
Pennsylvania Three Rivers AAHAM Fall Symposium

Self-Disclosure: How to Correct a Billing Problem Without Getting in Trouble

September 14, 2023

Dan Mulholland
Horty, Springer & Mattern, P.C.

HORTY  SPRINGER

Pennsylvania Three Rivers AAHAM

Self-Disclosure: How to Correct a Billing Problem Without Getting in Trouble

**Pennsylvania Three Rivers AAHAM
Fall Symposium**

September 14, 2023

**Dan Mulholland
Horty, Springer & Mattern
dmulholland@hortyspringer.com
412-687-7677**

1

What Do You Have to Disclose?

- **Overpayments?**
- **Fraudulent activities?**
- **Regulatory Violations?**

2

Liability for Failure to Repay Overpayments

- **Federal law requires providers to report and return any overpayment within 60 days of *identification***
 - **Creates reverse false claims liability if you don't**
 - **Regulations define when an "overpayment" is "identified"**
 - **Many ways to skin this cat**

3

Pennsylvania Three Rivers AAHAM

What To Do if You Discover a Problem

- Identify
- Quantify
- Correct
- Self disclose
- Refund

4

What Is an Overpayment?

- An overpayment is a payment made to a provider that exceeds the amount due and payable according to existing laws and regulations
- Identified overpayments from Medicare and Medicaid are debts owed to the government
- Overpayments from private payors also must be refunded in accordance with contract

5

Overpayments happen because of:

- Incorrect coding
- Insufficient documentation
- Medical necessity errors
- Processing and administrative errors

6

Pennsylvania Three Rivers AAHAM

Who Should You Disclose to?

- **OIG?**
- **U.S. Attorney?**
- **State Medicaid Agency?**
- **Medicare Administrative Contractor?**
- **Commercial Payors?**

7

OIG's Health Care Fraud Self-Disclosure Protocol

- **Not for overpayments or errors**
- **"These matters should be disclosed directly to the appropriate CMS or other responsible contractor under the payor's voluntary refund process."**

8

U.S. Attorney/Department of Justice

- **Only for issues where fraud is involved**
- **Don't try this without close adult legal supervision!**

9

Pennsylvania Three Rivers AAHAM

Pennsylvania Medical Assistance

- DHS Self-Audit Protocol
- “when the provider properly identifies an inappropriate payment and reports it to DHS, and the acts underlying such conduct are not fraudulent, DHS will not seek double damages, but will accept repayment without penalty.”
- <https://www.dhs.pa.gov/about/Fraud-And-Abuse/Pages/MA-Provider-Self-Audit-Protocol.aspx>

10

Novitas Self-Disclosure Options

- Unsolicited return of monies form
- Medicare redetermination and clerical error reopening request form
- Voluntary disclosures

11

Voluntary Disclosures of “Material Deficiencies”

- Large overpayments
 - Overpayments related to systemic weaknesses in the provider’s controls
 - Conduct that appears to violate the law
 - Quality of Care issues
- “The definition of a material deficiency is still somewhat subjective.”

12

Pennsylvania Three Rivers AAHAM

Commercial Insurers

- Check payor contracts
- What rules apply?
- Is there a time limit on recoveries?
- Follow Provider Manual Instructions

13

Step-by-Step Process To Identify and Resolve Potential Overpayments

- Identify problem
- Hold claims until you know what you are dealing with
- Conduct initial assessment
- Interview Personnel/Review Documents
- Institute preliminary corrective action

14

Assemble the Team

- Billing/Revenue Cycle/CFO
- Compliance Department
- Legal Counsel
- Outside Consultants

15

Pennsylvania Three Rivers AAHAM

Beware the Rogue Consultant



16

How to Protect Yourself

- Check consultant out
- “No rat” clause in contract
- Have attorney retain consultant
- No legal conclusions by consultant
- Legal review before final

17

How Far Back Do You Have to Go?

- Medicare lookback period – 6 years unless...
 - Problem started less than 6 years ago
 - Recovery from old I.T. system would be overly burdensome
- Medicaid self-audit protocol:
 - Explain reason for the time period selected
- Commercial payors –
 - May be shorter period
 - Check contract

18

Pennsylvania Three Rivers AAHAM

Quantify Amount of Overpayment

- 100% claims review
- Extrapolation
 - Probe sample – 30 claims
 - Extrapolation sample – 100 claims
- Explain Sampling Methodology

19

RAT-STATS



20

What Can Happen if Overpayments Are Ignored?

- Reverse False Claims Liability
- Qui Tam Suits
- Medicare/Medicaid Exclusion
- Criminal Penalties

21

Pennsylvania Three Rivers AAHAM

**“A lawyer with his briefcase can
steal more than 100 men with guns.”**

- Don Vito Corleone

22

Thank you.

Horty, Springer & Mattern, P.C.

20 Stanwix Street, Suite 405

Pittsburgh, PA 15222

phone: (412) 687-7677 • fax: (412) 687-7692

email: info@hortyspringer.com

www.hortyspringer.com

HORTY  SPRINGER
