SEO DETAILS:

Page Title: Avoiding the Inadvertent Misuse of Medicare and Medicaid Funds | [INSERT RELATED SERVICE] | [INSERT FIRM NAME]

Meta Description: [NAME OF FIRM] discusses ways providers can misuse funds from Medicare and Medicaid, along with the potential consequences and ways to avoid problems in the first place.

Headline: Avoiding the Inadvertent Misuse of Medicare and Medicaid Funds

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Misuse of Medicare and Medicaid funds has become a high priority for federal regulators in recent years. The Center for Medicare and Medicaid Services (CMS) is not limiting its enforcement activity to overt, intentional acts of Medicare and Medicaid fraud. It is also looking into misuse of funds without fraudulent intent. The consequences of accidental misuse of Medicare and Medicaid funds are not as severe as the penalties for intentional fraud, but they can still be quite costly. This article looks at the ways providers can misuse funds from Medicare and Medicaid, the potential consequences and ways to avoid problems in the first place.

What Is Misuse of Medicare and Medicaid Funds?

The term "misuse" does not have a specific legal definition in the Social Security Act (SSA), which governs the Medicare and Medicaid programs. It refers to uses of funds that do not comply with the programs' rules, but which do not necessarily rise to the level where civil or criminal penalties would apply.

Knowing Misuse

Section 1128A(a) of the SSA discusses civil penalties for healthcare providers who act "knowingly." This means that a person must have acted with the knowledge that a claim or statement was false. For example, § 1128A(a)(10) states that a person is subject to civil penalties if they know about an overpayment but do not report and return the funds to CMS.

Willful Misuse

Criminal penalties, as described in § 1128B(a), apply to people who act "knowingly and willfully." In addition to knowing that a claim is false, they must also intend to commit a fraudulent act. A person who receives a payment intended for someone else, for example, could face criminal penalties under § 1128B(a)(4) if they intentionally keep the money for themselves.

Accidental Misuse

The examples discussed above could fall under the category of "fraud." Accidental misuse of Medicare or Medicaid funds is not fraudulent, in a legal sense, as long as it is a good-faith error. Clerical errors, such as entering the wrong amount or code on a claim form, are not fraudulent without evidence that:

- A provider knew about the error and submitted the claim anyway; or
- The provider realized the error after submitting the claim but did not correct it.

CMS categorizes many instances of accidental misuse as "waste" rather than fraud.

Healthcare providers can also inadvertently violate other provisions of the SSA. The Stark Laws, for example, deal with relationships between healthcare providers:

- The anti-kickback statute, found in § 11288B(b) of the SSA, prohibits payments and other transactions between providers intended to induce referrals of Medicare or Medicaid beneficiaries.
- The self-referral statute, found in § 1877 of the SSA, prohibits providers from referring Medicare beneficiaries to providers with whom they have a financial relationship. It also bars providers from billing third-party payors, including CMS, for unlawful referrals.

It is possible for a provider to violate the self-referral statute without any specific criminal intent.

What Are the Penalties for Unintentional Misuse of Medicare and Medicaid Funds?

A provider who committed accidental waste of Medicare or Medicaid funds might be able to avoid civil or criminal penalties, but they will still face consequences. Those consequences can be costly in both the short and long term:

- CMS will expect them to repay any funds they received in error. This can be a significant financial hit to a provider that did not realize their error.
- Unlawful activity can result in ineligibility for Medicare and Medicaid under SSA § 1128(b)(7).
- Accidental misuse or waste of funds can harm a provider's standing with CMS. It can result in a low Medicaid score, which can lead to reduced revenue because of the damage to the provider's reputation.

How Can Healthcare Providers Avoid Misuse of Medicare and Medicaid Funds?

Providers can work to avoid potentially costly errors and waste by identifying where they are most vulnerable to errors and carefully scrutinizing likely problem areas.

Closely Examine Agreements and Partnerships

Healthcare providers can violate the Stark Laws without intending to engage in any sort of fraudulent activity. They should make sure that all responsible individuals know what these laws allow and prohibit. Every agreement with another provider should undergo a review process to make sure it complies with the law.

Be Careful with Coding

Coding errors often result in improper payments from Medicare and Medicaid. Providers should train staff members on coding requirements and implement quality control measures to confirm that claims are using the correct codes.

Watch Out for Excessive Charges

A classic example of Medicare or Medicaid fraud involves billing for services that were never provided to a patient. A grayer area involves overcharging for services that were provided. CMS looks at factors like fair market value and commercial reasonableness when reviewing claims. A provider might enter the wrong amount in error and could even repeat this mistake multiple times. Too much overcharging, however, will start to look like fraud to CMS.

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