The Legal Significance of Submitting a CMS 1500 Claim Form to Medicare

By Franklin J. Rooks Jr., PT, MBA, Esq.

Many physical therapists who have been long-time participants with the Medicare program probably do not recall what they signed when they became participating Medicare providers. By enrolling with the Medicare program, the physical therapist certifies that he/she will comply with the Medicare rules and regulations contained in the CMS 855i enrollment form. Under Section 15, "Certification Statement" of the 855i form, the provider *"[a]gree[s] to abide by the Medicare laws, regulations and program instructions that apply to me or to the organization listed in Section 4A of this application … I understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations, and program instructions (including, but not limited to, the Federal anti-kickback statute and the Stark law)."*[1] With every claims submission to Medicare, the physical therapist is reaffirming his/her compliance with the Medicare rules and regulations.

Health care fraud is a very hot topic. The Office of the Inspector General (OIG) expects fraud enforcement recoveries in excess of $3 billion for the first half of this fiscal year. By way of comparison, the OIG recovered approximately $2.5 billion for 2008 and 2009 combined.[2] A physical therapist's failure to comply may be the basis of a false claims act. Accordingly, physical therapists who treat Medicare beneficiaries should be aware of the legal significance of every CMS 1500 claim form submission to Medicare.

The Representations Contained in a CMS 1500 Form

A quick review of the reverse side of the CMS 1500 will offer a brief summary of the terms and conditions to which the provider has agreed. At the bottom of Box 31 of the CMS 1500 claim form is a sentence that reads, "*I certify that the statements on the reverse apply to this bill and are made a part thereof.*" On the reverse side of the claim form, one of the statements to which the physical therapist is attesting is, "*I certify that the services shown on this form were medically indicated and necessary for the health … and were personally furnished by me or were furnished incident to my professional service by my employee under my immediate personal supervision, except as otherwise expressly permitted by Medicare or CHAMPUS regulations.*" The front side of the CMS 1500 form functions as the "bill of sale" by representing to the insurance carrier which procedures were performed, the cost per unit, and the quantity of units delivered.

Compliance with Medicare's rules and regulations must be ongoing. Simply put, every time a physical therapist treats a Medicare beneficiary and submits the claim to CMS for payment, he/she is attesting to the certifications contained on the claim form. This attestation underscores the responsibility that the physical therapist has to the beneficiary and the Medicare program.

False Claims Liability

The False Claims Act is just one of the statutes governing a provider's participation in a federal health care program. This Act provides civil penalties and treble damages against a provider or entity that knowingly submits false claims to the federal government, seeking payment under a federal health benefit program.[3] Under the statute, "knowingly" is not limited to the actual knowledge held by the person or entity submitting the claim. The statute also punishes false claims that are submitted through the provider's deliberate ignorance of the information submitted on the claim form, or in reckless disregard of the truth or falsity of information contained on the claim form. The legal theory of "false certification" may establish the basis of liability for claims under the False Claims Act.

False Certification

False certification refers to a circumstance where a physical therapist (or other health care provider) submits a claim to Medicare, and the claim form does not comply with Medicare's requirements upon which payment is conditioned. Because of

Definition of a Key Term

Treble damages, in law, is a term that indicates that a statute permits a court to triple the amount of the actual/compensatory damages to be awarded to a prevailing plaintiff, generally in order to punish the losing party for willful conduct.

the language contained on the CMS 1500, the physical therapist's submission of the claim form expressly certifies compliance with Medicare's rules and regulations. When the physical therapist fails to comply with Medicare's requirements and submits the 1500 claim form to Medicare for payment, it becomes a "false" claim. That is, liability under the false certification theory may attach when the therapist falsely certifies compliance with a Medicare statute or regulation, where payment is conditioned upon that certification.

Conclusion

In summary, compliance with federal health care laws is a prerequisite to eligibility for the Medicare program, and an ongoing requirement for each and every claim submitted on behalf of a Medicare beneficiary. Physical therapists should review the terms to which they have agreed as a condition of Medicare participation, as well as the language contained on the CMS 1500 form. Providers cannot escape liability by claiming that they did not know or were not aware of the false claims, because the statute's language encompasses a provider's willful ignorance as well as a provider's reckless disregard of proper billing practices. A quality assurance program that includes billing and charge review is a good risk management tool to ensure compliance and minimize exposure to liability. ■

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References

[1] Available at www.cms.gov/cmsforms/downloads/cms855i.pdf

[2] See "Health Care Fraud and Abuse Update," 201 *New Jersey Law Journal* 848 (2010).

[3] 31 U.S.C. §3729 *et seq.*