

What To Do When the OMIG Investigates Your Health Center

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Overview

- Background
- How the Audit Process Works
- How to Respond to an Investigation
- Discussion

Establishment of Independent OMIG

- In June 2006, Office of Medicaid Inspector General (OMIG) was established by statute as an independent entity within DOH.
 - Existing state personnel from various other state executive branch agencies, including OMRDD, OMH and OASAS, who engaged in the detection and prevention of Medicaid fraud, waste and abuse, were transferred to OMIG.
 - New technological investments to review claims and identify potential fraud or abuse were authorized.

OMIG's Mission

- “To improve and preserve the integrity of the Medicaid program by conducting and coordinating fraud, waste and abuse control activities for all State agencies responsible for services funded by Medicaid.”

Definitions of Fraud and Abuse

- Fraud means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person.
- Abuse means practices that are inconsistent with sound fiscal, business or medical practices and result in:
 - Unnecessary cost to Medicaid program; or
 - Reimbursement for services that are not medically necessary/fail to meet professionally recognized standards for health care.

Requirement to Consider Best Interest of Medicaid Program

- Statute establishing OMIG as independent entity contains following limiting language:
 - “In the pursuit of such civil and administrative enforcement actions under this subdivision, the [OMIG] shall consider the quality and availability of medical care and services and the best interest of both the medical assistance program and recipients.”

Interaction with Other Agencies

- Part of DOH, but reports directly to the Governor.
- Works closely with the Attorney General's Medicaid Fraud and Control Unit (MFCU).
- Also works in conjunction with:
 - Office of Mental Health
 - Office of Mental Retardation and Developmental Disabilities
 - Office of Alcoholism and Substance Abuse Services
 - Office of Temporary Disability Assistance
 - Office of Children and Family Services
 - Commission on Quality of Care and Advocacy for Persons with Disabilities
 - Department of Education

Funding for OMIG Activities

- SFY 2006-07 Budget: \$96 million to support 440 existing positions and to establish 81 new positions.
- SFY 2007-08 Budget: \$98 million to support continued operations and establish 157 new positions.
- SFY 2008-09 Budget: \$92 million to support continued operations and establish 75 new positions.

Recovery Targets

- Federal-State Health Reform Partnership (F-SHRP):
 - October 1, 2006 – September 30, 2011.
 - Purpose is to promote efficient operation of New York's healthcare system.
 - \$1.5 billion in federal funding over 5 years (\$300 million annually).
 - Establishes fraud and abuse recovery targets.

Recovery Targets

- F-SHRP fraud and abuse recovery targets:
 - 10/01/07 – 9/30/08: \$215 million
 - 10/01/08 – 9/30/09: \$322 million
 - 10/01/09 – 9/30/10: \$429 million
 - 10/01/10 – 9/30/11: \$644 million
- In contrast, total recoveries in 2003 were \$39 million and in 2004, \$90 million.

Recovery Targets (cont'd)

- Failure to achieve target would require New York to repay the federal government the difference between targeted amount and actual recoveries
- In 2007/08, OMIG met its goals, recovering at least \$269 million.

OMIG Approach

- Traditional approach: Field audits or desk audits of individual providers.
- More common recently: In-house review of multiple providers relying on electronic data mining (e.g., current audit of supplemental Medicaid managed care payments to FQHCs).
- There is no such thing as a “routine” audit.

Field Audits vs. Desk Audits

- **Field Audits**
 - Begin with entrance conference where OMIG representatives discuss nature and extent of audit.
 - On-site review of documents by OMIG investigators
 - After conclusion of review, exit conference to discuss preliminary findings.
 - May have opportunity to present additional information during audit or even after exit conference.
 - Next step is issuance of draft audit report identifying proposed recoupments and basis for action.
- **Desk Audits**
 - Begin with issuance of draft audit report.

Process After Issuance of Draft Audit Report

- Health center has 30 days to respond (may request extensions, but must show good cause).
- If no response, OMIG will issue a final audit report.
- If health center responds, OMIG will review the response and then issue a final audit report.

Extrapolation of Audit Findings

- In many instances, consequences of final audit findings are compounded by extrapolating audited results over entire volume of services rendered during audit period.
- Methodology results in projection of low, medium and high statistically valid projections.
- In some cases, statistical defenses may arise that would question the use of the extrapolation methodology.

Settlement Strategy and Considerations

- Post-final audit report, health center will have option to accept low-range or middle-range extrapolations if they choose to forego hearing.
- Negotiations over audit findings can occur at various stages during the audit process and OMIG may compromise.
- Interest may be charged on claims—both pre-audit and post-settlement—and is often another item for negotiation.

Hearing and Appeal Process

- If health center disagrees with final audit report, 60 days to request administrative hearing.
 - DOH may begin recouping 20 days after issuance of final audit report.
 - If hearing has been requested and isn't scheduled within 90 days, recoupment is stayed.
 - During 2007:
 - 78 providers requested administrative hearings
 - 172 cases were pending
 - 28 cases were resolved with settlement agreements
 - 16 providers withdrew their hearing requests
 - 3 administrative decisions were rendered

Hearing and Appeal Process

- If granted, hearing is limited to matters contained in health center's response to draft audit report.
 - Critical that all relevant matters are outlined in response
 - DOH regulations specify that the burden of proof is on the provider
 - Hearing overseen by DOH Administrative Law Judge
 - Somewhat less formal than court proceeding
- If health center disagrees with hearing decision, may initiate court proceeding.

General Principles for Responding to an OMIG Audit/Investigation

- Never create or alter a document.
- Tell the truth, or decline to answer.
- You have a right to consult with legal counsel before taking any action.
- Not responding is not an option.

Obligations of Health Center in Audit/Investigation

- Respond to request for books and records.
- Permit on-site audit of books and records, including patient histories, case files, patient-specific information.
- OMIG and MFCU have broad investigative authority:
 - OMIG statute clarified authority to subpoena witnesses and evidence
 - MFCU, for criminal investigations, has eavesdropping and search warrant authority and may use undercover informants
- Record retention required for six years.
- Failure to make records available is “unacceptable practice” that could result in exclusion from Medicaid program.

Typical Areas for Audit Focus and Liability

- Insufficient documentation
- Absence of authorizations or orders
- Duplicate billing
- Billing for non-covered services
- Even failure to satisfy clinical standards or procedures (not directly related to payment requirements) or quality concerns can warrant recoupment

Surprise Visits

- If no search warrant, no right to search premises or examine documents
- In the event of a surprise visit, health center staff have right to:
 - Decline to answer questions
 - Consult with legal counsel
 - Request that a return appointment be scheduled
 - Have legal counsel present at the return appointment

Search Warrants

- Where search warrant is presented, health center should:
 - Review a copy of the search warrant
 - Monitor search to ensure investigators limit their search to the scope of search warrant
 - Do not consent to search of any location or records not identified in the warrant
 - Instruct employees to cooperate in the search but not answer questions unrelated to the search
 - If investigators exceed scope of warrant, state your objection but do not attempt to physically interfere
 - Take detailed notes that identify the records searched
 - Make copies of any records taken

Conclusion

- Questions