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# HOME CARE NURSE NEWS™

"The First Clinically-Focused Newsletter for Home Care, Hospice, and Community Health Nurses"

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## Regulatory Review

### New Federal Program to Attack Medicare and Medicaid Fraud and Abuse

Washington, D.C. — Using the 1995 White House Conference on Aging as a backdrop, President Clinton launched a national anti-fraud campaign in five states to crack down on Medicare and Medicaid fraud and abuse, particularly in home health agencies, nursing homes, and suppliers of durable medical equipment.

In 1993, Medicaid spent \$25 billion for services to 1.6 million Medicaid patients in nursing facilities and \$5.5 billion for home health services provided to homebound patients. This year, Medicare payments will total \$16 billion, up from \$7.1 billion in 1992.

The project, "Operation Restore Trust," will initially focus in five states with the highest Medicare expenditures —

New York, Florida, Illinois, Texas, and California. Nearly 40 percent of all Medicare and Medicaid beneficiaries live in these states.

The Clinton administration's anti-fraud campaign is targeting home health care and nursing facilities because past federal investigations have shown them to be particularly susceptible to fraud and abuse. Fraud and abuse in the home health care settings include billing for excessive services or for services not rendered, the use of unlicensed or untrained staff, falsified plans of care, forged physician signatures, and kickbacks.

In nursing homes, problems include inappropriate

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## Regulatory Review

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payments and overuse of services, which increase the financial burden on beneficiaries and the Medicare and Medicaid programs.

### It's a win-win project

"The project is a win-win situation for everybody except those who try to cheat the system," said Health and Human Services (HHS) Secretary Donna E. Shalala. She predicted that the Medicare and Medicaid programs will save significant dollars in reduced spending on up-front billings for fraudulent and wasteful practices and from the monies received from court awards.

"We need to weave fraud control deeper into the fabric of our programs, and we need our beneficiaries and our private sector partners to help us," Shalala said.

A major component of the project will be a voluntary disclosure program that allows home health and nursing homes to come forward with evidence of fraud or errors within their own organization, in consideration for possible reduced penalties, Judy Holtz, spokesperson for the Health and Human Service Office of the Inspector General (OIG) told *Home Care Nurse News*. She added that a special hotline will also allow the public, including Medicare and Medicaid beneficiaries, to report fraud and waste.

To report a fraud or abuse incident, contact the Department of Health and Human Services hotline at 1-800-447-8477.

According to Holtz, the \$8 million anti-fraud project will involve the OIG, the Health Care Financing Administration and the Administration on Aging along with an inter-governmental team comprised of federal and state personnel.

- Other project activities include:
- Financial audits by OIG and HCFA.
  - Criminal investigations and referrals by OIG to appropriate law enforcement officials.
  - Civil and administrative sanctions and recovery actions by OIG and law enforcement officials.
  - Studies and recommendations by OIG and HCFA for program adjustments to prevent fraud and reduce waste and abuse.
  - Issuance of Special Fraud Alerts to notify the public and the health care community about schemes in the provision of home health services, nursing care, and medical equipment and supplies.

### Wait and See

While the White House touts their

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## Calendar

October 3, 1995  
3rd Annual Geriatric Education Update  
Alzheimer's Disease Research Trends  
Varying Locations in Missouri  
Missouri League for Nursing  
(314) 635-5355

October 8-10, 1995  
Caring for People: Managing Managed Care  
National Association for Home Care  
San Francisco, CA  
(202) 547-7424

October 10-11, 1995  
28th Annual Cancer Nursing Conf.  
American Cancer Society  
Lansing, MI  
(517) 371-2920

October 13-16, 1995  
Building on Our Strengths  
The National American Journal of  
Nursing Conference  
New Orleans, LA  
(800) CALL-AJN

October 15-17, 1995  
Controlling Nursing's Destiny  
National Association of Associate  
Degree Nursing  
9th Annual Convention  
Los Angeles, CA  
(703) 437-4377

October 18-21, 1995  
Case Management in a Managed  
Care World  
New Orleans, LA  
(800) 664-2620

October 26-27, 1995  
American Fed. of Home Health Agencies  
Colorado Springs, CO  
(301) 588-1454

October 27, 1995  
Pain Management  
Penn State's School of Nursing  
State College, PA  
(814) 863-2202

October 28 - November 3, 1995  
Home Care Association of America  
Quebec City, Canada  
(800) 386-HCAA

October 29 - November 2, 1995  
American Public Health Association  
San Diego, CA  
(202) 789-5670

## Regulatory Review

Continued from Page 2

new initiative to combat rising health care fraud and abuse as a smart investment that can lower health care costs, health care groups charge that it is like "old wine in a new bottle."

"A lot of the enforcement activities that will make up this new initiative are already ongoing or have already been done," observed William A. Dombi, Esq., director of National Association of Home Care's Center for Health Care Law.

The Clinton administration has not yet announced all the specific measures that it intends to use in enforcing fraud and abuse laws in the home care sector, Dombi noted, but utilization oversight will be a part of the new initiative in Florida to determine fraud and abuse. Dombi told *Home Care Nurse News* that utilization notices are now being mailed to Medicare beneficiaries and physicians for their review to determine if billing for excessive services or for services not rendered took place.

According to Dombi, home care providers are expressing concerns about this activity because physicians and patients are misinterpreting the utilization notices as an indication that the agency is being investigated for fraud and not just as a regular ongoing audit of the agency's charges.

In order to counter this perception, home care agencies must inform physicians and patients alike to expect utilization notices, educate them about why they received the notice, and warn them not to misread it, Dombi recommended.

The utilization notices are confusing to physicians because they indicate total charges for services rendered and not what the home health agencies are reimbursed, Dombi noted. "A physician might be looking at the notice and say 'Oh, no!, I ordered \$40,000 worth of care' when in fact only half of that amount was paid," he said.

Any physicians charging that a service was not necessary has implicated him or herself in a potential fraud allegation because the individual certified that the care was necessary, Dombi noted. This may have chilling effects of getting physicians to report fraud and abuses, he said.

Dombi believes that the pilot voluntary disclosure program operated by the OIG won't work because it doesn't provide real protection to people. "In today's environment, it's a safer bet not to report anything because your chances of getting caught are so limited," he said.

This new initiative is partially viewed as a political reaction to recent Republican efforts to slash Medicare spending and dismantle the Medicaid program, noted Dombi. But he concedes that stronger and more realistic efforts are needed to weed out fraud and abuse in the home care setting. ♣

*This article was written by Herbert P. Weiss, NHA, who is a Providence, Rhode Island-based writer who covers health care and aging issues.*

## Protecting Your Home Care Agency Against Fraud and Abuse Allegations

Here are five tips that will help support your agency's compliance should your agency find it in a fraud and abuse investigation:

- Review the quality and accuracy of claims documentation.
- Test staff knowledge and understanding of Medicare and Medicaid coverage criteria.
- Monitor subcontracted care to assure the appropriate delivery of billed services.
- If the agency utilizes a liaison or coordinator for transitioning referrals from a hospital to a home care setting, make sure the activities performed can not be interpreted as marketing or substitute discharge planning.
- Examine your relationships with adult congregate living facilities to assure that referrals are not the result of kickbacks.

Source: William A. Dombi, Esq., Center for Health Care Law, 1995. ♣



## HOME CARE NURSE NEWS™ Professional Editorial Board

Chris Cody, RN, C, MSN  
National Hospice Organization  
Arlington, Virginia

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Division of Infectious Diseases  
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## Manager's Corner: Expansion of Federal Fraud and Abuse Pilot Program is Likely

Recouping millions of dollars into the federal coffers from its anti-fraud initiative, the Clinton Administration in its fiscal year(FY) 1997 budget proposal called for an expansion to all 50 states of its pilot project to rout out fraud, abuse, and waste in the Medicare and Medicaid programs. The federal anti-fraud pilot program, "Operation Restore Trust (ORT)," was announced by President Clinton during his address to delegates of the 1995 White House Conference on Aging. Clinton announced increased federal efforts to track down fraud, waste and abuse in home health agencies, nursing homes, and durable medical equipment supply companies that receive Medicaid and Medicare dollars. These services were chosen because they are three of the fastest-growing cost areas in Medicare and Medicaid.

According to the Department of Health and Human Services (HHS), the one-year old pilot project is operating currently in New York, Florida, Illinois, Texas, and California, which account for 38.5 percent of Medicaid beneficiaries and 34 percent of Medicare beneficiaries. New approaches used in HHS's anti-fraud initiative, have already raked in \$42.3 million in recoveries into federal coffers, said Donna E. Shalala, the department's secretary. "This constitutes a return of \$10 in recoveries for every \$1 spent on the project," she noted. "ORT has pioneered new partnerships within the federal government, new cooperation with states, and new ways of targeting and stopping fraud in the Medicare and Medicaid programs," Secretary Shalala said. "In its first year, ORT has proved its value, and the President

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## Calendar

### OCTOBER

October 5-9, 1996

Annual Meeting & Homecare Expo  
National Association for Home Care  
Nashville, TN  
(202) 547-7424

October 17, 1996

Second Annual Infusion Therapy Seminar  
The Heart of Ohio Chapter of the Intravenous  
Nurses Society  
Columbus, OH  
(614) 833-2802

October 18-20, 1996

9th Northeast Regional Oncology  
Nursing Conference: Creating a Legacy  
Plymouth, MA  
(203) 238-8663

October 19, 1996

Cancer Pain Management: A Clinical  
Approach  
Ohio Cancer Pain Initiative  
Columbus, OH  
(614) 293-6274

October 20-23, 1996

Nursing at the Crossroads  
The 1996 National AJN Conference  
Orlando, FL  
(800) CALL AJN x538

Innovations in Pain Management:

Taking It One Step Further

October 25, 1996

Tulsa, OK

October 26, 1996

Albuquerque, NM  
Oncology Nursing Society  
(412) 921-7373

October 23, 1996

Medicare Conditions of Participation  
Michigan Home Health Association  
Novi, MI  
(517) 349-8089

October 31-November 1, 1996

American Federation of Home Health  
Agencies Annual Meeting  
Las Vegas, NV  
(301) 588-1454

## Manager's Corner

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wants to extend its reach to every state in the nation," she said.

Altogether the President's budget proposal for a nationwide anti-fraud initiative for Medicare and Medicaid would involve FY 1997 spending of \$597 million, an increase of \$158 million over current funding levels. The total savings expected from the additional spending is \$3.5 billion over seven years, from 1997 to 2004.

### Routing Out Fraud, Abuse, and Waste

According to Judy Holtz, an investigator for the Department of Health and Human Services' Office of the Inspector General, out of 272 Medicare and Medicaid cases currently under investigation, one third are new criminal cases opened as a direct result of the ORT initiative and are against home health agencies. Holtz said that fraud was committed when home health agencies billed for services that weren't rendered, billed for deceased patients, claims were not authorized by physicians and cost reports were padded.

"ORT has raised the consciousness of home care providers about what is fraudulent activity," William A. Dombi, Vice President for Law at the National Association of Home Care, told *HCCN*. He noted that providers are becoming sharper and more focused on making sure internal compliance programs are in place. A computerized review of home care providers "red flags" potential fraud violators. These red flags include the number of visits given per patient, the length of time patients are on service, or a fairly significant growth of patients served by an agency, Dombi noted.

Dombi said that the expansion of the anti-fraud pilot program is a sure bet because it fits in nicely with bipartisan efforts in Congress to fight health care fraud and abuse. Despite HHS's glowing evaluation of the initiative, Dombi warned some home care providers charge that investigators are going overboard to rout out problems. For instance, ORT investigators from licen-

sure agencies are looking at utilization rates and extended coverage, rather than whether home health agencies are complying with Medicare conditions of participation. The ORT effort is challenging utilization of Medicare services under the guise of a quality of care survey, Dombi charged. During one investigation, a provider was criticized for providing services to patients for an extended period of time and not moving fast enough to discharge them, he said.

### Summary

While some home care providers defraud the Medicare and Medicaid program, the number is really quite small, Dombi said. The ORT initiative rakes in about \$20 million in fraudulent billings out of \$17 billion Medicare and Medicaid dollars, he estimated, stating that this doesn't demonstrate that fraud is running rampant in the home health care sector. Home care providers must now look at the risk of fraud allegations differently, Dombi added. "The traditional type of fraud such as billing for nonexistent services is only one of the concerns of ORT. Providers should think as creatively as the investigators do and ensure that all areas of regulatory requirements are met," he said.

### Three Tips on Protecting Your Agency from Fraud and Abuse

Dombi outlined the following three tips to rout out fraud and abuse in your organization and how to respond to an ORT investigation, should one occur:

**1. Implement an internal compliance program.** Home health agencies might consider performing an internal audit from the organization's top to bottom. Fraud doesn't just occur at the top with ownership; it can also occur at lower levels of the organization. Many agencies have not been through an investigation and believe that they are in total compliance with federal rules, however, they may be out of compliance but are not aware of the problem. Thus, it is better to find out if your operations are noncompliant before an ORT investigation or licensure survey.

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## HOME CARE NURSE NEWS™

Professional Editorial Board

Chris Cody, RN, C, MSN  
National Hospice Organization  
Arlington, Virginia

Lynda S. Hilliard, RN, MBA, CNA  
Author, Home & Health Consultant  
Pleasanton, California

Kathy Larsen, MSN, RNCS  
Homebound Consultants, Inc.  
Worthington, Ohio

Anne L. Rooney, MPH, MS, RN  
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Oak Park, Illinois

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Huntsville, Alabama

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Arnold, Maryland

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Home Care Services  
Meridia Health System  
Cleveland, Ohio

## Manager's Corner

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### 2. Tighten up documentation.

Improve the quality of your documentation to ensure compliance with licensure standards. Ensure that your documentation supports coverage, cost report expenses, and clinical services provided to patients. The vast majority of home care providers are not committing fraud but they may not be fully compliant with the myriad federal rules. Proper documentation combined with internal compliance auditing enables an agency to rise to a higher level of perfection in its operations.

### 3. Be prepared if investigated.

Don't wait to look in the yellow pages for someone to provide you with legal advice if the FBI comes knocking on your door. Be prepared to properly react if your agency is notified that it is being audited by ORT investigators. Even if you choose not to put legal counsel on retainer, identify the right individuals available for immediate contact, should you need it. Consider having an overall investigation plan in place to help you determine what is the focus of the investigation, who is the target of that investigation, and what kind of vulnerabilities your agency might have.

*Herbert P. Weiss is a Providence, RI-based freelance writer specializing in health care and aging issues.*

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## Humor for Your Health

