

Health Care Facility Self-Disclosure

Healthcare Financial Management Association
Rochester Chapter

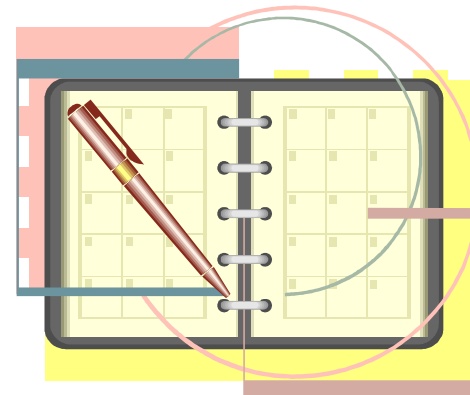
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The Education Center at Unity Hospital
Rochester, New York

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Agenda

- What is Self-Disclosure?
- Federal and State False Claims Acts
- Self-Disclosure Process
- Best Practices During the Self-Disclosure Process
- Questions and Answers



What is Self-Disclosure?

- The process whereby a facility informs the government it has billed the government for services or items for which the facility was not permitted by statute or regulation to bill
- Depending on the issue and the payor, can be made to the Department of Justice, Office of Inspector General (OIG), Centers for Medicare and Medicaid Services (CMS) or the Office of Medicaid Inspector General (OMIG)
 - OIG, CMS and OMIG have self-disclosure protocols available on their websites

What is Self-Disclosure

- Why Self-Disclose?
 - It is required
 - Failure to disclose results in False Claims Act exposure
 - Forgiveness or reduction in interest
 - Extended repayment terms
 - Waiver (or reduction) of penalties/sanctions
 - Possible avoidance of Corporate Integrity Agreement
 - Possible avoidance of legal action
 - Avoid exclusion

Federal and State False Claims Acts

- Similar federal and State False Claims Act
 - Federal: 31 U.S.C. 3729-3731
 - State: Article 13 of State Finance Law
- Elements most relevant in health care context:
 - knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval
 - knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim

Federal and State False Claims Acts

- Elements (cont'd)
 - knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the government

Federal and State False Claims Acts

- What does “knowingly” mean?
 - actual knowledge, deliberate ignorance of truth or falsity, or reckless disregard of truth or falsity
 - Proving specific intent to defraud is not required

Federal and State False Claims Acts

- Damages

- Treble damages, up to \$12,000/claim submitted, may pay government legal fees

- Example:

- 200 \$5 claims with actual overpayment of \$1000

$$3 \times \$1000 = \$3,000$$

$$200 \times \$12,000 = \underline{\$2,400,000}$$

$$\$2,403,000$$

- Will consider mitigating factors

Self-Disclosure Process

- Federal Process
 - DOJ and OIG follow the OIG protocol (<http://oig.hhs.gov/fraud/selfdisclosure.asp>)
 - CMS' Stark protocol is not specifically discussed here
 - Discovery of a problem
 - Internal investigation
 - Nature and extent of improper or illegal practice;
 - Discovery and response
 - Internal financial impact assessment

Self-Disclosure Process

- Federal Process (cont'd)
 - Deadline – within 60 days from identification of overpayment or date corresponding cost report is due (whichever is later), Section 6402(d) of the 2010 Affordable Care Act requires facilities to report, refund, and explain identified overpayments (combined with 2009 FERA False Claims liability) for anyone who knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money

Self-Disclosure Process

- Recommended self-disclosure procedure is to call first and follow up with a written submission
 - Contact person at DOJ in the Western District of New York is Robert Trusiak (716-843-5847; robert.g.trusiak@usdoj.gov)

Self-Disclosure Process

- Written submission of self-disclosure
 - Disclosing provider name, address, provider and tax ID numbers; description or diagram of ownership and related entities; and name and address of designated representative
 - Provider knowledge of current inquiry by a government agency or contractor
 - Full description of nature of disclosed matter including names of implicated individuals and their roles in the matter
 - Type of provider implicated and any associated billing numbers along with affected federal programs
 - Reason for disclosure
 - Provider certification that disclosure is truthful and made in good faith

Self-Disclosure Process

- OIG verification of disclosure
- Cooperation with OIG
- Settlement Agreement
- Payments

Self-Disclosure Process

- New York State –
(http://www.omig.state.ny.us/data/images/stories/self_disclosure/omig_provider_self_disclosure_guidance.pdf)
 - Again, the recommended procedure is to call first and follow up with a phone call to John Daniels at OMIG (

Self-Disclosure Process

- OMIG Self-Disclosure Timeline
 - Discovery of a problem
 - Internal investigation
 - Nature, time period and financial impact
 - Medicaid program rules involved
 - Corrective action and monitoring process

Self-Disclosure Process

- Written or phone-in report to OMIG
 - Basis of disclosure, how it was discovered, time period involved and potential financial impact assessment
 - Medicaid rules involved
 - Corrective action taken, date of corrective action and process for monitoring to prevent reoccurrence
 - Name and phone number of individual making report on behalf of provider

Self-Disclosure Process

- OMIG verification of disclosure
- Cooperation with OMIG
- Restitution

Best Practices and Pitfalls

- Best Practices
 - Meet applicable timeframes
 - Maintain appropriate relationship with government auditors and attorneys—trust factor—you will likely have to deal with them in future
 - Respond to requests for information in a timely fashion or let government contact know if more time is required

Best Practices and Pitfalls

- Best Practices (cont'd)
 - Organize and carefully prepare documents
 - Provide only the information required under the applicable self-disclosure protocol
 - Provide only the follow-up information requested by the government
 - Coordinate and be consistent if submitting self-disclosures to both the federal (Medicare) and State (Medicaid) governments

Best Practices and Pitfalls

- Best Practices (cont'd)
 - If uncertain about sampling or extrapolation methodology to calculate overpayment amount, discuss with government contact prior to selecting and reviewing records and calculating overpayment

Best Practices and Pitfalls

- Pitfalls

- Not having an appropriate point person responsible for the self-disclosure and to respond to questions from the government contact
- Providing more or different information than is required in the self-disclosure
- Continuing the improper practice that has been self-disclosed — need corrective action plan to prevent future submission of improper claims

Best Practices and Pitfalls

- Pitfalls (cont'd)
 - Failing to consider whether a consultant's internal audit or review should be done under attorney-client privilege
 - Failing to submit and maintain a cover letter/e-mail describing the documentation that is being submitted as well as a copy of the documentation submitted
 - Being adversarial—this is a voluntary self-disclosure

Best Practices and Pitfalls

- Pitfalls (cont'd)
 - Not carefully reviewing the language contained in the settlement documents related to the self-disclosure

Questions and Answers

