



Move quickly to abjure wrongdoing as biller gets prison time for fraud

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Compliance

Distance yourself if you expect fraud is happening at your practice to avoid a fate similar to that of a medical biller who received a 45-month prison sentence.

Mary Talaga, a biller for Medical Physicians Group and Home Care America in Illinois, had been indicted along with a physician and medical director on charges stemming from a conspiracy to obtain payment on care plan oversight (CPO) services for patients who were not receiving those services — and in some cases were not even alive. Talaga also must pay about \$1 million in restitution.

The government's indictment against Talaga indicates that she was an active conspirator in the fraud and "billed Medicare for CPO services notwithstanding her awareness of the lack of proper documentation" and "fabricated material information that would have been included in the missing documentation, such as the dates on which CPO services were provided."

While *Part B News* expects its readers are trying to make an honest living, this case is a reminder that if you see suspected fraud happening at your practice, you should move quickly to avoid even a slight chance of getting caught in the net.

Not just big fish

Talaga's sentence shows that just being a "little fish" isn't going to protect you from prosecution. The Justice Department on Sept. 9 issued guidance announcing that it would "fully leverage its resources to identify culpable individuals at all levels in corporate cases," rather than just prosecuting the businesses.

That fits with the approach of the current U.S. Attorney General Loretta Lynch, who succeeded Eric Holder April, says Brian H. Mahany, a national whistleblower attorney specializing in fraud recovery whose home office is in Milwaukee. "Holder was going after corporations, primarily banks, because he was interested in coming up with record fines to deter bad behavior," says Mahany. "Lynch's emphasis is slightly different. She says that a corporation or other business entity won't get any consideration at sentencing unless they disclose all names of individuals in wrongdoing."

Billers beware

Watch for the signs that your practice may be headed for dangerous ground, says Mark Pastin, president and CEO of Health Ethics Trust in Alexandria, Va. For example:

High turnover rates in certain areas, such as patient financial services or among certified coders, which suggest that employees have gotten the hint that something's not right.

Money departments get involved with medical documentation. "When finance staff who are not part of patient financial services start calling the shots on particular codes, that is a very big warning sign," says Pastin.

Staff members tell you, "don't say anything." If you're told not to challenge certain doctors on documentation issues, "that is usually trouble," says Pastin. "The biller doesn't want to hear, 'keep your mouth shut,'" says Christopher A. Parrella of the Health Law Offices of Anthony C. Vitale in Miami.

Lots of unappealed denials in a given area, which suggests the practice sees a greater benefit in not making waves than in recovering those charges.

Practices: Watch out for third parties

Practices also should look out for possible fraud in outside billing services, says Parrella. "Many of these billing agents are paid a percentage of what they recover" because CMS allows third-party billers to get a percentage of the receivables, he says. And sometimes agents try to beef up their percentage. "They're either unbundling codes or upcoding services or padding the claim form to generate additional revenue for the provider and in turn, their wallet," he says.

Because the claims have the practice's name on them, it's on you to check these third-party billers' work with random audits to make sure the billing agent's submissions are accurate, says Parrella. If the provider receives more money than they were entitled to, it's an overpayment and it needs to be refunded within 60 days.

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Blow the whistle?

If you see something really wrong, you have to come forward to a compliance officer at your practice. "Being the intermediary between the provider and the Medicare trust fund, the biller has a heightened responsibility," says Parrella. "She can't just keep her head in the sand. She has an obligation to inquire further and if she knows something is not right, she has to act."

Tip: Have a process for employees to report problems. "This is why the government is always talking about a 'culture of compliance,'" says Bret S. Bissey, senior vice president, compliance services, MediTract, Chattanooga, Tenn. "The obligation is on the organization to have compliance policies." You need a compliance officer and a process that allows employees with complaints to make them without fear of retribution.

If the compliance officer won't act, the next step will be to report them. CMS has a Medicare Fraud Tip Line (1-800-MEDICARE) and the Office of Inspector General (OIG) has an online fraud reporting form. Or talk to a lawyer. "If you come forward quickly enough, you may even qualify for a whistleblower award under the False Claims Act," says Mahany. *Qui tam* suits pay a percentage of the government's recovery to the complaining witness whose case is taken up by the government. — Roy Edroso (redroso@decisionhealth.com)

Resources:

Justice Department press release: www.justice.gov/opa/pr/medical-biller-sentenced-45-months-prison-role-4-million-health-care-fraud-scheme

OIG fraud reporting form: <https://forms.oig.hhs.gov/hotlineoperations/report-fraud-form.aspx>



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