

Your Next "Patient" May be an Undercover Agent Performing a Medicare Audit on Your Practice.



(April 10, 2010): As the American Medical Association (AMA) recently reported on March 22nd, 2010, health care providers may find themselves subjected to a **"Secret Shopper"** Medicare audit by fellow health care providers hired by the government to conduct undercover reviews and investigations.

In a speech he made March 10th, 2010, President Obama expressed interest in a proposal by Senator Tom Coburn, M.D. (R-OK) to have physicians and other health professionals go undercover and pose as patients to root out fraud. Apparently, President Obama included it among with several other Republican proposals which were considered when the recently passed Health Care Reform Bill was enacted. Dr. Coburn tried to amend the Senate health reform bill with a provision that would direct the Department of Health and Human Services (HHS) to establish a demonstration project for undercover investigations. While a number of demonstration projects were ultimately included in the legislation, it isn't clear if this is one of them.

I. Undercover Medicare Audits by Patients: AMA's Response:

Not surprisingly, the AMA has dismissed the idea of paying physicians to pretend to be patients in an effort to smoke out criminal activity. As the AMA responded:

"The AMA has zero tolerance for health fraud, but there's no evidence that the undercover-patient tactic would be effective or efficient in finding fraud. . . We are partnering with HHS and the Justice Dept. to address fraud, and we strongly recommend the government target areas where fraud occurs most, instead of wasting physician time that could be better spent caring for real patients." (AMA President J. James Rohack, M.D.)

Notably, "Secret Shopper" Medicare audits and investigations are nothing new. Both HHS and DOJ have used individuals posing as patients or employees in investigations for as long as health care fraud has been prosecuted by the government.

II. Does The Performance of Undercover Medicare Audits Affect Your Compliance Plan?

Theoretically, the proverbial "facts are the facts." In other words, it really shouldn't matter if you know you are being subjected to a Medicare audit or not. Nevertheless, from a compliance standpoint, treating another health care provider could conceivably present a number of additional risks not normally

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encountered in a standard billing and coding Medicare audit. Moreover, this may raise quality of care issues due to differences in professional opinion, variances in standards of care, etc.

In any event, all physicians should work with their legal counsel to develop and implement an effective Compliance Plan and Program. Hopefully, in doing so, it won't matter who enters your office -- a bona fide patient or an undercover physician -- your care will be equally excellent.



Robert W. Liles, Esq. is Managing Partner at Liles Parker. Should you have any questions regarding compliance issues, don't hesitate to contact us. For a complimentary consultation, you may call Robert or one of our other health lawyers at: 1 (800) 475-1906.