Fraud grabs headlines but psychologists more often troubled by poor documentation

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A national health care fraud takedown in the second half of 2016 resulted in criminal and civil charges against the most providers and largest amount of alleged fraudulent billing in Medicare history.

In June, U.S. Attorney General Loretta Lynch and the Department of Health and Human Services (HHS) announced an unprecedented sweep led by the Medicare Fraud Strike Force charging 300 defendants of approximately $900 million in alleged false billing.

The charges involved home health care, physical and occupational therapy, durable medical equipment, prescription drugs and psychotherapy.

The takedown was possible because of the Health Care Fraud Prevention and Enforcement Action Team (HEAT), a joint program between the Department of Justice and HHS that began in 2009. The Affordable Care Act provides $350 million for health care fraud prevention and enforcement efforts.

The use of sophisticated data analytics has revolutionized detection of health care fraud and abuse, according to the recently retired Deputy Chief of the Fraud Section at the Department of Justice, Gejaa Gobena. In an interview published in *FierceHealthcare* in August, he said that fraudulent mental health care reimbursements have been stopped in partial hospitalization services in community mental health centers in Miami and Detroit, crediting that the U.S. Attorney and the Department of Justice worked together, exchanging information and marshalling all resources.

Charges of fraudulent billing of mental health services were brought against two clinical psychologists who pled guilty to one count each of conspiracy to commit health care fraud in a psychological testing scheme in nursing homes in Mississippi, Louisiana, Florida and Alabama occurring from 2010 through 2015. In a report issued in September by the U.S. Department of Justice's Office of Public Affairs, the two defendants admitted that they along with other psychologists employed in two nursing home practices administered a large number of psychological tests that were not medically necessary and submitted claims for many testing services that had not been provided.

In 2015 the co-defendants in the case, owners of the psychology nursing home practices, had also been charged in an indictment in connection with the large-scale Medicare takedown that totaled $25 million. Their trial is scheduled in the fall 2016.

The two psychologists were allegedly responsible for more than $5.6 million of fraudulent claims. According to their plea agreements, they repeatedly tested the same nursing home patients even though some could not meaningfully participate in testing.

## Fraud, abuse and waste

In a recent phone interview independent consultant and health care attorney, James Georgoulakis, Ph.D., J.D., said "Although fraud gets the big headlines, fraud does not occur that frequently in the mental health field. Our problems are in waste and abuse."

The Office of Inspector General defines fraud as "a type of illegal act involving the obtaining of something of value through willful misrepresentation." Fraud is a determination made through the judicial system.

Abuse involves behavior that is improper when compared with the behavior that a prudent person would consider reasonable and necessary business practice. Comparing practice patterns among providers gives auditors a way of determining abuse.

In a letter dated May 9, more than 4,000 psychiatrists across the country received Comparative Billing Reports (CBRs) developed by eGlobalTech, a CMS contractor that provides comparative data on how an individual provider's billing and payment patterns compare to his/her peers. The CBRs give providers the chance to compare themselves to their peers, check their records and review Medicare guidelines to ensure their compliance.

Waste goes beyond fraud and abuse and usually does not involve a legal violation. It involves mismanagement, inappropriate actions and inadequate oversight. Use of medical services that are not medically necessary comes under the category of waste.

Georgoulakis said that government-sponsored probes can lead to charges of fraud, waste or abuse. For example, two psychologists who asked to remain anonymous said their documentation of several patients' medical records from July 2016 is under review for the possible excessive use of the psychotherapy code involving 45-minute sessions.

"Most probes are based on algorithms that compare patterns of billing and services and compliance with medical necessity," said Georgoulakis. "The exclusive use of a single code based on CMS analytics is more likely to produce a review."

**Requirements change over time**

According to the Medicare Fee-for-Service 2014 Improper Payment Report, one out of every three psychotherapy claims was in error due to inadequate documentation. Additional data showed a 64 percent error for dates of service.

The elements of appropriate documentation for psychotherapy based on recommendations from APA have included the date of service, diagnoses, start and stop time, type of therapeutic intervention, target symptoms, progress toward achievement of treatment goals and reasons for lengthy sessions.

The CBR indicated additional elements that some Medicare administrative contractors require are the degree of patient interaction with the therapist, the reaction of the patient to the therapy session and any changes in symptoms or behavior as a result of the previous therapy session.

Georgoulakis said, "I have reviewed more than 100,000 clinical records, and I can tell you without a doubt the biggest problem with psychology records is documentation. The major reason is that psychologists do not keep up with documentation requirements which evolve and vary from carrier to carrier on the Medicare side as well as from private payers. Poor and incorrect documentation is the major reason psychologists are denied payment, receive fines and other sanctions. I have believed for a long time that APA has over emphasized coding changes and under emphasized the need for compliance plans and information regarding proper documentation."

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