ANA ISSUE BRIEF

Information and analysis on topics affecting nurses, the profession and health care.

Ignorance is Not a Defense

Implications of heightened scrutiny for fraud and abuse

Key Points

The Obama Administration has "turned up the heat" on Medicare fraud and abuse.

The government is working to crack down on fraud, and even an honest mistake result in a charge.

Nurses and APRNs should be aware of recent developments and should take steps to understand and avoid fraud and abuse.

Turning up the HEAT

The Obama Administration has intensified its efforts to eliminate on Medicare Fraud and Abuse. Health and Human Services (HHS) Secretary Kathleen Sebelius and Attorney General Eric Holder have pledged to fight waste, fraud and abuse in Medicare through the creation of the **Health Care Fraud Prevention and Enforcement Action Team (HEAT**).

Medicare Fraud Strike Force Teams, a key component of HEAT, began in Miami in 2007 and have since been expanded to Los Angeles, Detroit; Houston; Brooklyn, N.Y.; Baton Rouge, La.; and Tampa Bay, Fla..Strike Force teams have obtained indictments of more than 500 individuals, including nurses, who collectively have falsely billed the Medicare program for more than $1 billion dollars.

The vast majority of nurses, including advanced practice registered nurses (APRNs), are working every day to eliminate waste and save health care dollars. It is important, however, to **be aware of the rules** for billing in order to prevent honest mistakes and help stop what could be considered fraud before it happens.

Increased education for providers

The mission of the Office of Inspector General (OIG) is 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.

The OIG and other government experts are working to educate health care providers, compliance officers, and their legal counsel about the realities of Medicare fraud and the importance of implementing an effective compliance program. The elements of an effective compliance program are:

- **Get the Facts.** Understand the law and the consequences of violating it.
- **Make a Plan.** Cultivate a culture of compliance within your health care organization.
- **Know Where to Go.** Learn what to do when a compliance issue arises.

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In addition to increased education for providers, HEAT has launched other initiatives, all of which are available at the HEAT website at www.stopmedicarefraud.gov .

These initiatives include:

►Expansion of a project regarding durable medical equipment

Increased site visits are being carried out during the provider enrollment process to help ensure only legitimate providers can participate and bill for services in the Medicare program.

►Use of new state-of-the-art technology to fight fraud

Federal law enforcement officials are receiving an unprecedented amount of data, helping them to detect more quickly potential patterns of health care fraud. This is a result of state-of-the-art, cutting edge technology that can identify and analyze potential fraud with unprecedented speed and efficiency.

►Increase support for States

Additional support is being provided to state Medicaid officials to allow them to conduct targeted activities to fight fraud in their States.

►New funding for Medicare Drug Integrity Contractors

Expanding the use of drug integrity contractors is helping to strengthen HHS's ability to monitor Medicare Parts C & D (Medicare Advantage and Prescription Drug benefit) compliance and enforcement.

Understand billing rules

Billing rules can be very complex, even for people who deal with them every day. It is important, however, for nurses – especially APRNs – to ensure that services they provide are billed correctly. This is particularly true with "incident to billing."

"Incident to billing" Nurse Practitioners (NPs) that meet Medicare qualifications[1] and bill Medicare directly are reimbursed at 85 percent of the physician fee.[2] [3] However, when NPs work with physicians, there is an option for their services to be billed at 100 percent of the physician fee if certain requirements are met. This is called "incident to" billing, because the services are provided "incident to" physician services.[4] Clearly, there is a financial incentive to a practice to bill "incident to." It is critical that NPs understand and follow the incident to billing rules.

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In order to bill Medicare for services provided by an NP "incident to" physician services, certain requirements must be met.

The service is:

- An integral, although incidental, part of the physician's professional service.
- Commonly rendered without charge or included in the physician's bill.
- Of a type that are commonly furnished in physician's offices or clinics.
- Furnished under the direct supervision of the physician (this does not mean in the same room, but in the same office suite and "immediately available".

In addition, there must have been a "direct, personal, professional service furnished by the physician to initiate the course of treatment," usually interpreted to mean that no new problems can be diagnosed and treated by the NP and billed incident to. These requirements are detailed in Chapter 15 of the Medicare Benefit Policy Manual and are explained in a number of good resources.[5]

Enrolling as a Medicare and Medicaid Provider

In order to obtain reimbursement from the Medicare and Medicaid programs (to bill Medicare or Medicaid), you must enroll as a provider by doing the following. Obtain a National Provider Identifier (NPI). Apply for this unique health identifier online at https://nppes.cms.hhs.gov/NPPES/StaticForward.do?forward=static.npistart

Then, complete the Medicare Enrollment Application. http://www.cms.gov/MedicareProviderSupEnroll/. Also, complete your state-specific Medicaid Enrollment Application.

Once you become a Medicare and/or Medicaid provider, it is your responsibility to ensure that claims submitted under your number are true and correct.

Resources: Where to go for help

When considering whether or not to engage in a particular billing practice, enter into a business venture, or pursue an employment or consulting relationship, it is prudent to evaluate the arrangement for potential compliance problems. The following is a list of possible resources that can help.[6]

Seek counsel with an experienced health care lawyer. The state or local bar association may have a referral service; or contact The American Association of Nurse Attorneys at www.TAANA.org. The state nurses association may also provide a listing of health care lawyers who are experienced in nursing issues.

CMS's local contractor medical directors are a valuable source of information on

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Medicare coverage policies and appropriate billing practices. The contact information for local contractors is available at http://www.cms.gov/MLNGenInfo/30_contactus.asp .

The OIG's Web site, available at http://oig.hhs.gov , provides substantial fraud and abuse guidance. OIG issues Compliance Program Guidance documents that include compliance recommendations and discussions of fraud and abuse risk areas. These guidance documents are available at http://oig.hhs.gov/fraud/complianceguidance.asp .

OIG issues advisory opinions to parties who seek advice on the application of the certain laws. Information on how to request an OIG advisory opinion and links to previously published OIG advisory opinions are available at http://oig.hhs.gov/fraud/advisoryopinions.asp .

CMS issues advisory opinions to parties who seek advice on the Stark law. Information on how to request a CMS advisory opinion and links to previously published CMS advisory opinions are available at http://www.cms.gov/PhysicianSelfReferral/95_advisory_opinions.asp.

Reporting Fraud and Abuse

If you have information about fraud and abuse against Federal health care programs, you may report that information (anonymously, if you chose) through the OIG Fraud Hotline at 1-800-HHS0TIPS (1-800-447-8477)or HHSTIPS@oig.hhs.gov
For more information about the Hotline, visit http://oig.hhs/gov/fraud/hotline/.

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[1] To qualify to bill Medicare, an NP must hold a state license and certification from a nationally recognized certifying body. Effective January 1, 2003, applicants were also required to hold a master's degree. Details on requirements are available at http://www.cms.gov/center/provider.asp

[2] Prior to January 1, 2011, nurse-midwives were reimbursed at 65 percent of they physician fee. As a result of Section 3114 of the Affordable Care Act, CNMs are now reimbursed at 100 percent of the physician fee schedule.

[3] Medicare Information for Advanced Practice Nurses and Physician Assistants; available at www.cms.gov/MLNProducts/70_APNPA.asp NP information is on page 4.

[4] "Incident to a physician's professional services means that the services or supplies are furnished as an integral, although incidental, part of the physician's personal professional services in the course of diagnosis or treatment of an injury or illness."

[5] See, for example, www.medscape.com/viewarticle/422935_4; www.medscape.com/viewarticle/734972; www.texmed.org/Template.aspx?id=2274; www.acnpweb.org/i4a/pages/Index.cfm?pageID=3435

[6] Adapted from A Roadmap for New Physicians: Avoiding Medicare and Medicaid Fraud and Abuse. http://oig.hhs.gov/fraud/PhysicianEducation/

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