

"Risks, Rewards & Decision Points Relating to Disclosures."

**April 12, 2005
Dedham, Mass.**

***Moderator:* Lawrence Vernaglia, Health Law Practice Group,
Hinckley, Allen & Snyder LLP**

***Panel:* Karen Murphy, Chief Compliance Officer & Asst.
General Counsel, Boston Medical Center**

**Glover Taylor, Compliance Officer,
Cambridge Health Alliance**

**James Bryant, Asst. Regional Administrator,
CMS Region I**

Rich McGreal, Medicaid Branch Chief, CMS Region I

Joan Senatore, MassHealth

Causes of billing errors

“[T]he statutes and provisions in question, involving the financing of Medicare and Medicaid, are among the most completely impenetrable texts within human experience. Indeed one approaches them at the level of specificity herein demanded with dread, for not only are they dense reading of the most tortuous kind, but Congress also revisits the area frequently, generously cutting and pruning in the process and making any solid grasp of the matters addressed merely a passing phase.”

Rehab. Ass'n of Va., Inc. v. Kozlowski, 42 F.3d 1444, 1450 (4th Cir.1994), *cert. denied*, 516 U.S. 811, 116 S.Ct. 60, 133 L.Ed.2d 23 (1995). *Cited in* Briggs v. Comm., 429 Mass. 241, 707 N.E.2d 355, (1999).

The Issues

(1) Distinguishing between:

- **Expected level of error and variation (something less than absolute perfection)**
- **Innocent billing error, but resulting in the provider receiving no more than was due**
- **Innocent billing error resulting in the receipt of an actual overpayment**
- **Intentional and knowing submission of a false claim or other criminal violation resulting in financial benefit to the provider**

The Issues (cont.)

(2) . . . and then determining what to do about it:

- **Do nothing**
- **Correct internally and prevent recurrence**
- **Report to payor and correct/prevent recurrence**
- **Refund to payor and correct/prevent recurrence**
- **Disclose to law enforcement/OIG/DOJ, refund to payor, and correct/prevent recurrence**

The Law

Felony for “whoever . . .having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized . . .”

42 U.S.C. §1320a-7b; S.S.A 1128B(a)(3).

The Law

Proposed rule 67 Fed. Reg. 3662 (Jan. 25, 2002):

“This proposed regulation would supplement and modify that notice in order to establish, in regulations, the *longstanding responsibility* of providers, suppliers, individuals and also managed care organizations contracting with us to report and return overpayments to us. This proposed would establish the timeframe and process for making the reports and returning the overpayments.” (emphasis added).

Never finalized.

Our Panelists . . .

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