

MEDICAID COMPLIANCE NEWS

Provider Self-Discloses Error to Feds, State Simultaneously

A medical group killed two payment-error birds with one stone by self-disclosing simultaneously to the HHS Office of Inspector General and the New York state Office of Medicaid Inspector General. Other providers may want to take that route to resolving Medicare and Medicaid liability simultaneously, though North American Partners in Anesthesia (NAPA) had a leg up in the process because New York state has a formal voluntary self-disclosure process.

NAPA agreed to pay over half a million dollars in a civil monetary settlement with the HHS Office of Inspector General, obtained by MCN through a Freedom of Information Act request. The Office of Medicaid Inspector General (OMIG) also was a party to the settlement.

OIG and OMIG allege that NAPA submitted claims to Medicare and Medicaid for items or services furnished by five physicians that NAPA knew or should have known were false or fraudulent. According to the settlement, between Sept. 28, 2004, and June 9, 2008, these physicians provided anesthesia services at a gastroenterologist's office, but their documentation didn't truly reflect the dates on which the services were performed. "For certain gastrointestinal procedures furnished to Medicare beneficiaries and Medicaid recipients on a single day, OIG and OMIG contend that the responsible physicians created false documentation indicating that the procedure actually was performed, in part, on two separate days," the settlement states. OIG and OMIG allege the "fabricated anesthesia medical records" were used to support NAPA's claims to Medicare and Medicaid. The physicians are no longer associated with NAPA.

NAPA self-disclosed to OIG and then sent a copy of its self-disclosure letter to OMIG as well, an OIG spokesman says. OIG did not require a corporate integrity agreement in the settlement with NAPA.

NAPA discovered the physicians' billing shenanigans when an employee reported them to the compliance officer, according to Lloyd Straus, president of NAPA, and NAPA attorney Richard Parmel. NAPA then investigated the allegations and confronted the physicians, some of whom acknowledged the billing problems, Straus and Parmel told MCN. "As soon as we learned of the behavior of the physicians involved," Straus says, NAPA self-disclosed to OIG and OMIG and "separated from the physicians." He said it made sense to enter both the OIG and OMIG voluntary disclosure programs when it became clear both that Medicare and Medicaid were implicated. The fact that OIG did not impose a corporate integrity agreement, Straus says, reflects both NAPA's "zero-tolerance policy toward unethical behavior," the effectiveness of its compliance program and the fact that "we were the victim of the covered conduct."

"It's important to note you can enter into one settlement with two agencies and get both Medicare and Medicaid problems addressed," says San Francisco attorney Judy Waltz, with Foley & Lardner. "Having both parties involved means you get a release from both the feds and the states."

New York makes it easier because of its formal self-disclosure program, but there are ways to get Medicaid issues resolved without a formal process. Waltz has handled self-disclosures for clients by approaching the head of the state Medicaid fraud control unit, for example. "It's not necessary to have a self-disclosure protocol, but it makes it easier." Waltz says she was also glad to see OIG keep its promise generally not to impose CIAs on self-disclosing providers.

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