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HELPING YOU MEET NEW MEDICAID COMPLIANCE AND ENFORCEMENT CHALLENGES

Due to a new federal agreement and the formation of the state Office of Medicaid Inspector General (OMIG), your organization is now likely to be subject to much more aggressive Medicaid audit and enforcement. For the first time, the state must recover high levels of improper Medicaid payments or risk losing millions of dollars of federal money. Harris Beach can help you prepare for and respond to these challenges.

WHAT IS THE FEDERAL MANDATE?

On September 29, 2006, the Centers for Medicare and Medicaid Services (CMS) approved a New York State Medicaid waiver request under which the federal government agreed to pay \$1.5 billion to New York over five years. This agreement, which is subject to numerous specific conditions, is known as the Federal-State Health Reform Partnership (F-SHRP) Medicaid Section 1115 Demonstration. One of the conditions, which is already underway by the Commission on Health Care Facilities in the 21st Century, is the restructuring of New York’s institutional health care delivery system.

Another condition is a mandate for recovering Medicaid overpayments due to fraud, abuse, errors, or omissions. Annual targets established by CMS rise to 1.5% of the state’s projected Medicaid expenditures per year. Specific requirements range from \$215 million in pledged recoveries in the second year to \$644 million in the fifth year of the F-SHRP demonstration period. To put these sums in perspective, in 2003 and 2004, New York only recovered approximately \$39 and \$90 million, respectively. If New York fails to collect the requisite increased amounts, it could forfeit up to \$500 million of the F-SHRP funds.

WHAT ARE THE NEW COMPLIANCE REQUIREMENTS?

The legislation that created the OMIG also imposed a new requirement that each institutional health care provider have a compliance program meeting state specifications. State regulations have not yet been promulgated, but the statutory requirements are fairly extensive. In addition, the federal Deficit Reduction Act of 2005 (DRA) requires that any entity that receives at least \$5,000,000 in Medicaid revenues must have in place certain written compliance policies. These mandated policies must cover federal and state false claims and whistleblower laws, and must include policies and procedures for detecting and preventing fraud, waste, and abuse (i.e., a compliance plan). The DRA makes compliance with its requirements a condition for receiving Medicaid payments.



Compliance Preparation & Audit Defense



WHAT SHOULD YOUR ORGANIZATION DO?

Along with all New York state health care providers, it is imperative that you protect your organization by doing the following: **(a)** conduct a rigorous self-examination to prepare for this heightened scrutiny and to ensure that your compliance program meets the new state and federal requirements; and **(b)** properly respond to audits and their findings if and when they occur. When errors are discovered, it is crucial to quickly disclose them with a clear strategy to minimize risk. Obviously, the wrong strategy can backfire.

HOW CAN WE HELP YOUR ORGANIZATION?

To help you meet the new compliance requirements and prepare for the overpayment recovery imperatives, Harris Beach developed a program and assembled a multi-disciplinary team of attorneys. There are two aspects to our program, including: (1) proactive review of compliance plan documentation and implementation procedures and practices; and (2) audit defense.

Prospective Compliance Review

An attitude and practice of proactive compliance is critical to preventing liability and to meeting the challenges of heightened Medicaid overpayment scrutiny. Every health care provider who participates in the New York Medicaid program must have a compliance plan that meets all federal and state requirements. Still more important is the need to fully and continuously implement the compliance plan once adopted.

Harris Beach can help you by:

1. Reviewing your existing compliance plan and related documents, then updating as necessary to assure they meet federal and state requirements while accommodating your organization's distinctive practices;
2. Assessing past compliance plan implementation, including organization, procedures, and results, with special emphasis on internal audits and the methods by which your organization addresses discovered billing irregularities;

The accuracy and appropriateness of Medicare and Medicaid billings have long been overseen by numerous federal agencies, including the Department of Health and Human Services (HHS) through CMS, the Office of Inspector General (OIG), and fiscal intermediaries; and the United States Department of Justice (DOJ) through the U.S. Attorney's offices, the Federal Bureau of Investigation (FBI), and Postal Inspectors. New York state agencies involved in oversight have included the Attorney General's Medicaid Fraud Control Unit (AG) and the Department of Health (DOH). The Office of Medicaid Inspector General (OMIG) now adds a new level of state enforcement.

3. Providing counsel and advice on initiating or improving your plan's implementation, including organization, procedures, and internal and external reporting;
4. Supervising audits of your organization's billing procedures if necessary; and
5. Advising and assisting you with respect to self-disclosure and voluntary repayment of discovered errors or omissions.

Medicaid Audit Defense

For all the reasons described previously, OMIG will need to accelerate audit and enforcement activities throughout New York state. Many more health care providers of all types will be audited, and enforcement of claimed overpayments will be more rigorous. That's why planning for and responding to audit requests and ensuing repayment claims are more important than ever.

Harris Beach can help you by:

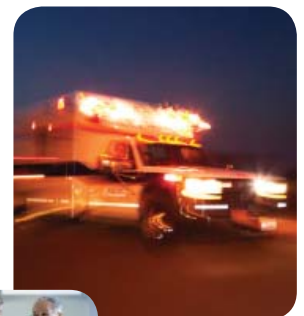
1. Conducting an internal investigation of the audited services and areas of claimed overpayment to determine your organization's potential exposure;
2. Interfacing with OMIG during on-site facility inspections and coordinating the responses to subpoenas or other forms of compelled document production. As part of this process, we establish workable parameters and timetables for the inspections, audits, and record production in order to minimize the disruption of your organization's daily activities;
3. Preparing your organization and your employees and assisting during examinations under oath or in other discovery proceedings;
4. Representing your organization in any civil or administrative enforcement actions brought by OMIG seeking recovery of claimed improper Medicaid payments;

5. Appearing before regulatory agencies or licensing boards to which the OMIG refers an investigation for formal action;
6. Interacting with the Office of the Attorney General (AG) with respect to any matter referred by OMIG to AG for potential criminal investigation and prosecution;
7. Representing you and your organization in any criminal actions brought by the AG.

WHY IS OUTSIDE LEGAL COUNSEL IMPORTANT TO YOUR ORGANIZATION?

Counsel will assess legal compliance and risks, while also affording the protection of confidentiality to your organization's fact-finding and decision-making processes. Engaging legal counsel early in the process facilitates the benefits of the privilege, which can extend to communications between your organization and accountants or other consultants who work under the direction of legal counsel.

In fiscal year 2005, New York state spent more than \$30 billion on Medicaid, which is approximately 29 percent of its annual budget. The magnitude and growth of the Medicaid program and the presumed number of wasted dollars have become alarming to both state and federal officials.



WHY CHOOSE THE HARRIS BEACH TEAM?

Having worked with health care providers for decades, we are sensitive to the fiscal challenges commonly faced by organizations such as yours. Our objective with this program is to preserve your organization's financial stability and health by substantially reducing your organization's financial exposure and risk.

To meet these goals, Harris Beach assembled a team of attorneys from its Health Care Providers and Government Investigations & Defense practices. Our team is comprised of highly qualified professionals with broad experience in compliance matters – as well as in both civil and criminal litigation of disputed Medicare and Medicaid claims.

For details on the credentials of our individual team members, please see the enclosed information.

WHAT MAKES HARRIS BEACH SO EFFECTIVE?

When meeting your objectives, we are concerned about efficiency as well as quality. We encourage a team approach in complex matters to suppress wasteful duplication and unproductive tangents.

One way we achieve efficiency is by collaborating with your staff and, as appropriate, your accountant and any other consultants you select. Working with other professionals helps us to obtain a cost-effective outcome for you.

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