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Coventry Health Care Inc. Settles Governmental Claims of Unauthorized and Improper Access to the Medicare Beneficiary Database

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On November 17, Coventry Health Care Inc. (Coventry) entered into a [settlement agreement](#) with the U.S. Attorney's Office for the District of Maryland (USAO) and agreed to pay a \$3 million fine and perform other agreed-upon actions in exchange for the settlement of certain civil, criminal, and/or administrative claims the U.S. Department of Justice and USAO contend could be asserted alleging that Coventry employees and executives improperly accessed the Medicare Beneficiary Database (MBD). This settlement agreement encompasses Coventry, its related entities, and individuals working on their behalf (Coventry-Related Entities).

In 2005, Coventry acquired First Health Priority Services (First Health), which it operated as a subsidiary. As part of its overall operations at that time, Coventry managed Medicare Advantage plans and First Health offered a Medicare Set-Aside Arrangement (MSA) product. In these capacities, each entity's employees had access to the Centers for Medicare & Medicaid Services (CMS) password-protected computerized database containing Medicare eligibility information. This database was called the Common Working File (CWF) until its conversion when it was renamed the Medicare Beneficiary Database.

As part of the MSA administration process, if there is a settlement of a workers' compensation claim federal law requires a determination be made as to whether the claimant is a Medicare beneficiary. If the claimant is in fact a Medicare beneficiary, CMS must be notified and the amount of funds that Medicare may ordinarily pay related to the workers' compensation claim must be "set aside." This ensures that Medicare does not pay for medical costs related to the workers' compensation claim. It also allows for the establishment of a fund to satisfy any future medical subrogation liens for workers' compensation disability payments made to individuals.

The actions questioned by the government occurred in 2005 and 2006 at the time the CWF was being converted to a different format which resulted in the MBD. A subpoena was issued and a subsequent investigation was initiated. In January 2007, Coventry was contacted by CMS and questioned regarding CMS' concerns of the inappropriate access to the MBD, and Coventry responded to

CMS acknowledging that its employees had inappropriately accessed the MBD that same month. The following month Coventry acknowledged via correspondence to CMS that its employees had committed the same actions pertaining to the MBD and that Coventry would take corrective action. There were no further formal communications between Coventry and CMS subsequent to the February 2007 correspondence.

As part of the settlement agreement, the parties agreed that Coventry and/or First Health employees had accessed the MBD from May 2005 through December 2006 without authorization or in excess of the scope of such authorization for the purposes of benefiting Coventry and to remain compliant with CMS' regulations related to its MSA product. Certain senior management employees of Coventry were aware of the improper access and have since terminated their employment with Coventry.

The government has settled and released the Coventry-Related Entities from certain civil, criminal, or administrative causes of action that it claims it could assert against these parties and is not referring the matter to the U.S. Department of Health & Human Services for administrative review. In exchange for this settlement and release, Coventry, in addition to the monetary payment, will maintain new hire and annual training for its employees and require mandatory testing on fraud and abuse, privacy and security, and Coventry's code of business and ethics. The new hire training shall occur within thirty days of the individual beginning his or her employment. In addition, Coventry must designate an attorney in its General Counsel's office who shall be responsible for the administration of Coventry's compliance and ethics programs.

**We would like to thank Fraud and Abuse Practice Group Enforcement Committee members Patrick D. Souter, Esquire (Looper Reed & McGraw PC, Dallas, TX), and Chandra Westergaard, Esquire (Davita Inc., Denver, Co), for respectively authoring and reviewing this email alert.*

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