FEHB Program Carrier Letter
All FEHB Carriers

U.S. Office of Personnel Management
Healthcare and Insurance

Letter No. 2011-13 **Date: June 17, 2011**

Fee-for-Service [10] Experience-rated HMO [10] Community-rated [10]

SUBJECT: Fraud and Abuse: Mandatory Information Sharing via Written Case Notifications to OPM's Office of the Inspector General

FEHBP Carrier Special Investigative Unit ("Carrier") are required to submit a written notification to the OPM OIG ("OIG") within 30 working days of becoming aware of a fraud, waste or abuse issue where there is a reasonable suspicion that a fraud has occurred or is occurring against the Federal Employees Health Benefits (FEHB) Program. Reportable fraud, waste or abuse issues include the identification of emerging fraud schemes; suspected internal fraud or abuse by Carrier employees, contractors, or subcontractors; suspected fraud by providers who supply goods or services to FEHBP members; suspected fraud by individual FEHBP members; issues of patient harm, and Carrier participation in class action lawsuits. There is no financial threshold for these initial case notifications. The notifications are for information sharing purposes and will not contain the same level of detail required in a referral.

Furthermore, it is understood that in order to meet the 30 day notification requirement, Carriers may provide notification on cases where their investigation is still in the early stages and the Carrier has not yet determined whether there is sufficient evidence to substantiate the allegation. Written notifications are generally expected to include (but are not limited to) the following information:

1) Complete identification on file for the suspected health care provider(s) or FEHB enrollee(s), including but not limited to full name(s), business name(s), address(es), telephone number(s), date(s) of birth, social security number(s), enrollee/member number(s), tax identification number(s), and universal provider identification number(s);

2) A brief written description of the general allegation of suspected fraud, waste, and/or abuse;

3) How the case was identified (i.e., internal source such as customer service, medical review staff, pre-certification, ViPS, or similar proactive computer software usage/analysis, etc., or external source such as enrollee complaint, anonymous letter, Federal Bureau of Investigation, National Health Care Anti-Fraud Association (NHCAA), etc);

4) Total FEHB Program Billed and Paid Amount for a Four Year Time Period (Summary Exposure, not detailed claim information);

5) Fraud Type Indicator: Examples include but are not limited to Billing for Services Not Rendered, Ineligible Spouse, Up coding, Unbundling, Misrepresentation of Services, Medically Unnecessary Services, Stolen Health Benefit Card, Forged Prescription, False Application (SF-2809), False Diagnosis, Waiver of Co-pay, Altered Prescription, Identity Theft, Other;

6) Provider Type Indicator: An identification to include but not limited to Ambulance, Billing Company, Chiropractor, Dentist, Doctor Shopper, DME, Home Health, Hospital, Laboratory, Member, Nursing Home, Nurse Practitioner, Outpatient Surgery Center, Pharmacy, Physical Therapy, Physician, Physician Asst., Psychiatric, Other;

7) If a provider, whether the provider is an In-Network/Participating or Non-Network/Non-Participating Provider;

8) If FEHB Program Enrollee(s)/Member(s) or dependent(s), the Carrier should provide the member's employer information and/or a Copy of the members SF-2809 Health Benefit Election Form; and,

9) Carrier Contact Information for specific Special Investigative Unit (SIU) or other Carrier personnel responsible for notification.

*A recommended format for initial case notifications and status updates is attached.

The purpose of notifications varies depending on the information being developed. However, as noted earlier the main purpose is to open the lines of communication between the Carrier SIU and the OIG. In some cases, Carrier's may also request the OIG monitor a case they are developing in preparation of a pending referral or the Carrier may request the OIG decline a case so the Carrier may participate in a Class Action Lawsuit.

OIG Response to Case Notifications

Upon receipt of a case notification, the OIG will review to determine if it is appropriate for the OIG to share information from the case notification with other FEHBP Carriers potentially affected by the suspected fraud. The OIG shall also provide the Carrier generating the notification with a written reply indicating the OIG's level of interest in the case. In the OIG's reply, the OIG may:

1) Request a Referral: The OIG may request that the Carrier submit a case referral if the OIG has a strong interest in the case based on the limited amount of information contained in the notification.
2) Monitor: The OIG may request that the Carrier continue to investigate and provide the OIG with a Status Update when the Carrier has more information available to substantiate or refute the allegation. Upon receipt of a Status Update, the OIG may request the SIU to provide a referral, continue to investigate/monitor, or decline the case.
3) Decline: If the case is not of interest to the OIG, due to the nature of the allegation, the exposure amount, or other factors, the OIG will advise the carrier that the OIG does not intend to investigate, absent the development of significant new information. The Carrier may proceed with its investigation and no further communication with the OIG about the case is required, unless a triggering event occurs which warrants a Status Update. Triggering events are:
    a. If the Carrier develops significant new information and believes the OIG should reconsider the declination, the Carrier shall submit a Status Update that provides a brief summary of the new information;
    b. If a case declined by the OIG is subsequently accepted for investigation by another Federal, state and/or local law enforcement agency, the carrier shall submit a Status

Update to the OIG advising the OIG of the identity of the investigating law enforcement agency;

c. If a case declined by the OIG is subsequently accepted for prosecution at the Federal level, such as by a United States Attorney's Office or U.S. Department of Justice.

The OIG will provide a written response to the notifying carrier Special Investigations Unit within 30 days of the receipt of an initial notification, status update or unsolicited referral.

Status Updates: Information Sharing After Initial Case Notification

To further facilitate information sharing between the Carriers and the OIG, in certain instances specifically defined below, Carriers shall provide the OIG with Status Updates on cases that the OIG is monitoring. The Status Updates shall:

1) Be in writing;
2) Follow the same general format as the initial notification;
3) Clearly indicate that it is a status update rather than an initial notification;
4) Provide a brief summary of new information;

While the OIG is monitoring a case, the Carrier shall submit a Status Update to the OIG in the following instances:

1) The Carrier develops significant new information that the Carrier believes would aid the OIG in determining whether to request a referral or decline the case;
2) The Carrier determines that the allegations have no merit and/or no false or fraudulent activity took place as alleged;
3) The OIG specifically requests a Status Update;
4) The Carrier closes their investigation or inquiry;
5) The Carrier wishes to proceed with administrative debt collection, recovery or settlement of an FEHBP overpayment in reference to below section "Notification of Carrier Settlement Agreements".

Referral Process

When the OIG requests a referral based on a case notification or status update, the Carrier shall submit a written referral as defined below within 120 days of the OIG's request for referral.

If the Carrier is unable to provide the full referral as described below within 120 days, the carrier is required to provide monthly Status Updates in writing beginning on day 121. The Status Updates shall indicate not only the current status of the case, but shall also provide the OIG with an estimated date on which the OIG will receive the full referral.

If at any point after the OIG has requested a referral the carrier determines the allegation(s) have no merit and/or no false or fraudulent activity took place as alleged, in lieu of the requested referral the carrier shall promptly provide the OIG with a Status Update explaining the final conclusion/disposition of the allegation(s).

Referrals to the OIG must be in writing and shall include, but are not limited to, the following:

1) Complete Identification on file for the suspected health care provider(s) or enrollee(s), including but not limited to name(s), business name(s), address(es), telephone number(s), dates of birth, social security number(s), enrollee/member number(s) and a copy of the member SF-2809 form, tax identification number(s), Participating Network/Non-Participating Non-Network Provider status, and universal provider identification number(s);

2) A comprehensive written description of the nature of the suspected fraud, waste, and/or abuse;

3) A written summary of the evidence the carrier has reviewed which has caused the carrier to suspect fraud, waste, and/or abuse has occurred;

4) A written analysis of any suspected fraudulent claims pattern, specific CPT, ICD-9, and other types of codes utilized in the scheme (i.e., of 1900 Billed services, 800 of them were not performed equating to 42% of the claims being false);

5) How the case was identified (i.e., internal source such as customer service, medical review staff, pre-certification, ViPS or similar proactive computer software usage/analysis, etc., or external source such as enrollee complaint, anonymous letter, FBI, NHCAA, etc);

6) At least three examples of suspected false claims to include copies of the hard copy submitted claim(s), explanation of benefits, and copies of the front and back of any issued check for payment to the suspect provider;

7) A Copy of any carrier specific medical policy statements that guides the carrier in processing claims related to the suspected fraudulent or misrepresented claims submitted by the subject provider;

8) A four year claims history for the provider or enrollee in electronic format using the "Standard OIG Format";

9) Copies of any and all relevant or supporting documents obtained or produced by the carrier or the carrier's Special Investigation Unit (SIU) during the preliminary investigation (i.e., internal provider audits, medical review findings, carrier cease and desist letters, medical records, provider applications, network provider agreements, provider relations rep contacts, customer service records of contact, patient surveys, interview reports, Reports of Investigation, etc.);

10) Any and all research performed, including any background information obtained via investigative databases, information found on the internet, and/or other medical procedure research performed;

11) Any and all suspected state and Federal laws researched and believe the suspect activities have violated;

12) Any specific knowledge of patient harm that could be a result of the suspect activity, AND

13) Contact information for the carrier personnel or SIU investigator responsible for preparing the referral; and,

14) If necessary, Contact information for the Federal and/or State law enforcement agency, investigator, and/or attorney the carrier is coordinating its investigation with, such as, but not limited to the Federal Bureau of Investigation, Defense Criminal Investigative Service, Health and Human Services Office of the Inspector General, U.S. Postal Inspection Service, U.S. Attorney's Office, Department of Justice, Internal Revenue Service, State Attorney Generals Office, District Attorneys Office, etc.

Carrier Settlement Agreements

Reference is made to the provisions in this letter concerning Mandatory Information Sharing via Written Case Notifications to OPM's OIG, specifically the requirement to notify the OIG of all cases where there is a reasonable suspicion that a reportable fraud, waste, or abuse has occurred. No case involving recovery of FEHBP overpayments which result from apparent or suspected false, fictitious, fraudulent, or misleading claims should reach the settlement stage without prior communication with the OIG regarding the allegations.

In cases where the OIG has requested a referral from the Carrier and/or has advised the Carrier that the OIG has an open investigation, the Carrier may not enter into a Settlement Agreement for the recovery of FEHBP funds without communicating with and obtaining authorization from the OIG.

In cases where the OIG has advised a Carrier that the OIG is monitoring the allegations, prior to recovering FEHBP funds, the Carrier shall send the OIG a Status Update to advise the OIG of the Carrier's intent to proceed with a settlement agreement, or any other form of debt collection or recovery.

In cases that the OIG has declined, the Carrier may proceed with any resolution the Carrier deems appropriate, to include pursuit of a settlement agreement. The Carrier is reminded to report any such recoveries to OPM on their annual Fraud and Abuse Reports.

When a Carrier (as a sole participant[1]) resolves claims with any type of health care services provider or manufacturer for recovery of overpayments which resulted from apparent or suspected false, fictitious, fraudulent, or misleading claims submitted to the carrier; AND

a. At least $20,000 of the identified overpayments is money paid through the FEHB program, then the Carrier must:

b. include the language listed below in the settlement agreement, AND

c. not include a confidentiality clause in the settlement agreement which restricts the Government's access to the agreement,

Language for the settlement agreement: *"This settlement agreement in no way waives the rights of the United States Government under any Federal statute to pursue civil and/or criminal fines, penalties, recoveries, etc., for claims submitted to the carrier under the Federal Employees Health Benefits (FEHB) Program."*

[1] The requirement to include specific language in settlement agreements does not apply to Class Action Lawsuits, because the Carrier is not the "sole participant" in such litigation.

If a carrier enters into negotiations with a provider such as those described above and there were monies identified paid through the FEHB Program, but the FEHB Program overpayments were excluded from the final settlement agreement for any reason, the carrier must send notification to the OPM-OIG without delay.

Response to OPM-OIG Requests for Information

Upon request, all carriers must furnish the OPM-OIG Office of Investigations with FEHB Program claims information and supporting documentation relevant to open criminal, civil, or administrative investigations.

Special Agents of the OPM-OIG will make initial requests for claims information on the "FEHBP Exposure Data Request Form" (copy enclosed).

1) In response to exposure requests, carriers must furnish a claims history via electronic media for the subject of the exposure request. The scope of the claims history required will be specified by the OPM-OIG Special Agent on the exposure request.

2) Absent extenuating circumstances, carriers are expected to furnish requested data within 30 calendar days.

3) Unless directed otherwise, carriers must comply with the standard data format established by the OPM-OIG. A list of the specific data fields required is attached.

4) Any spreadsheets or documents containing sensitive or proprietary data forwarded to the OPM-OIG by the carrier via email must be encrypted.

5) Any sensitive or proprietary data sent via mail or delivery service should, at a minimum, be password protected.

6) Any request from the OIG marked "Confidential" or similar language, MUST NOT BE SHARED with Private Lines of Business, Local Plans, or the Public. Contact the OIG Agent/Analyst directly before engaging in any investigative activities.

During the course of investigation, OPM-OIG Special Agents may require additional documentation from the carrier (hard copy claims, checks, correspondence, etc.) and/or investigative support in the form of data analysis, prosecutorial witnesses, discovery documentation, medical expertise, provider applications/contracts, etc. The OPM-OIG Special Agent will contact the carrier SIU investigator assigned to the initial exposure request when additional documentation or assistance is needed.

OPM-OIG Contact Information for Notifications and Referrals:

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Thank you for your consideration.

Sincerely,

John O'Brien
Director
Healthcare and Insurance

Enclosures

Attachment 1: Case Notification / Status Update Format
Attachment 2: OPM / OIG Exposure Request Form