OIG ENFORCEMENT TRENDS
HCCA 2018 ST. LOUIS REGIONAL CONFERENCE

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Overview

• OIG Overview
• CMP Law and Exclusions
• Self-Disclosures
• OIG-initiated litigation
• Compliance Takeaways

Office of Inspector General
**OIG’s Multidisciplinary Approach**

- Office of Audit Services (OAS)
- Office of Evaluation and Inspections (OEI)
- Office of Investigations (OI)
- Office of Counsel to the Inspector General (OCIG)
- Office of Management & Policy (OMP)

**Civil and Administrative Enforcement**

- False Claims Act
- Exclusion
- CMP authorities

**What is Exclusion?**

- No Federal health care program payment may be made for items or services:
  - Furnished by an excluded individual or entity
  - Directed or prescribed by an excluded individual, where the person furnishing the item or service knew or had reason to know of the exclusion
- Exclusion applies to direct providers (e.g., doctors, hospitals) and indirect providers (e.g., drug manufacturers, device manufacturers)
Exclusion Risk Spectrum

http://oig.hhs.gov/exclusions/files/1128b7exclusion-criteria.pdf

CIAs and Exclusions
Calendar Years 2013-17

OIG CMP Authorities

- 42 CMP authorities
  - Billing While Excluded
  - Kickbacks & Physician Self-Referral (Stark Law) Violations
  - False or Fraudulent Claims
  - Reporting & Returning of Overpayments
Civil Monetary Penalties Law

- Administrative fraud remedy
  - Money damages + penalties + exclusion
- Alternative or companion case to a civil action
  - Physicians, owners, or executives
- Burden of Proof
  - Preponderance of the evidence (same as civil)
- Statute of Limitation
  - 6 years (same as civil)
- Intent: generally “knows or should know”
  - Actual knowledge
  - Deliberate ignorance or reckless disregard

OIG Self-Disclosure Protocol

- Quick resolution
- Consistent damages calculations and 1.5 multiplier
- Presumption of no Corporate Integrity Agreement
- 6-year statute of limitations
- Tolling of the 60-day Overpayment Rule period after submission
- No FCA release, but may limit exposure
- More predictable process, but DOJ may become involved

Common Self-Disclosure Mistakes

- Declares there is no fraud liability
- Fails to identify potential laws violated
- Discloses the conduct too early
- No plan to quantify damages
- Conduct only violates the Stark Law
- Refuses to pay a multiplier
- Lack of cooperation
- Argues damages should be calculated in a manner contrary to the revised SDP
Shands Jacksonville Medical Center

- $4.4 settlement
- Allegations: physician performed medically unnecessary surgical procedures

What do you do when there are allegations of medically unnecessary services?
21st Century Oncology Holdings, Inc.

- $369,039.25 settlement
- Allegations: Employment of excluded individuals

**Check OIG's LEIE**

Special Advisory Bulletin on the Effect of Exclusion From Participation in Federal Health Care Programs


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**Goals of OIG-initiated litigation**

- Use exclusion remedy to protect patients
- Amplify OIG priorities
- Complement the work of the components
- Support OIG guidance
- Level the playing field
- Change industry behavior
- Hold individuals accountable

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**Pelvic Floor Therapy Project**

**Project Description**: Proactive data-analytics identified outliers for pelvic floor therapy.

**Results**: 5 settlements resulting $2.3 million and 32 years of exclusion (total)
Office of Audit Services Referrals

**Urine Drug Testing Initiative**

**Conduct:** Inappropriately added Modifier-59 to claims for drug screening when only a single unit may be billed per patient encounter and general upcoding.

**Results:**
- 10 settlements totaling more than $8.9 million and 2 CIAs.

Civil FCA Spin-Off Cases

**Dr. Baker Fairmont Diagnostic Center and Open MRI**

**Conduct:** Referring physicians received kickbacks in the form of medical directorship fees and office staff arrangements.

**Result:** Settlements with 11 physicians for a total of $1.4 million and one exclusion.

Fraud Alert to Physicians

OIG alerted physicians that compensation arrangements may violate the Anti-Kickback Statute if even one purpose of the arrangement is to compensate a physician for his or her past or future referrals of Federal health care program business.
Data Mining

Ambulance Referrals

Conduct: Emergency ambulance transportations to inappropriate destinations such as skilled nursing facilities or residences

Result:
9 settlements
$1.1 million

AnMed

EMTALA

- Allegations: Failure to provide an adequate screening examination or stabilizing treatment for psychiatric patients, despite having psychiatrists on call and available psychiatric beds. 35 individuals were in the ED for 6-38 days.
- Result: $1.25 million

Dr. Vinod Sharma

- Conduct: Referral from QIO. Physician failed to document his response to aberrant urine tests
- Result: 3-year exclusion
Civil FCA Spin-Off Cases

Kickbacks from Cardiac Laboratories for Referrals

Conduct: Physicians and physician practices received kickbacks in the form of process and handling fees in exchange for sending laboratory referrals to Health Diagnostic Laboratory, Inc. ($20/referral) and/or Singulex, Inc. ($10-$13/referral)

Result: 8 settlements to-date with physicians and physician practices, for a total of $824,103

OIG Compliance Resources
http://oig.hhs.gov/compliance/