Testimony of Lewis Morris

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Good morning Mr. Chairman. I am Lewis Morris, Assistant Inspector General for Legal Affairs at the U.S. Department of Health and Human Services, and I am here to discuss vulnerabilities that may arise from the use of billing consultants by providers.

Health care providers who take care of Medicare and Medicaid beneficiaries should be fully compensated for their services. Therefore, it is entirely reasonable and beneficial for them to use expert consultants to help navigate the sometimes complex rules of health care programs. However, expert knowledge and sophisticated billing techniques should never be used to abuse Medicare or Medicaid. Today I will share some examples of providers and consultants that stepped out of bounds and violated our trust.

Needless to say, when laws are broken by consultants, the Office of Inspector General (OIG) takes action to investigate the allegations and seek appropriate civil and criminal penalties. Our preference, however, is to work with the health care industry to promote ethical conduct, ensure quality care for beneficiaries, and thus avoid the need for enforcement actions. To this end, in my testimony today I will describe the vital role that consultants play in the health care system, identify questionable practices engaged in by a small minority of consultants, and emphasize the need for providers to exercise good business sense when selecting a consultant.

Consultants' Role in Health Care

We believe that most consultants, like most providers, are honest and that the majority of relationships between providers and consultants serve legitimate business purposes. Providers use the services of consultants, such as accountants, attorneys, business advisors, and reimbursement specialists, for many *bona fide* reasons. These include improving the efficiency and effectiveness of the provider's operations (including its coding and billing systems), conserving resources through outsourcing, and ensuring compliance with applicable laws, regulations, and rules. Responsible consultants play an integral role in developing and maintaining practices that enhance a client's business objectives, as well as in improving the overall efficiency of the health care system.

Consultants and Providers Subjected to Penalties

Notwithstanding the benefits that can be derived from the use of consultants, a small minority of consultants engage in improper practices and encourage abuse of the Medicare and Medicaid programs. Depending on the circumstances, these practices can expose both the consultant and his or her clients to potential legal liability. The following are some examples of how unscrupulous consultants can undermine the integrity of the Federal health care system.

In one case, two consultants advised more than 100 hospitals improperly to unbundle clinical laboratory tests into their component parts and bill higher rates for the individual components. The consultants first sent letters to hospitals claiming they had methods of increasing Medicare revenues for laboratory services. If a hospital engaged their services, the consultants conducted an on-site visit, assessed the hospital's coding and billing

procedures, and then advised on "reimbursement maximization" techniques. Although some of the advice was legitimate, some resulted in hospitals submitting false claims for unnecessary tests and for services that were not provided as claimed.

Facing civil charges, the two consultants each agreed to pay $30,000 and to be excluded from the Medicare and Medicaid programs for 3 years. Of equal importance, they agreed to cooperate in the Government's effort to investigate the hospitals that benefitted improperly from the billing scheme. To date, the investigations have resulted in civil actions against 36 hospitals and the payment of fines and penalties in excess of $11 million. In addition to the monetary recovery, the OIG required the hospitals to adopt and implement certain integrity measures to prevent a recurrence of the fraud.

Another example of abuse is found in the recent case of a billing consultant that contracted with physicians to code, bill, and collect for emergency department services. Our investigation found that the consultant's employees were routinely billing Medicare and Medicaid for higher levels of treatment than were provided or supported by medical record documentation. The consultant was found liable under the False Claims Act and agreed to pay $15.5 million to resolve his civil and administrative monetary liabilities. The Government is continuing its investigation of the physicians who benefitted from the fraudulent billing practices. To date, the consultant's clients have paid $5.8 million to resolve the civil liabilities stemming from this fraud scheme.

In yet another example, a hospital contracted with a coding consultant who claimed he could help maximize Medicare revenues by "optimizing" the coding of claims associated with pneumonia patients. That hospital agreed to pay the Government to settle allegations that the hospital improperly upcoded Medicare claims. An additional 26 hospitals also have settled their civil and administrative liabilities for a total of $26.8 million. The consultant and many more hospitals are currently under investigation for their participation in this fraud scheme. Of particular concern in this case, other consultants learned of the pneumonia upcoding scheme and also encouraged their hospital clients to falsify Medicare claims for the treatment of pneumonia. As the word spread among consultants, the scheme expanded throughout the hospital industry.

In these examples, both the consultants and their clients were implicated in the fraud scheme. We suspect that in other instances, unethical health care consultants carefully craft their advice to bring their clients up to the line, without expressly advocating illegal behavior. This aggressive and unethical approach puts the client, as well as the Federal health care programs, at substantial risk. Ultimately, providers need to recognize that hiring a consultant does not relieve them of the responsibility to ensure the integrity of all of their dealings with Medicare and Medicaid.

Misuse of Federal Agency Names

Unethical consultants sometimes attempt to enhance their credibility by claiming that their services are endorsed by the Government. For example, a consultant currently under investigation made false representations that its seminars were sanctioned by Medicare and that attending the seminars was mandatory to maintain a Medicare provider number. In truth, the Medicare program does not condition participation in the program on a provider attending seminars. Pursuant to section 1140 of the Social Security Act, the OIG may impose civil monetary penalties of up to $5,000 per misrepresentation against anyone who uses various specified words, acronyms, and symbols, such as "Social Security," "Health and Human Services," and "HCFA"

to convey the false impression that they are approved or endorsed by our agencies. We are working to end these abusive marketing practices.

Recently, we have become aware of a company that uses its website to claim falsely that its health care business venture has OIG approval. Although this is a significant misrepresentation, the OIG's ability to address the problem is limited because the terms "Office of Inspector General" or "OIG" are not expressly protected by the statute. With the recent name change of the Health Care Financing Administration to the Centers for Medicare and Medicaid Services, many sections of the Social Security Act will need revising. This would be a good time to add the terms "Office of Inspector General" and "OIG" to the appropriate sections to preclude further misrepresentation of OIG approval or endorsement.

Other Questionable Activities

In addition to misrepresenting an affiliation with the Federal health care programs, some consultants make claims that are simply too good to be true. Although not necessarily illegal, health care providers should be leery of doing business with anyone who relies on puffery or half-truths. In our experience, providers that succumb to the temptation to cut corners or game the reimbursement system can face civil and criminal liability.

Promises or guarantees that may be problematic could include, for example:

- A valuation consultant promising that its appraisal of a physician's practice will yield a "fair market value" that satisfies a client's demand for a particular valuation, regardless of the actual value.

- A billing consultant representing that its advice will result in a specific dollar or percentage increase in Medicare reimbursements, regardless of the prospective client's particular circumstances. The consultant's fee is often based on a percentage of the increased reimbursement.

- A consultant promising to increase Medicare revenues for laboratory services by showing its clients how to disguise double billings and claims for medically unnecessary services.
- A reimbursement specialist suggesting that a client use inappropriate billing codes in order to elevate reimbursement and describing methods to avoid detection.

- A consultant advising a client to modify or customize a routine medical supply in an insignificant manner solely to justify billing the item at a higher rate.

- A reimbursement specialist suggesting that a client bill for an expensive item with a high reimbursement rate when a less expensive item with a lower reimbursement rate was actually provided to the patient.

Using Good Business Sense when Selecting a Consultant

Not all consultants attempt to mislead providers or Medicare. To the contrary, most consultants provide valuable services to providers and, indirectly, to the Medicare and Medicaid programs. Consultants gain insights from their experiences with different clients, and providers can benefit from this expertise and "best

practices" knowledge. We believe that only a small minority of consultants engage in questionable marketing practices or promote abuse of the Medicare and Medicaid programs. The examples I have discussed show that providers must be vigilant and exercise judgement when selecting and relying on consultants. The axiom still applies: "If it looks too good to be true, it probably is."

Both providers and consultants need to avoid business relationships that can place them in jeopardy of violating health care laws and regulations. To assist providers and consultants in avoiding these pitfalls, today we are issuing a Special Advisory Bulletin on Practices of Business Consultants. This Bulletin alerts providers to certain abusive consultant practices that have come to our attention. Such practices may raise concerns for providers and may put the Medicare and Medicaid programs at increased risk. The Bulletin, like the OIG's compliance guidances and advisory opinions, is another tool for each provider's compliance tool box.

Conclusion

Mr. Chairman, I hope my testimony and our Advisory Bulletin will help prevent inappropriate practices of business consultants. I would be pleased to answer any questions you may have. Thank you.