Engaging American Indian and Alaska Native Medicare Beneficiaries: Senior Medicare Patrol Toolkit

Prepared by International Association for Indigenous Aging

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Chapter 3: Medicare Fraud & Abuse in Indian Country

Why is it so difficult to quantify the problem of Medicare fraud and abuse for AI/AN seniors?

- Medicare, Census, and IHS data do not routinely and accurately identify and classify all AI/ANs, and often contain significant discrepancies.
- Medicare, Census, and IHS data systems are not linked.
- The health care and billing systems can be extremely complex.
- IHS estimates of Medicare payments only tell part of the story, as they do not capture data collected by tribal facilities.
- No concrete estimates or methodologies exist for determining fraud, waste, and abuse in the Indian health care system.

Fraud, Waste, and Abuse

As with any type of fraud, it is nearly impossible to quantify the scope of the problem. The perception exists that potentially less fraud may be impacting AI/AN elders due to:

- Cultural insulation or geographical isolation in some tribal communities from typical fraud and abuse scams; and
- Fewer incentives to commit fraud because ITU reimbursements are so complex and program funding is limited.

Findings from an SMP staff survey, interviews with tribal aging and health service providers, and feedback from the Office of the Inspector General (OIG) staff identified a number of factors impacting Medicare fraud for AI/ANs, including:

- Cultural barriers: distrust of the government; close-knit communities may lead to a reluctance to report friends and relatives; the limited number of providers available; a fear of retribution; limited literacy; limited access to phone, internet or other technologies; etc.
- High poverty rates may create susceptibility to induce beneficiary participation in scams
- Lack of interest by elders—“they don’t pay their bills, so they don’t seem to care”
- Lack of knowledge about Medicare programs and services
• Limited access to information, expertise, and resources on Medicare
• Lack of understanding on the impact of Medicare losses on IHS and tribal programs
• Complex billing system with multiple payers involved
• If services are obtained through IHS or an IHS-funded entity, the Medicare Summary Notice (MSN) is *suppressed* and the elder doesn’t receive an MSN

**Where Elders Live and Receive Care**

Those living in urban settings, or those who seek care from non-ITU providers, are likely equally exposed and susceptible to the same types of scams as the non-Native population.

Elders who receive care from ITU providers, and thus don’t receive MSNs, may be more likely to be disengaged from health care billing practices and activities.

 Providers in these facilities may, in fact, be emboldened knowing that elders receiving care from most ITU facilities don’t receive MSNs and are, therefore, less likely to detect improper billing.

**Oversight and Scams**

The HHS OIG is responsible for providing oversight of HHS programs to help protect against fraud, waste, and abuse. Between 2001 and 2010, the OIG opened 288 investigations involving IHS—many were the result of allegations of Medicare or Medicaid fraud. Of the 223 investigations, 118 investigations led to criminal prosecutions.

The OIG has identified five vulnerabilities within IHS and tribal health systems:

• Employee misconduct;
• Drug diversion by employees, contract providers, and beneficiaries;
• Tribal enrollment fraud;
• Fraud related to tribal 638 programs or ISDEAA, and
• Medicare or Medicaid reimbursement fraud.

Examples of **employee misconduct** include specific schemes to defraud IHS, Medicare, or Medicaid, including embezzlement of funds, kickbacks, and more. In South Dakota, an IHS employee and two others were convicted of improperly directing IHS contracts in return for cash and employment kickbacks.

Rural isolation and the black market value of controlled prescription drugs contribute to the appeal of crimes involving **drug diversion**. In one Montana case, an IHS nurse practitioner wrote unnecessary prescriptions for controlled substances. Patients (including some IHS staff) filled the prescriptions at IHS facilities and then sold the drugs back to the nurse practitioner.
Individuals enticed by the availability of expense-paid health care at IHS facilities, which is available only to members of federally recognized tribes, have falsely claimed enrollment as tribal members. A lawyer in South Dakota was put in jail and required to pay restitution for tribal enrollment fraud.

Regulations for the use of ISDEAA or 638 program funds require that they be used for the provision of health care related services only. In one case, a tribe utilized funding to construct a permanent facility and intentionally misled the IHS during negotiations involving the use of the funds.

Typical Medicare and Medicaid fraud scams are also perpetrated within the ITU system. In one successful investigation, an unlicensed physician’s assistant illegally billed hundreds of thousands of dollars to Medicaid and Medicare while working at an IHS facility. 

At any point in time, tens of thousands (perhaps hundreds of thousands) of elders may be seeking care outside of the ITU system, which means they are exposed to the same types of scams as the general Medicare beneficiary population.
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7 Senator Ben Nighthorse Campbell, chair, and Senator Daniel K. Inouye, vice chair, Senate Committee on Indian Affairs, letter to the Senate Committee on the Budget, Feb. 29, 2000, as reported in Concurrent Resolution on the Budget, FY 2001, Report of the Committee on the Budget, United States Senate, Mar. 31, 2000, p. 188 (hereafter cited as Senators Campbell and Inouye, letter to the Senate Committee on the Budget, Feb. 29, 2000).
10 Ibid. p.4. The states with the largest Native American populations, in descending order, are California, Oklahoma, Arizona, Texas, New Mexico, New York, Washington, North Carolina, Michigan, Alaska, and Florida. The census identifies the four geographical regions as Northeast, Midwest, South, and West. Ibid.
11 In 1997, the Office of Management and Budget definition of American Indian or Alaska Native included the original peoples of North and South America, including Central America. Census Bureau, AI/AN Population: 2000, p. 8.
15 Urban Indian Health Institute 2004
20 Ibid
42 USCCR, A Quiet Crisis, Tables 2 and 3 of Chapter 3 (citing the Budget of the United States Government, Fiscal Year 2004, Historical Tables, Table 5.4, pp. 103–04).
43 Ibid
44 Ibid., p. IHS–27.
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47 *Ibid.* See also Brosnan, J.


