Government Accuses Hospitals of Fraud for Delays in Refunding Medicaid Overpayments

Health care providers face ever-increasing scrutiny. For those providers billing Medicare or Medicaid, recent laws have increased the stakes associated with billing errors. Even an innocent mistake may trigger severe penalties if providers discover the mistake and do not act promptly to return any funds resulting from the error.

In a recent federal action, the United States and New York State sued a group of hospitals for their delay in returning Medicaid overpayments that they received in error, labeling that delay “fraud.” The law generally requires repayment within 60 days of identification of overpayments. The case was commenced by a terminated employee acting as a whistleblower, who sent an email identifying overpayments, waited exactly 60 days, and then filed suit. The action illustrates the critical importance of quickly responding to complaints to report and return Medicare or Medicaid overpayments.

Legal Background

Both the federal government and New York State have False Claims Acts (“FCA”). These laws include treble damages and stiff penalties. An FCA case may be commenced either by the government or by a whistleblower, who may receive a generous award for a successful claim. For decades, the government has used the FCA to scrutinize health care providers’ reimbursements from Medicare and Medicaid. Historically, the FCA was limited to affirmative wrongful acts.

Recently, the FCA has expanded to also prohibit the knowing retention of overpayments, such as Medicare and Medicaid funds. Overpayments may include payments for noncovered services, payments in excess of allowed amounts, duplicate payments, and other payments received in violation of federal program rules. Congress adopted this change in 2009, and New York followed suit in 2013. Federal law requires providers to report and return all Medicare and Medicaid overpayments within 60 days of identifying them, or when a corresponding cost report is due. The failure to do so may trigger treble damages and penalties.

Recent Enforcement Action

In June 2014, the U.S. Attorney for the Southern District of New York and the Office of the New York Attorney General teamed up with a whistleblower to sue a group of New York hospitals for delaying the return of approximately $1 million in overpayments.

The case began after the hospitals terminated a revenue cycle employee. In 2010, the New York State Comptroller audited the hospitals. The audit turned up a small number of improper Medicaid claims. The hospitals quickly determined that the errors arose from a software glitch, which was causing the hospitals to bill both Medicaid and a Medicaid managed care organization. They fixed the glitch and tasked the revenue cycle employee with identifying similar improper claims. On February 4, 2011, that employee completed his task and sent management an email identifying approximately 900 such claims totaling $1 million in overpayments. Four days later, for reasons not stated in the government’s complaint, the hospitals terminated the employee. The terminated employee waited exactly 60 days from the date of his email and filed an FCA case against the hospitals for failure to report and repay the overpayments.
Between February 2011 and March 2013, the hospitals engaged in discussions with the Comptroller. During that time period, the Comptroller identified dozens of sets of overpayments. The hospitals repaid each set, but the hospitals did not affirmatively identify and report the other overpayments listed in the email from the terminated employee.

As a result, both the United States and New York State filed suit. They alleged that the hospitals “intentionally or recklessly failed to take the necessary steps to timely identify the claims affected by the software issue or to timely” return the Medicaid overpayments. The United States and New York sought treble damages and millions of dollars in mandatory penalties. In announcing his action, U.S. Attorney Preet Bharara harshly criticized the hospitals, explaining, “They cannot just keep the money – after learning that they should not have received it – in the hopes that the government will not figure it out. To do so is fraud.”

Implications

This recent enforcement action signals that both federal and state governments will not hesitate to impose severe penalties on health care providers who delay in returning Medicare or Medicaid overpayments. It is increasingly important for organizations to quickly address internal complaints or other evidence suggesting they may have received an overpayment from a government program.

As this recent case also illustrates, an employee who flags an issue internally may, within weeks, bring that same issue to the government. It is crucial for health care providers to recognize that addressing complaints and resolving overpayment issues is not just the right thing to do, but is also the best way to prevent a concerned employee from becoming a whistleblower.

Conclusion

HSE attorneys have the experience necessary to assist health care organizations and professionals in reporting and returning overpayments and responding to government investigations into suspected Medicare or Medicaid fraud and abuse. If you would like our assistance, or if you have any questions about this LEGALcurrents®, please contact a member of our Health Care or Government and Internal Investigations practice groups at (585) 232-6500.