

The Opioid crisis: The important role of CPAs



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CPAs should be aware of the emerging trends in opioid abuse and the impact of this crisis on the audit, tax and financial statements of businesses in virtually all industries, but particularly in health care. Specifically, the legal and illegal flow of money has significantly affected businesses – hospitals; physician practices; pharmaceuticals; government-sponsored programs such as Medicare, Medicaid and TRICARE; and private insurance health care plans. Federal, state, county and local governmental resources are now addressing the issues.

Scope of the crisis

President Donald Trump declared this crisis a public health emergency Oct. 26, 2017, and United States Attorney General Jeff Sessions has announced “new tools” that the Department of Justice will use to combat the crisis. Although not defined as a national emergency at this point, the federal government seems committed to partnering to solve the problem. The President’s Commission on Combating Drug Addiction and Opioid Crisis issued a preliminary report that described the overdose death toll as “September 11 every three weeks.”¹

Attorney General Sessions has formed the Opioid Fraud and Abuse Detection Unit, a new Department of Justice (DOJ) pilot program to confront the crisis. The new unit will use data to identify those fraudulently prescribing and worthy of prosecution. Focusing on prescription opioids, the data analytics team will identify the following:

- Which physicians are writing opioid prescriptions at a rate that far exceeds their peers
- How many of a doctor’s patients died within 60 days of an opioid prescription
- The average age of the patients receiving these prescriptions
- Pharmacies that are dispensing disproportionately large amounts of opioids
- Regional hot spots for opioid issues²

In 2016, about 63,600 Americans lost their lives to drug overdoses. Of these drug deaths, 42,200 were linked to opioids³ – prescription drugs, heroin and synthetic drugs such as fentanyl. To confront the crisis, the DOJ will focus on prevention, enforcement, and treatment.⁴

Recent U.S. Department of Justice actions

On July 3, 2017, the DOJ and FBI announced charges against more than 400 individuals, including doctors, nurses, and licensed medical professionals, for their roles in fraud schemes involving about \$1.3 billion in false Medicare billings. Of the 412 individuals charged, 1 in 4 cases involved opioid-related crimes, underscoring the scope of what federal officials are calling an abuse epidemic that is killing about 115 Americans daily.⁵

As planned, investigations concentrated on federal health insurance programs’ submissions and payment data, searching for anomalies potentially indicative of medically unnecessary drug prescriptions or unlawful distribution of opioids and other prescription narcotics. The investigators at the U.S. Department of Health & Human Services (HHS) Office of the Inspector General (OIG) were able to conduct their probe and forward any substantial findings to federal, state, and local law enforcement.

Focus on the flow of money

Recent data the HHS OIG released indicate that Medicare spending for Part D drugs has continued to rise by more than \$10 billion a year. In 2015, total Part D spending reached \$137 billion, marking the third consecutive year that spending increases surpassed \$10 billion. Overall spending for commonly abused opioids exceeded \$4 billion.⁶

Federal and state officials responsible for addressing the opioid issues are committed to long-term audits and investigations. A significant part of these efforts will address

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¹ Goodnough, Abby. “White House Panel Recommends Declaring National Emergency on Opioids.” *New York Times*. July 31, 2017.

² Department of Justice, Office of Public Affairs. “Attorney General Sessions Announces Opioid Fraud and Abuse Detection Unit.” August 2, 2017.

³ Levitz, Eric. “Drug Overdoses Killed 63,600 Americans Last Year.” *New York Magazine*. Dec. 21, 2017.

⁴ See footnote 2.

⁵ Wide-ranging online data for epidemiologic research (WONDER). Atlanta, GA: CDC, National Center for Health Statistics; 2017. Available at wonder.cdc.gov.

⁶ U.S. Department of Health & Human Services. “High Part D Spending on Opioids and Substantial Growth in Compounded Drugs Raise Concerns.” OEI-02-16-00290. June 2016.

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the flow of money from the starting point of product manufacturing to final distribution to end users, and all points in between. Practitioners can count on increased audit and investigative scrutiny of taxpayer dollars expended through Medicare, Medicaid and TRICARE. Private insurance payments will certainly fall under the spotlight, as well.

In a study published in 2017, researchers at Boston Medical Center found that 1 in 12 doctors has received money from drug companies marketing prescription opioid medications. Further, from 2013–15 (the most recent Centers for Medicare and Medicaid Services (CMS) data available at the time of the study), 68,177 doctors received more than \$46 million in payments from drug companies. Fentanyl, typically used in hospitals to treat post-surgical pain, for cancer patients, and for end-of-life care, is the drug doctors were found to be paid the most to promote. Additionally, companies were not aggressively marketing tamper-proof versions of the pills, designed to reduce issues of improper use.⁷

The drug industry — opioid painkiller manufacturers, distributors, wholesalers and pharmacy chains — is facing a “tidal wave” of litigation from government entities. At least 30 states, cities and counties have either filed lawsuits or are formally recruiting lawyers using a process that tends to preclude full-blown legal action. In many cases, the complainants argue that manufacturers used aggressive sales tactics to boost revenues from the drugs, while downplaying the risks, or did too little to identify large numbers of orders for controlled substances or “suspicious orders.” The DOJ recently announced a \$150 million settlement with McKesson Corporation, one of the largest pharmaceutical distributors in the United States. The DOJ alleged that McKesson failed to detect and report “suspicious orders” for controlled substances that were distributed to McKesson’s independent and small-chain pharmacies. The settlement requires McKesson to suspend sales of controlled substances from distribution centers in Colorado, Ohio, Michigan and Florida for several years.⁸

The list of attorneys general (AGs) pursuing companies that have profited from opioids is expected to grow. Recently, three AGs sent out a tender document, known as a “request for proposal,” inviting law firms to bid for contracts to manage the litigation.⁹

What can CPAs do?

Last year, in hopes of discouraging opioid painkiller use, Aetna sent notices to more than 900 physicians who prescribe such drugs at high rates. Aetna was able to determine physicians’ opioid prescribing patterns by analyzing data collected through insurance claims.¹⁰ Much like Aetna’s team and the new DOJ Opioid Fraud and Abuse Detection Unit, CPAs must play an important role in monitoring and pinpointing potential instances of fraud and abuse related to the opioid crisis.

Industry CPAs (CFOs, controllers, internal auditors and so on) within financial, internal audit or compliance departments may be able to observe and inquire about controls in their hospitals or organizations. Although CPAs may not have access to extensive prescribing and claims data, they do have access to key financial statements that tell the story of an entity and its processes. As a CPA, it is important to understand enough about your entity and how it operates, so you can better identify abnormalities in revenue or costs, or both, that may be a result of fraud, abuse or other compliance issues. The following actions are important for industry CPAs and financial officers in identifying fraud and abuse:

- Develop a compliance department notification process. This will ensure that the appropriate individuals receive the relevant information, so an investigation can take place, if necessary. Refrain from creating your own monitoring and auditing program for these or other areas of risk if it might conflict with the organization’s compliance efforts.
- Partner with the compliance department to assist in the monitoring or auditing, if appropriate. Entities typically follow a certain protocol for investigations, so your role might be to report a potential concern to compliance, rather than investigate that concern.
- Assist the compliance department in determining the scope and method for testing reasonableness of data related to controlled substance prescribing, dispensing, or collections that typically routes through your own department.
- Maintain a list of risk areas your compliance department has identified for ongoing monitoring and auditing.
- Along with compliance and the internal audit manager, examine the audit trails embedded within your organization’s automated pharmacy systems.

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⁷ Zezima, Katie. “Study: Doctors Received More Than \$46 Million From Drug Companies Marketing Opioids.” *The Washington Post*. August 9, 2017.

⁸ Department of Justice, Office of Public Affairs. “McKesson Agrees to Pay Record \$150 Million Settlement for Failure to Report Suspicious Orders of Pharmaceutical Drugs.” Jan. 17, 2017.

⁹ Crow, David. “Drug Industry Faces ‘Tidal Wave’ of Litigation Over Opioid Crisis.” *Financial Times*. Aug. 11, 2017.

¹⁰ Advisory Board. “How Aetna Is Curbing Opioid ‘Superprescribers.’” *Advisory Board Daily Briefing*. Aug. 5, 2016.

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- Implement controls and policies related to drug access and dispensing and perform routine auditing and monitoring in the various departments with access to drugs.
- If you are serving a client as a public practice CPA, notify the client if you notice data is trending abnormally, for example, a sudden spike in revenue for a certain controlled substance, and possibly discuss ways in which to assist the client with monitoring.

Monitor the data

Increase in opioid and other pain-related drug revenue

If physicians or entities are experiencing increased revenue associated with opioids or other pain-related drugs, it may be important to consider where exactly the revenue is originating. A Massachusetts doctor recently pleaded guilty to health care fraud after it was discovered that he was seeing 100+ patients a day and writing prescriptions for oxycodone and other opioids without doing exams or tests. In fact, he wrote more oxycodone prescriptions in one month (over 1,100) than some of the largest hospitals in Massachusetts.¹¹ As a CPA, you might ask yourself: Do the numbers add up? Can these increased volumes and revenues be supported by the current staffing? Is it possible for one physician to see 100+ patients per day?

Similarly, in 2016, an Alabama physician was also charged with illegally prescribing and health care fraud for activities dating back to 2012. In 2012, he saw 80 to 145 patients per day and wrote prescriptions for all patients seen. Initial visits lasted only five minutes or fewer, and follow-ups for medication refills lasted two minutes or fewer. The physician did not obtain prior medical records and did not treat with anything other than controlled substances. According to the state's prescription drug monitoring program, this physician would have had to write 423 prescriptions per day if he worked five days per week.¹² This case raises many of the same questions. Monitoring trends in revenues, visits, and charges can allow accountants to identify potential areas of concern. If significant increases in volume and revenue occur, do not hesitate to ask questions about what is driving that growth. Even periodic checks to assess reasonableness can be instrumental in identifying potential fraud and abuse risk.

Increase in opioid and other pain-related drug costs

For health care entities and facilities, monitoring drug costs, particularly opioid drug costs, is important. If a facility has a significant jump in drug expense, it is worth investigating. These increases could point to an overprescribing or overdispensing issue within the organization. Many payers use claims data to identify "superprescribers" of opioid medications. The same logic can be applied here. By monitoring drug costs and inventory, accountants may be able to assist in identifying departments or providers that are prescribing large quantities of these medications. Sharp increases in drug costs can also highlight an inventory issue. Regardless of quantities of opioids in inventory, it is important for financial and operational teams to ensure that sufficient physical and financial controls are in place to mitigate opportunities for theft and misuse of these medications. (Federal and state-controlled substance boards also have specific requirements related to the storage and custody of, and access to, all controlled substances, including opioids.) Additionally, internal audits should be conducted to test these controls.

Pharmaceutical company payments

Similarly, if it appears that one particular opioid is purchased more than others, or that revenue associated with one kind of opioid drug has increased, the financial or operations team should investigate further. As mentioned previously, 1 in 12 doctors has received some sort of payment from drug companies.¹³ Although most of these payments are small (meals, drinks and so on), research suggests that pharmaceutical company payments result in increased prescribing of marketed medication, even when payments are of low monetary value.¹⁴

To avoid litigation issues, it is vital to verify the legality of any payments your entity receives from drug companies and ensure that they are reported in accordance with the Physician Payments Sunshine Act. Additionally, if you identify any undefined or uncategorized revenue streams, ask questions about the origin of the revenue. There have been instances of drug companies providing kickbacks to physicians who regularly prescribe their medications.

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¹¹ Finnegan, Joanne. "Massachusetts Pain Doctor Pleads Guilty to Healthcare Fraud." *FierceHealthcare*. March 16, 2017.

¹² Department of Justice, Office of Public Affairs. "Alabama Pill Mill Doctor Charged with Illegal Prescribing and Health Care Fraud." Sept. 23, 2016.

¹³ Zezima, Katie. "Study: Doctors Received More Than \$46 Million From Drug Companies Marketing Opioids." *The Washington Post*. Aug. 9, 2017.

¹⁴ Orenstein, David. "Opioid Makers Made Payments to 1 in 12 U.S. Doctors." *News from Brown University*. Aug. 9, 2017.

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Increase in urine drug screens and testing revenue

Both the Massachusetts and Alabama physicians mentioned previously also routinely billed payers for urine drug tests they did not use, or need, in treatment. In fact, 80% of paid claims that the Alabama physician submitted to Medicare and Blue Cross were for urine drug tests. Payers view the billing of urine drug screens as unnecessary and fraudulent when the documentation does not clearly indicate medical necessity per their coverage guidelines. The guidelines related to how often urine drug screens should be used for patients taking opioid medications are complex. Further, they have changed significantly as opioid prescription use has increased in the last five years. If there is a significant increase in urine drug screens, confirm that the appropriate monitoring and auditing is performed, ensure that documentation supports the order per state and federal governmental and payer guidance, and that there are no medical necessity concerns.

If you work for a laboratory, monitor the marketing department's spending on complimentary supplies that are provided to physicians and other ordering providers. In 2015, a laboratory paid \$256 million to settle claims for unnecessary drug testing. The company purportedly had provided free testing cups to physicians in exchange for referrals.¹⁵ Free supplies to physicians, which may be considered inducement for referrals, are not permitted in the health care industry.

Be part of the solution

Although a robust monitoring process is important in identifying potential fraud, abuse and compliance risks for your entity, it is just as important to have a communication protocol in place. Work with your organization's compliance officer to determine potential indicators of an issue – inclusive of those that affect your entity's revenue and your own typical

legal and compliance responsibility, but also those that could indicate overuse or cause for concern. If you identify an issue, notify your compliance officer. Your knowledge in accounting, coupled with your health care experience, can help identify potential fraud and abuse, which could help your organization, and the associated patients, mitigate risks associated with the opioid crisis.

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¹⁵ Alltucker, Ken. "Labs, Doctors Scrutinized Over Lucrative Drug Tests for Pain-Pill Abuse." AZ Central. Dec. 26, 2015.

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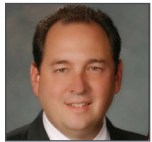
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