
MEDICARE COMPLIANCE DAILY ANALYSIS

The Daily Report for Compliance Professionals

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*Enforcement: Contractor Execs Fess Up To Medicare Wrongs

*Advisory Opinions: OIG Nixes Rx Copay Program

ENFORCEMENT: CONTRACTOR EXECES FESS UP TO MEDICARE WRONGS

Two ex-employees of former Part B carrier General American Life Insurance Co. pleaded guilty to concealing information from Centers for Medicare and Medicaid Services auditors Oct. 2 – just months after General American itself agreed to pay \$76 million to settle allegations that it falsified its claims error rate.

Carl Messina, former Medicare director at General American, and Mary Wimbley, a one-time Medicare manager at the company who reported to Messina, admitted to one felony count each of conspiring to falsify and conceal information from federal auditors, according to U.S. Attorney Ray Gruender.

Messina and Wimbley acknowledged that they failed to report claims processing errors identified in the quality assurance process. The pair concealed General American's error rate by deleting claims selected for review by CMS auditors and replacing the deleted claims with other files they thought would pass muster. They also hid and altered documents and falsified reports.

Prosecutors maintain that the manipulation of the quality assurance data allowed General American to boost its carrier ranking from 38th in the nation in 1984 to number two in 1986. The charges against the contractor arose from a whistleblower suit filed by former employees Harry and Nancy Riggs. The Riggs collected more than \$14 million of the General American settlement for their role as qui tam relators.

ADVISORY OPINIONS: OIG NIXES Rx COPAY PROGRAM

The HHS Office of Inspector General Oct. 4 rejected a drugmaker's proposal to subsidize the cost-sharing amounts incurred by needy Medicare beneficiaries who use one of its products.

In advisory opinion 02-13, the OIG weighs in on an arrangement under which the pharmaceutical company would set up a non-profit foundation that would pay part of the copayments connected with an anemia treatment it manufactures. Financially needy Medicare and privately insured patients would be eligible for the program – but only if they use or intend to use the company's anemia drug.

In analyzing the kickback risks of the program, the OIG first deems that payments by the foundation would, in essence, be payments from the drug company. Thus, "the question becomes whether we should permit a manufacturer of a drug or device that is covered under a Federal health care program to subsidize copayments incurred by financially needy beneficiaries for using the manufacturer's product," the opinion says.

The answer to that question, in short, is “No.” Not only is the arrangement “squarely prohibited” by the anti-kickback statute, the OIG argues, it also “poses all the usual risks of fraud and abuse associated with kickbacks.” For one thing, it would give the drugmaker’s product “an obvious financial advantage over competing drugs on the market,” the OIG notes. Not only that, but there would be no incentive for beneficiaries or physicians to use competing products, even if they’re less expensive, since beneficiaries don’t have to worry about their financial obligations and physicians are guaranteed full payment – with no copayment collection hassles.

The OIG also worries that Medicare could end up footing the bill for such programs. By increasing the “average wholesale price” (a figure which governs much federal reimbursement for drugs) the manufacturer could recoup the cost of operating the foundation while keeping its own profits consistent, as well as those of doctors who prescribe its product – all “at the expense of the Medicare program,” according to the opinion.

The OIG also points out that there are other ways to help out financially needy people who need the drugmaker’s product – such as providing the drugs to them for free, as many pharmaceutical manufacturers already do through patient assistance programs.

To see the opinion, go to <http://oig.hhs.gov/fraud/docs/advisoryopinions/2002/ao0213.pdf>.

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