



ELECTRONIC SUBMISSION VIA [Physician Data Comments@cms.hhs.gov](mailto:Physician_Data_Comments@cms.hhs.gov)

September 5, 2013

Marilyn Tavenner
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
Office 341D-05
200 Independence Avenue, SW
Washington, DC 20201

Re: Physician Data Comments, August 6, 2013 Request

Dear Administrator Tavenner:

On behalf of the National Health Care Anti-Fraud Association (NHCAA), we are writing in response to the notice titled "Request for Public Comments on the Potential Release of Medicare Physician Data," issued August 6, 2013.

Established in 1985, NHCAA is the leading national organization focused exclusively on combating health care fraud and abuse. We are unique among associations in that we are a private-public partnership—our members comprise the nation's most prominent health insurance plans as well as those federal, state and local government law enforcement and regulatory agencies having jurisdiction over health care fraud which participate in NHCAA as law enforcement liaisons.

NHCAA's mission is to protect and serve the public interest by increasing awareness and improving the detection, investigation, civil and criminal prosecution and prevention of health care fraud and abuse. Our commitment to this mission is the same regardless of whether a patient has private health coverage through an employer or as an individual, or is a beneficiary of Medicare, Medicaid, or any other public program.

On a national level, fraud infects and undermines our nation's health care system and is a drain on limited resources. The extent of financial losses due to health care fraud in the United States, while not

entirely known, is estimated to range in the tens of billions of dollars or more annually. It is a serious and costly problem that affects every patient and every taxpayer across our nation. Instances of abuse in the system, being closely related to fraud, only add to the detrimental impact. To be sure, the financial losses are considerable, but those losses are compounded by numerous instances of patient harm — unfortunate and insidious side effects of health care fraud that impact patient safety and diminish the quality of our medical care. Health care fraud is not just a financial crime, and certainly it is not victimless.

It is from this perspective that NHCAA offers its comments on appropriate policies for disclosing Medicare individual physician payment data. Although we believe that the release of Medicare physician payment data under certain conditions would add to transparency and promote other important goals of our nation’s health care system, our comments are limited to the release of this data with respect to its impact on the prevention and detection of fraud and abuse.

Our nation’s health care system hinges upon a staggering amount of data and countless health care claim adjudication systems while costing \$2.8 trillion annually. Moreover, the vast majority of health care providers and suppliers bill multiple payers, both private and public. For example, a health care provider may be billing Medicare, Medicaid, and several private health plans in which it is a network provider, and may also be billing other health plans as an out-of-network provider. As a result, when fraud is committed, it does not discriminate between types of medical coverage. The same schemes used to defraud Medicare and Medicaid migrate to private insurance, and schemes perpetrated against private insurers make their way into government programs. However, when attempting to detect potential fraud or abuse, each payer is limited to analyzing only the claims it receives and adjudicates. Generally, it is not privy to claims information collected by other payers. For this reason, the sharing of information among the payers is critically important to the effective detection and prevention of health care fraud and abuse.

NHCAA has been both an advocate and conduit for this type of anti-fraud information sharing for more than 25 years. Additionally, the Department of Health & Human Services and the Department of Justice also have recognized the critical importance of data sharing and analysis among public and private payers to detect and prevent fraud and abuse as demonstrated by the creation of the Healthcare Fraud Prevention Partnership in July of last year.

Consistent with this recognized strategy for fighting fraud and abuse, NHCAA recommends that access to Medicare physician payment data be made available to the anti-fraud components of all public and private payers, including private insurer special investigation units (SIUs), upon specific request, for purposes of fraud and abuse prevention, detection, and investigation. For example, to obtain access, an SIU would make a request to CMS identifying the physician or physicians of interest, the payment codes and timeframes at issue, and include any other information deemed necessary by CMS. In response, the requested data then should be provided electronically, ideally via a secure, internet-based portal. Under this type of access, the data would be released on the condition that it is used only for the purposes of anti-fraud and abuse activities.

Timeliness of the data also would be critical from a fraud-fighting perspective. Fraud schemes and trends often emerge quickly and then change, migrate, morph or dissipate just as quickly. For Medicare payment data to be optimally useful in reducing fraud and abuse, it should be made available soon after it is requested.

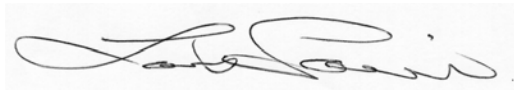
As for the level of information provided, while aggregated data at the individual physician level could prove useful and make for easier public consumption, NHCAA believes that providing line item claim details to requestors holds the most promise for effectively identifying and combating health care fraud and abuse. Health care fraud investigations often depend upon identifying when one claim should be preceded or accompanied by other claims (for example, certain tests that should precede a surgical procedure). Aggregated data alone would not allow for this level of assessment.

This type of public-private sharing of Medicare physician payment data which is restricted to anti-fraud and abuse activities would have little or no impact on physician privacy concerns. Since physicians voluntarily participate in Medicare and are paid with public funds, we question whether there exists a recognizable privacy interest in the amount a physician is reimbursed by Medicare. Nevertheless, even if such an interest exists, the release of payment data restricted in its use to the prevention, detection and investigation of health care fraud and abuse is consistent with sound public policy as well as established legal principles which recognize the validity and efficacy of information exchanges among potential victims of fraud.

CMS continues to demonstrate its strong commitment to fighting fraud, waste and abuse in the Medicare program. The shift away from pay and chase methods of fraud-fighting to a focus on prevention with the adoption of data analytics, predictive modeling and enhanced screening of providers is evidence of this commitment. NHCAA also applauds CMS' leadership in the development of the Healthcare Fraud Prevention Partnership, an initiative dedicated to the exchange of information between the public and private sectors in order to reduce the prevalence of health care fraud. Enabling payer access to Medicare physician payment data could help ensure greater success for the goals of the Partnership.

On behalf of the National Health Care Anti-Fraud Association, thank you for this opportunity to comment on the Center for Medicare & Medicaid Services' commendable efforts to promote greater data transparency. Making Medicare physician payment data available can improve the ability of both the public and private sectors to identify and stop health care fraud. We are available for any questions that you may have.

Sincerely,



Louis Saccoccio
Chief Executive Officer