers and suppliers.
2. Establish payment methodologies that are reasonable and responsive to changes in the marketplace.
3. Assist health care providers and suppliers in adopting practices that promote compliance with programs requirements.
4. Vigilantly monitor the programs for fraud, waste, and abuse.
5. Respond swiftly to detected frauds, impose sufficient punishment to deter others, and promptly remedy program vulnerabilities.

Historical Method

- Data Matching- is comparing records in two different data sets to find an answer to a particular question.
 - Benefits:
 - Identifies program vulnerabilities and risks.
 - Effective anti-fraud tool.
 - Weakness:
 - Analyst had to know what information was needed prior to analyzing it.
 - Could not identify hidden patterns.
 - Slow

Forensic Data Analysis

- What is it?
 - Data Mining
 - Process of sorting through large amounts of data and extracting previously unknown information to identify aberrant billing trends that would otherwise remain hidden.
 - Advantages:
 - Allows for a flexible approach to fraud detection;
 - Uses a larger data warehouse;
 - Identifies a wide range of trends; and
 - Quicker results based on near real time data.
- How is it used?
 - Identifies abnormalities.
 - Identifies patterns and trends of abuse.
 - Identifies cost saving areas.
 - Assess quality of care.

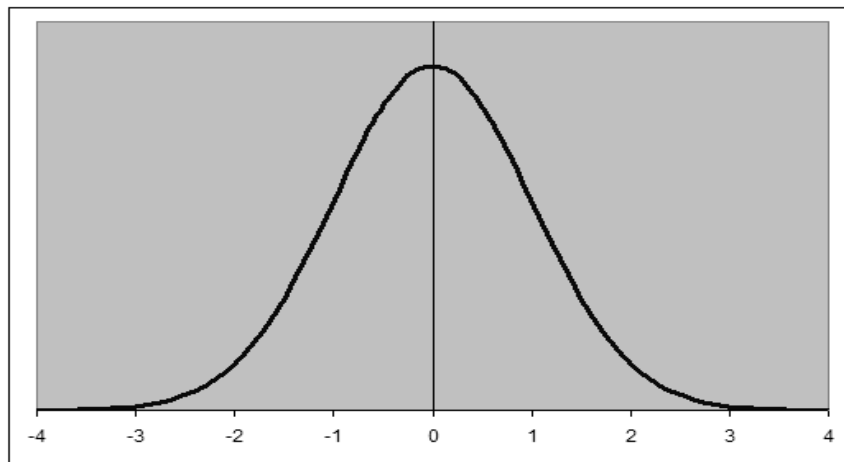
Data Analysis

- The Data:
 - 92.1 million beneficiaries
 - 1.3 million providers
 - 10 billion claims
 - 3 billion new claims annually
- Algorithms allow for the identification of problematic billing trends.
 - 100% Medicare Part A and B claims data dating back to 2001.
 - 2006: 100% Medicare Advantage and Part D data.
 - Data includes: HCFA-1500 Fields, provider demographics, costs reports, beneficiary eligibility data, and other CMS resources.
- The Simple:
 - physician UPIN – place of service beneficiary homes – hours of billing.
Ex: Physician “incident to” billing for physical therapy services.
- The Complex:
 - The bell curve approach
 - Identification of normative billing patterns for PT services and analyze normative patterns to identify outliers.

The Future

- No single claims data analysis can unequivocally identify providers who submit false claims to Medicare.
- Currently using multiple methods to identify aberrant billers:
 - Target groups of suspicious providers; and
 - Target geographical regions.

Investigation Techniques The Bell Curve



The Application of Data Matching and Data Mining in Government Investigations

Physical Therapy Reimbursement Overview

- The Early Years (1989-2001)
 - 1994: OEI-02-90-00590
 - Four out of five cases involving physical therapy rendered in a physician's office does not qualify as true physical therapy.
 - Medicare makes \$47 Million in improper payments.
 - 1999: OEI-09-97-00121 and OEI-09-97-00122
 - Two reports addressing therapy provided in SNF's.
 - 13% of services were improperly billed.
 - \$1 billion in improper payments.
 - 2001: OEI-09-99-00560 and OEI-09-99-00563
 - Two reports addressing physical therapy provided in nursing homes
 - 14% percent of services were not medically necessary.
 - \$28 million in improper payments.

Physical Therapy Reimbursement Overview

- The Present (2002-2008)
 - Objective: Identify aberrant billing patterns and make recommendations to protect Federally funded health care programs.
 - 2002:
 - Physician billing accounted for 30% of \$528 million for PT services paid by Medicare Part B.
 - 91% of the therapy failed to meet program requirements resulting in \$136 million in improper claims.
 - 26.4% not medically necessary;
 - 33.8% undocumented services; and
 - 57.4% incomplete or no plan of care.

Physical Therapy Reimbursement Overview

- 2004
 - The Numbers
 - Physician billing jumps to 44%.
 - 2002: \$353 million
 - 2004: \$509 million
 - Million dollar physicians jump 250%
 - 2002: 15
 - 2004: 38
 - A total of 51 different physicians billed at least \$1 million in services between 2002-2004.
 - 4 % of physicians account for over 50% of total allowed amount.

The Mississippi Project

■ 2004 Referral

- Office of Investigations opens cases on area PT clinics located across the state.
 - Program Safeguard contracts
 - Beneficiaries
 - Investigations
- Evidence of aberrant billing:
 - Overutilization;
 - Improper supervision; and
 - “Incident to” abuse.

Canton Rehabilitation Services, Inc.

■ Scheme to defraud

- Unlicensed Personnel
- Abuse of “incident to” billing
- Total Payments:
 - Billed \$4,223,310
 - Received \$1,176,865

■ 36 Count Indictment

■ 2 Guilty pleas

- Frank Wiley – 37 Months
- Michael Yant – 48 Months

The Kinesiotherapists

- Progressive Physical Medicine, Inc.
 - Total Payments:
 - Billed \$3,026,304.26
 - Received \$1,026,555.40
 - 19 Count Indictment
 - 1 Guilty Plea
 - 5 years in prison

- Southeastern Rehab Professionals
 - Total Payments:
 - Billed \$686,944.60
 - Received \$102,639.30
 - 19 Count Indictment
 - 3 Guilty Pleas
 - 2 Kinesiotherapists-
 - 5 years probation
 - Nurse Practitioner
 - 6 months

MS Care Partners, Rehabilitcare, and SelectCare

- Multiple Owners
 - Occupational Therapy Assistant
 - Lawyer
 - Housewife
- MS Care Partners
 - Billed: \$21,067,655
 - Paid: \$7,889,490
- Rehabilitcare
 - Billed: \$23,158,917
 - Paid: \$5,073,100
- SelectCare
 - Billed: \$5,420,975
 - Paid: \$2,444,463
- Result
 - Majority of Owners: 1-5 years
 - OTA and Housewife: 10 years each

The Impact of Enforcement

- Physician billing decreases
 - 2007
 - \$1.56 billion is allowed for physical therapy services.
 - \$291 million paid to physicians.
 - \$1.2 billion paid to physical therapists.
 - Million dollar physicians: 6
- Analysis:
 - 2004-2007
 - Physician billing decrease approximately 43% or \$218 million dollars.
 - Physicians make up approximately 19% of total allowed PT.
 - Number of Million dollar physicians drops by 84%.
 - Number of physicians billing in excess of \$100,000 decreases from 992 to 279.
 - Physical therapists receive 77% of total allowed PT.

Staying Compliant

- 1) Implement written policies, procedures and standards of conduct;
- 2) Designate a compliance officer, responsible official, or compliance committee;
- 3) Conduct effective training and education;
- 4) Foster effective lines of communication;
- 5) Enforce standards through well publicized disciplinary guidelines;
- 6) Conducting internal monitoring and auditing; and
- 7) Respond promptly to detected offenses and implement corrective action.

Policies and Procedures

- Goal: Reduction of erroneous claims and fraudulent activity.
 - Think of it as your “resource manual.”
- Focus on fraud and abuse topics relevant to your practice.
 - Vulnerable areas:
 - Coding and billing;
 - Reasonable and necessary services;
 - Documentation; and
 - Kickbacks and self-referrals.
- Clear standards.
- Understood by employees.

Compliance Officer/Contact

- Who is responsible for ensuring compliance?
 - One Person
 - Topic Specific
- What are the Duties?
 - Oversee and implement program;
 - Improve efficiency and quality of service;
 - Revise program to adapt to external changes;
 - Develop, coordinate, and participate in training;
 - Check OIG list of excluded persons;
 - Investigate allegations of unethical or improper business practice; and
 - Implementing and monitoring corrective action.

Training and Education

- Tailored to your practices needs.
- The 3 Questions:
 - 1) Who needs training?
 - Coding and billing.
 - Compliance.
 - 2) What type of training?
 - Seminar;
 - In-service training;
 - Self-study programs; and/or
 - Other types
 - 3) How much is needed?

Communication

- Integral in small practice.
- Create an “open door” policy
- Communication includes:
 - The reporting of problematic conduct;
 - Use friendly process (suggestions box);
 - Procedures addressing the failure to report problematic conduct;
 - Process the ensures anonymity; and
 - No retribution.

Respond and Implement Corrective Action

- Problems:
 - Violation of compliance program;
 - Failure to comply with Federal/State law;
 - Billing and coding issues; or
 - Other.
- Immediately address the problem.
 - Create an internal assessment.
- Take decisive steps:
 - Corrective action plan;
 - Return of an overpayment;
 - Payment of an underpayment; or
 - Referral to authorities.
- Post Mortem
 - Why?
 - How to Fix?

Monitoring and Audits

- Ongoing evaluation process.
- Policy and Procedures
 - Goals:
 - Current and Complete
 - Ineffective or Outdated
- Claim Submission
 - Goals:
 - Bills accurately coded;
 - Is documentation correct and accurate;
 - Reasonable and necessary; and
 - Incentives for unnecessary services.

Enforcement

- Employees must understand the consequence of behaving in a non-compliant manner.
- Discipline violations of compliance program.
 - Consistent and appropriate sanctions; and
 - Flexibility (consider aggravating and mitigating circumstance)
- Types of discipline:
 - Warning (oral)
 - Reprimand (writing)
 - Probation
 - Demotion
 - Suspension
 - Termination
 - Restitution

Conclusion

- Proactive enforcement regarding aberrant physician billing.
 - Initiation of investigations based on data analysis.
 - Examining claim volume, billing patterns, and provider profiles can demonstrate:
 - Overutilization;
 - Abusive and fraudulent billing; and
 - Supervision/Quality of care problems.
- Continued enforcement actions against physicians.
 - Decrease in physician “incident to” billing.
 - Factors:
 - Increased enforcement;
 - Regulatory change; and
 - Shift to reassignment.
- Stay Complaint!

Questions and Comments

David M. Blank
Senior Counsel
Administrative & Civil Remedies Branch Division
Room 5527, Cohen Building
330 Independence Avenue, SW
Washington, DC 20201
Telephone: 202-205-0578
Email: David.Blank@oig.hhs.gov