

Long-Term Care Survey Alert

Medicare: DOJ Dragnet Pulls in \$492 Million in Medicare Fraud Bust

Know what this type of arrest could do to your income.

No practitioner is safe from government fraud crackdowns, and CMS wants you to know that any health care professional -- including nursing home providers -- could be next. The latest arrests, which the government made on Oct. 4, involved doctors, nurses, and other practitioners. In total, 91 people were indicted in Medicare fraud schemes totaling \$492.2 million.

In addition to formal indictments, CMS suspended Medicare payments and took other administrative actions against 30 health care providers "following a data-driven analysis and based upon credible allegations of fraud," the DOJ said in a news release.

What is unclear is whether the providers CMS suspended are under indictment. The DOJ notes that "under the Affordable Care Act, HHS is able to suspend payments until the resolution of an investigation."

But in the release, HHS Secretary **Kathleen Sebelius** says "HHS used new authority from the health care law to stop future payments to many of the health care providers suspected of fraud, saving Medicare resources and taxpayer dollars from being lost to fraud in the first place."

Rare: Suspensions without an indictment are unusual. However, attorney **Robert Markette Jr.** suspects the DOJ is referring to just such suspensions, thanks to the references to data-driven analysis and credible allegations of fraud. "They are getting more comfortable with the idea of suspending payments" without an indictment or formal charges, says Markette, with **Benesch, Friedlander, Coplan & Aronoff** in Indianapolis.

Beware New Suspension Powers

Medical providers may have much to fear in CMS's suspension authority granted by the Affordable Care Act in 2010, but only recently implemented. The "credible allegations of fraud" required for the suspension are ill-defined. That leaves it largely up to CMS's interpretation.

Federal law defines the term as an allegation from any source, "including but not limited to fraud hotline complaints, claims data mining, patterns identified through provider audits, civil False Claims Act, and law enforcement investigations," explains attorney **Liz Pearson** with **Pearson & Bernard** in Edgewood, Ky. "The allegations are supposed to have some 'indicia of reliability,'" she adds. "But that term is not defined."

CMS has said it will look at all the circumstances of the allegations and must consult with the OIG as to the suspension, Pearson relates. "Again, [there is] no indication of the substance of that 'consultation.'"

Don't forget: "If CMS suspends payments based on a credible allegation of fraud ... then the order goes out to the State Medicaid program to also suspend," Pearson adds.

The result: Markette compares the suspension authority to this: "We're going to execute you, then let you have a hearing." That's because cutting off a provider's cash flow will likely shut it down before it can resolve CMS's suspicions, he says.

Medicare can keep providers' payments suspended for 18 months while it investigates, Pearson says.

Under these payment suspensions, the government treats providers more like they are guilty until proven innocent instead of the other way around, points out **Tom Boyd** with **Boyd & Nicholas** in Rohnert Park, Calif.

According to the credible allegation definition, a hotline complaint could be enough to trigger suspension. That could "simply be a disgruntled employee or competitor complaint," Pearson cautions.

Bottom line: "These new rules that were issued Feb. 2, 2011 provide CMS and the OIG great latitude in payment suspension," Pearson warns.

The OIG and DOJ have been advocating moving from a pay-and-chase model to one where fraud-fighting tools prevent money from going out the door based on fraudulent claims in the first place, Markette notes. The feds may see the suspension authority as a shortcut for achieving that goal.

"I think you can count on more use of the suspension power," Pearson agrees. "The government has been very vocal about wanting to stop the chasing after the money -- and this is one way to cut off the losses."

Resource: To read the complete news release about the indictments, visit www.justice.gov/opa/pr/2012/October/12-ag-1205.html.