

PRACTICE RESOURCE

Internal Billing Investigation Tools

Katherine A. Lauer, Cheryl Wagonhurst, Frank E. Sheeder, III, and Michael L. Silhol

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INTERNAL INVESTIGATION TOOLS

Delegation of Authority

TO: [Name of Individual(s)]
FROM: Legal Department
RE: **Medicare Coding Internal Investigation**
DATE: [Date]

The Legal Department requires your assistance in connection with its investigation of Medicare coding issues. We therefore hereby enlist your assistance and delegate the necessary authority to you on behalf of the Legal Department to carry out various tasks that will aid us in the investigation and defense of actual or anticipated litigation. All such tasks will be directed by counsel.

Our work is subject to the attorney-client privilege and the attorney work product protection. Since we are engaging you to assist us, we intend that all of the activities that you undertake pursuant to this Delegation of Authority also will be subject to all privileges and protections applicable to us as attorneys. We therefore ask that you communicate only with attorneys in the Legal Department about substantive issues, the results of your activities, or any questions that you might have. Similarly, you should not write any reports or commit anything to writing without consulting with the Legal Department.

Kindly confirm your understanding of this Delegation of Authority by signing it and returning it to me. We appreciate your willingness to assist us in this legal matter.

Name:

Date:

Investigation Summary

MEMORANDUM

TO: File
FROM: Compliance Officer
DATE: [Date]
SUBJECT: **Hotline Report No. 2005-14**

On July 7, 2005, the Compliance Officer received a report from the Compliance Hotline that contained an allegation that the central billing office (CBO) in Oakville was balance billing Medicaid patients.

Later that day, I drafted a preliminary work plan designed to assist in the investigation. That work plan, and all changes to it, is located in the file. Following that, I drafted and sent out a memorandum to all employees at the CBO directing them to retain all documents that relate to the CBO's billing practices.

On July 8, I informed the hospital CEO of the compliance report and provided her with my preliminary work plan. A summary of this discussion is contained in the file.

On July 11, 2005, I scheduled a meeting with Ana Meyers, manager of the Oakville CBO, to discuss balance billing and Medicaid payment procedures. A detailed summary of my meeting has been prepared and is in the investigation file.

On July 13, 2005, I met with John Winfred, the hospital's IT manager. This meeting was arranged to find out what reports could be run from the CBO regarding Medicaid payment and balance billing procedures. Also, a cash receipts report was requested for the prior 12 months. A summary of this meeting is contained in the file.

On July 15, 2005, I met with Nicole Ashley and Tiffany Joshua. Ms. Ashley and Ms. Joshua are reimbursement clerks in the Oakville CBO. We discussed the policies regarding balance billing and Medicaid payment procedures. We also discussed the education efforts surrounding the policies and whether employees were adequately informed of these policies. Summaries of these meetings are contained in the file.

From July 18, 2005, through August 3, 2005, I engaged the assistance of the IT department, members of the Elmview satellite billing office, and the legal department to review a randomly selected sample of Medicaid claims and bills from the CBO. The engagement of these employees was done via a written delegation memorandum. The analysis of this review is contained in the file.

On July 27, 2005, I reported to the Hospital Board about the Compliance Hotline allegation and the fact that an investigation was underway. The Board asked to be updated about the investigation at its next regular meeting.

On August 10, 2005, the investigation was completed. A reply was drafted to provide to the Compliance Hotline. The Hospital CEO and Board were informed of the investigation's conclusions. Corrective action was planned, to be completed within 60 days. Corrective action included remedial training on Hospital policies regarding Medicaid, and inclusion of software edits in billing software. Periodic monitoring will be conducted for the next twelve (12) months. No evidence of any overpayments was discovered.

Investigative Work Plan Considerations Checklist

- What do we need to do to stop any questionable conduct immediately?
- Who are the internal point people we need to empower?
- How do we establish privileges and protections?
- Do we need outside consultants, and should their work be done under privileges or protections from discovery?
- Should we, and how can we, remove stakeholders from the process?
- Who needs to be in the loop?
- How can we secure documents?
- Who is going to be the document custodian?
- How will we document our investigative processes?
- What is the anticipated endgame?
- What will we be doing with the results of the investigation?
- Do we need a written report?
- To whom will the written report be distributed?
- Do we need separate counsel because we are in a multi-entity setting?
- Do we need waivers of conflicts?
- What is the time period at issue?
- What if there are collateral issues?
- Who is, and who is not, on the team?
- How much should we escrow?

Investigation Work Plan

| Issue | Action Items | Responsible Parties | Target Date | Complete Date | Notes |
|----------------------------|--------------|---------------------|-------------|---------------|-------|
| 1. Initial Steps | | | | | |
| 1.1 Privilege | | | | | |
| 1.2 Engagement Letters | | | | | |
| 1.3 Who is on Team? | | | | | |
| 2. Communication | | | | | |
| 2.1 Point Person | | | | | |
| 2.2 Flow of Info | | | | | |
| 3. Documents | | | | | |
| 3.1 Custodian | | | | | |
| 3.2 Formal Requests | | | | | |
| 4. Data | | | | | |
| 4.1 Custodian | | | | | |
| 4.2 Reports | | | | | |
| 4.3 Preservation | | | | | |
| 5. Interviews | | | | | |
| 5.1 Identification of Ws | | | | | |
| 5.2 Scheduling | | | | | |
| 5.3 Interviewer | | | | | |
| 6. Remedial Efforts | | | | | |
| 7. Action Items | | | | | |

“Internal Subpoena” for Internal Investigation

MEMORANDUM

DATE []
TO: All Employees
FROM: Legal Department
FILE NO: []
COPIES TO: []
SUBJECT: **Document and Information Retention for Internal Investigation**

CONFIDENTIAL—ATTORNEY-CLIENT AND WORK PRODUCT PRIVILEGED

As you may know, **THE ORGANIZATION** is conducting an internal investigation of alleged wrongdoing related to the cost reporting process. The investigation is very broad, and will involve the review of a large volume of documents from the Central Office, each Regional Office, and each facility affiliated with **THE ORGANIZATION**. Our in-house attorneys plan to visit your facility during the week of [Date], to collect documents and other information necessary to respond to the investigation. This process will require that you and your facility’s employees assist the legal team by responding to questions and identifying the location of various types of documents, files, electronic data, and perhaps other materials. The purpose of this Memorandum is to familiarize you with the process so that we can complete this task with a minimum of disruption to your operations and your employees.

Scope of Review

The scope of the review is broad. The potentially affected locations are: Reimbursement, Finance, CFO, CEO, COO, Compliance, and archives, including offsite storage. At a minimum, each of these departments (where applicable) and their respective offices will be contacted for purposes of collecting responsive documents. In addition, electronically stored data will need to be identified. Although the legal team will not begin reviewing electronically stored data during their site visit to your facility, they will need to coordinate with the designated IT Director of each site to identify the location of potentially responsive electronic data. The Subpoena seeks documents and data for the Fiscal Year [_____ to _____]. The following summarizes the basic categories of documents sought:

All draft and final versions of cost reports, including filed, audited and booked versions of the cost reports and cost statements, as well as transmittal letters;

All work papers, notes, reports and memoranda pertaining to cost reports;

All work papers, notes, drafts and memoranda pertaining to the calculation and allocation of costs in the cost reports and home office cost statements;

All documents relating to any Medicare and Medi-Cal audits of the cost reports, including notices of program reimbursement, audited cost reports, adjustments, exist conferences, and any other communications with the fiscal intermediary regarding the cost reports;

All documents relating to the reopening or amending of the cost reports;

All policies and procedures, directives, memoranda, handbooks, seminar materials, instructions, bulletins, and correspondence relating to the preparation of cost reports;

All documents relating to internal and external audits, reviews, evaluations, or other assessments regarding the cost reports;

All documents evidencing internal or external hotline or other oral or written complaints or concerns related to Medicare cost report policies, practices, items or reserves;

All documents related to actual or contemplated disclosures to the government and/or its agents, including fiscal intermediaries, regarding known and/or suspected Medicare cost report overpayments.

Collection Procedures

Potentially responsive materials will be removed from your facility and brought to a central location for detailed review. The Legal Department will be collecting original documents. The Legal Department will leave a copy of a “cover sheet” in the file or other location from which documents are removed. This will provide notice that a document was removed, and will permit the replacement of documents or copies thereof into their original locations once the documents have been reviewed.

Please inform the Legal Department if certain responsive documents are necessary for ongoing operations. In that case, the Legal Department will arrange for prompt copying of the documents and the return of a copy to the facility’s files.

Advance Information Collection

In order to minimize the time that the Legal Department will need to spend on site at your facility, we would like to gather certain information in advance of the site visit. Please make yourself or your personal representative available as early as possible the week of [Date] to speak with the Legal Department attorney who will be organizing the visit to your facility.

Contact Information

If you have any questions prior to the site visit or during the collection process, please contact me or the following supervising attorney: [Legal Department Supervising Attorney]

Document Retention for Internal Investigation

DATE: []
TO: All Employees
FROM: Legal Department
FILE NO: []
COPIES TO: []
SUBJECT: **Document and Information Retention for Internal
Investigation**

PLEASE DO NOT DESTROY, DISCARD, ALTER, OR ERASE ANY DOCUMENT OR COMPUTERIZED INFORMATION UNTIL FURTHER NOTICE. THIS INCLUDES LETTERS, MEMOS, REPORTS, HANDWRITTEN NOTES, E-MAILS, COMPUTER RECORDS AND PROGRAMS, DATA STORED ON HARD DISKS OR FLOPPY DISKS, AND BACKUP TAPES ON ANY SUBJECT MATTER CONCERNING THE ORGANIZATION'S BUSINESS.

[The Organization] is conducting an internal investigation relating to [The Organization's] compliance with certain government regulations [be more specific if possible]. There are no allegations of criminal conduct as of this time. However, because [The Organization] does not yet know the scope of the inquiry, IT IS EXTREMELY IMPORTANT THAT NO DOCUMENTS ARE DESTROYED. [Destruction of documents during a government investigation may implicate criminal and civil liability for [The Organization] and individual employees]. This also applies to documents you may create in the future. Therefore, please retain any such documents or information, whether in hard copy or on your computers, until further notice.

The Legal Department is conducting an internal investigation. Our attorneys will collect documents and interview employees to determine the facts and legal implications. Please be sure to provide your full cooperation when asked by me or the attorneys from the Legal Department to be interviewed or to locate documents. All your discussions with them are privileged and confidential and will not be disclosed to anyone outside of [The Organization].

Finally, if you are approached by any attorneys who do not identify themselves as an attorney from the Legal Department about this matter, please refer them directly to me. If you are approached by someone identifying himself as a government official, it is your decision whether or not to talk to the official. [The Organization] takes no position on

whether you should answer questions of a government official. You may choose first to speak to legal counsel (either private or [Organization] counsel) prior to any interview. If you choose to speak to government officials, you should speak accurately and truthfully at all times. Please notify us if you are approached or interviewed by a government official.

Please do not discuss this memorandum or the existence of the investigation with any member of the media. All media inquiries should be referred to [_____].

Letter of Understanding to the Department of Justice

[DATE]

[]

United States Department of Justice

[]

United States Attorneys Office

Re: []

Dear Counsel:

I write to confirm our understanding regarding our upcoming meetings and our on-going dialogue with the United States Department of Justice (the DOJ) and the United States Attorneys Office for the [] District of [] (the USAO), relating to your investigation of out client, [] (the Organization) and the following matters: []. This understanding will govern the use of any report, document, or information voluntarily submitted by either party to the agreement to the other in furtherance of settlement and plea discussions regarding these matters.

1. All settlement discussions between the Organization, DOJ, and the USAO are subject to the provisions of Federal Rule of Evidence 408, and plea discussions to the provisions of Federal Rule of Evidence 410 and Federal Rule of Criminal Procedure 11. The government, however, may make derivative use of and may pursue any investigative leads suggested by any statements or information provided by the Organization's representatives. Such derivative information may be used against the Organization and/or any individuals in any future proceedings.

2. The disclosure of any report, document, or information by one party to the other does not constitute a waiver of any applicable privilege or claim under the work product doctrine. Both parties to the agreement reserve the right to contest the assertion of any privilege by the other party to the agreement, but will not argue that the disclosing party, by virtue of the disclosures it makes pursuant to this agreement, has waived any applicable privilege or work product doctrine claim.

3. Except as provided in paragraphs 1 and 2, and subject to any other legal objection, any report, document, or information disclosed pursuant to this agreement may be used by DOJ and the USAO as it deems appropriate in connection with this investigation and in any criminal, civil, administrative, or contractual proceeding.

4. In the event of a criminal trial, this agreement will not limit the ability of the DOJ or USAO to provide any report, document, or information in its possession required to be produced under applicable disclosure obligations.

5. This agreement shall not prevent or limit the ability of DOJ or the USAO to provide any report, document, or information to the United States Congress pursuant to a Congressional request. DOJ and the USAO will use reasonable efforts to notify the Organization of such a request if, and only if, the requesting Congressional party does not object to such notification.

Very truly yours,

Legal Counsel, Esq.
The Organization

Assistant United States Attorney

Assistant United States Attorney