

Waste management

Squandered healthcare dollars a result of bureaucracy, lack of education

By Adam Frederic Dorin, M.D.

The past decade has seen record multimillion-dollar recoveries by the U.S. Justice Department in what are generically called "healthcare fraud and abuse cases." In fact, since the late 1980s, the American taxpayer has been made whole to the tune of more than \$15 billion in settlement money for fraud by pharmaceutical giants, healthcare systems, doctors and healthcare supply companies.

Some of the cases have been directed at kickback schemes, others involved Medicare and Medicaid insurance fraud, and still more involved complex billing rules governing the supervision of resident physicians in academic training programs. HHS' inspector general's office predicts that the amount of money recovered by the U.S. government probably accounts for just 10% of the fraud talking place.

A question remains, however: Who is stealing the remaining 90% of our healthcare dollars? If the Justice Department is correct, we, the taxpayers and recipients of Medicare and Medicaid, are being short-changed by hundreds of billions of dollars. This is enough money to cover the entire expense this far of the war in Iraq. This is enough to render healthcare services to millions of Americans who currently have no health insurance. This should be enough to raise a few eyebrows.

Perform a quick Google search on the Justice Department, the inspector general's office, or the False Claims Act, and you will see the numbers for yourself. There is, apparently, a lot of fraud taking place. The government and the related legal firms that prosecute such cases will explain that the cost to prosecute these cases represents a small percentage of the recoveries realized over the past two decades.

In its wisdom, starting with the Clinton administration, the government has committed more resources to the investigation and prosecution of such cases. There has even been emphasis given to an old realm of law, termed *qui tam*. It's Latin for "he who brings forth on behalf of the king," meaning fraud cases brought forth by ordinary citi-

zens on behalf of the U.S. government. In return for their efforts, these citizens often receive 10% to 25% of the recovered funds, minus legal contingency fees and taxes. The *qui tam* statutes, in addition to recently strengthened whistle-blower protection acts, have been credited with much of the multimillion-dollar annual recoveries over the past few years.

It would appear that the government would have little to lose and billions to gain in adding more federal agents (usually reassigned FBI personnel) to the cause of fighting healthcare fraud and abuse. But while this has been done several times over the past decade, we are still left with the 90% figure. We must ask, then, do we need even more federal agents on the trail of healthcare fraud? Or is there something else we're missing in this equation.

In fairness, some have suggested the whole judicial system was derailed after Sept. 11, 2001, and has yet to recover. Possibly, however, we are stuck with a glass ceiling of recovered monies that ends at 10% to 20% of the total fraud being committed. But why?

The answer is that the government doesn't fully understand the complexities of fraud schemes, the average taxpayer is too far removed from them and the healthcare system is too preoccupied with burdensome rules and regulations to take the time to analyze it. We may glean some insight in the reams of poorly written, onerous government regulations that govern the ways in which patients are billed and healthcare transactions take place.

In essence, the government itself, although lauded for efforts in recovering billions of dollars in blatantly fraudulent activity, is also responsible for the obfuscation and waste that amounts to an equal or larger amount of money lost to an already flailing health insurance system.

There are two generalities that I believe have victimized both the American medical community, as well as the average tax-paying citizen. Like taxes, Medicare and Medic-

aid rules need to be simplified. The various codes, modifiers and rules used in medical billing have become so complex as to benefit only the billing consultant companies now necessary to interpret and educate doctors and health systems.

Secondly, the Justice Department and the CMS need to educate their own employees and agents to the very rules they are being paid as civil servants to uphold and enforce. Insiders will often cite witnessing a profound lack of healthcare knowledge on the part of U.S. attorneys working in this area of law.

Specific complaints given by citizens who have filed False Claims Act lawsuits are that government lawyers simply do not know how various healthcare services are billed. They're given very high marks for tracking down obvious cases of double billing, and even inflated billing, or "upcoding," but they cannot enforce the subtleties of many regulations because they don't understand them.

In effect, doctors, hospitals and healthcare systems are wasting an indeterminately huge amount of time and money trying to stay within the letter of the law. It's not just that the government doesn't know enough to look for the errors—it's that the government is not even sure what is or is not fraud. If something is fraudulent, shouldn't doctors and healthcare administrators know fraud when they see it? If, indeed, it is the will of Congress and the executive branch to hold the healthcare system to the rules that are on the books, we need officials who can thoroughly understand and interpret those rules.

The answer to "who's stealing our healthcare dollars?" may not be a matter of figuring out how to catch the bad guys but rather a more introspective challenge in educating, simplifying and shoring up inefficiencies in the government.



■ Dorin

Adam Frederic Dorin, M.D., is an anesthesiologist at Grossmont Plaza Surgery Center in La Mesa, Calif.