Health Care Fraud Alert: HEAT in Action

6/26/2009

The Health Care Fraud Prevention and Enforcement Action Team (HEAT), the joint taskforce announced by the Department of Justice and Department of Health and Human Services (HHS) last month, is already achieving results. Fifty-three people were indicted in Detroit this week for allegedly submitting over $50 million in false Medicare claims. These indictments resulted in arrests not only in Detroit but also in Miami and Denver on various charges, including conspiracy to defraud Medicare, submission of criminal false claims, and violations of the anti-kickback statute.

The defendants allegedly conspired to submit claims to Medicare for infusion therapy and physical and occupational therapy services that were not medically necessary or were never provided. According to the indictments, beneficiaries often received cash kickbacks in exchange for allowing the providers to seek reimbursement for the unnecessary or nonexistent treatments.

The HEAT taskforce is responsible for operating the Medicare Fraud Strike Force teams established in South Florida in March 2007 and Los Angeles in March 2008, and for subsequently establishing the Detroit Strike Force team that uncovered the activities leading to this week's indictments.

Inspector General Lays Out Five-Principle Strategy

Daniel Levinson, Inspector General for the Department of Health and Human Services, presented testimony yesterday before the House Energy and Commerce Committee's Subcommittee on Health on his agency's efforts to combat fraud, waste, and abuse in HHS's federal health care programs. In his written testimony, Inspector General Levinson stated that it was "critical" that the federal government pursue a comprehensive strategy to prevent, detect, and remediate fraud, waste, and abuse in the Medicare and Medicaid programs. Mr. Levinson provided the Subcommittee with background information on the role of the HHS Office of Inspector General (OIG) in combating fraud, waste, and abuse; described the agency's collaborative initiatives with other governmental agencies, including the HEAT taskforce; and highlighted numerous vulnerabilities that the OIG and its law enforcement partners have identified in the Medicare and Medicaid programs.

Based on the OIG's investigative and enforcement experience, Mr. Levinson presented the following five-principle strategy for combating health care fraud, waste, and abuse:

1) Enrollment - Scrutinize individuals and entities that want to participate as providers and suppliers prior to their enrollment in health care programs.

Recognizing that it is more efficient to prevent providers and suppliers from enrolling than to attempt to recover payments or to address fraud or abuse after it occurs, the Inspector General advocated for more effective screening of providers and suppliers before granting them billing privileges. Heightened screening measures should be used for high-risk items and services, and could include requiring providers to meet accreditation standards, obligating enrollees to present proof of business integrity or surety bonds, imposing periodic recertification and on-site verification of compliance with the conditions of participation, and requiring full disclosure of ownership and control interests. Additionally, new providers and suppliers should be subject to a provisional period during which they are subject to enhanced oversight, such as prepayment review and payment caps.

2) Payment - Establish payment methodologies that are reasonable and responsive to changes in the marketplace.

Medicare and Medicaid payments should be sufficient to ensure access to care without wasteful overspending. The incentives and fraud risks created by the various payment methodologies should be identified and addressed, and the necessary safeguards to remediate the negative incentives and reduce fraud risks should be implemented.

3) Compliance - Assist health care providers and suppliers in adopting practices that promote compliance with program requirements, including quality and safety standards.

The Inspector General maintained that providers and suppliers should be required to adopt compliance programs as a condition of participation, and that they should be required by law to repay overpayments discovered through their compliance efforts.

4) Oversight - Vigilantly monitor programs for evidence of fraud, waste, and abuse.

Government agencies should increase efforts to ensure that they effectively use 21st-century information technology in the fight against health care fraud. Needed improvements in program oversight include real-time access to data for law enforcement; uniform, comprehensive data elements; more timely collection and validation of data; and interoperability of systems. In addition, the various provider databases, including the Health Care Integrity and Protection Data Bank, the National Practitioner Data Bank, and OIG's List of Excluded Individuals/Entities should be consolidated and expanded.

5) Response - Respond swiftly to detected fraud, impose sufficient punishment to deter others, and promptly remedy program vulnerabilities.

Congress should authorize the imposition of civil monetary penalties (CMPs) for the submission of false provider enrollment applications and for the ordering or prescribing of items or services by an excluded entity, and also align the OIG's authority to impose CMPs with the recent False Claims Act amendments.

The five-principle strategy and the OIG's collaborative efforts with other government agencies align with the Obama Administration's goal of cracking down on fraud and abuse in the health care system, as demonstrated through the recent actions of the Medicare Strike Force and HEAT.

For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

MEMBERS

Robert D. Clark
Managing Member, Health Law Practice
(202) 434-7402
RDClark@mintz.com

Stephen M. Weiner
Chairman, Health Law Practice
(617) 348-1757
SWeiner@mintz.com

Susan W. Berson
Managing Member,
Washington, D.C. Office
(202) 661-8715
SBerson@mintz.com

Thomas S. Crane
(617) 348-1676
TSCrane@mintz.com

Stephen C. Curley
(212) 692-6217
SCCurley@mintz.com

Deborah A. Daccord
(617) 348-4716
DADaccord@mintz.com

Hope S. Foster
(202) 661-8758
HSFoster@mintz.com

Ellen L. Janos
(617) 348-1662
EJanos@mintz.com

Karen S. Lovitch
(202) 434-7324
KSLovitch@mintz.com

M. Daria Niewenhous
(617) 348-4865
DNiewenhous@mintz.com

Andrew B. Roth
(212) 692-6889
ARoth@mintz.com

OF COUNSEL

Michael D. Bell
(202) 434-7481
MDBell@mintz.com

ASSOCIATES

Stephen R. Bentfield
(202) 585-3515
SRBentfield@mintz.com

Dianne J. Bourque
(617) 348-1614
DBourque@mintz.com

Theresa C. Carnegie
(202) 661-8710
TCCarnegie@mintz.com

Brian P. Dunphy
(617) 348-1810
BDunphy@mintz.com

Garrett G. Gillespie
(617) 348-4499
GGGillespie@mintz.com

Lauren N. Haley
(202) 434-7386
LNHaley@mintz.com

Rachel M. Irving
(617) 348-4454
RMIrving@mintz.com

Krietta Bowens Jones
(617) 348-3042
KBowensJones@mintz.com

Sarah A. Kaput
(202) 434-7423
SAKaput@mintz.com

Katina W. Lee
(202) 661-8729
KLee@mintz.com

Carrie A. Roll
(202) 434-7350
CARoll@mintz.com

Tara E. Swenson
(202) 585-3504
TESwenson@mintz.com

Andrea P. Testa
(617) 348-4407
ATesta@mintz.com

Melissa O'Neill Thatcher
(617) 348-3015
MOThatcher@mintz.com

Heather L. Westphal
(202) 585-3538
HLWestphal@mintz.com

Jennifer E. Williams
(202) 585-3542
JEWilliams@mintz.com

Nili S. Yolin
(212) 692-6799
NSYolin@mintz.com