



OIG ENFORCEMENT TRENDS

HCCA 2018 ST. LOUIS REGIONAL CONFERENCE

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Office of Inspector General





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)




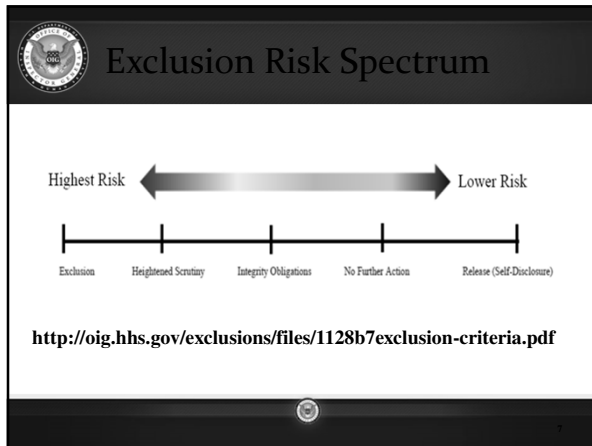
 **Civil and Administrative Enforcement**

- 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)



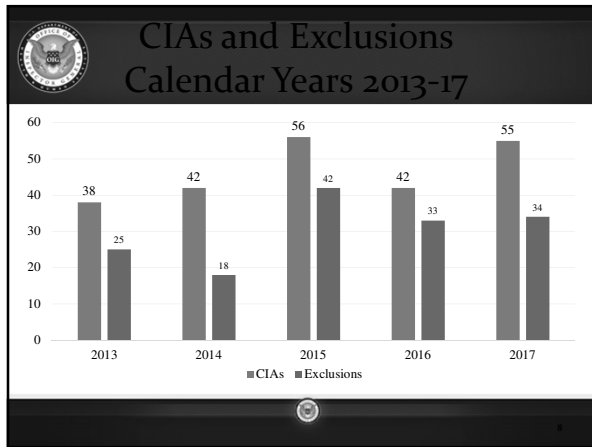


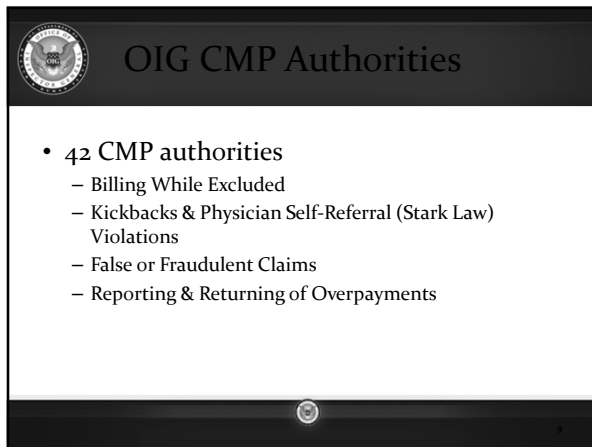
Exclusion Risk Spectrum

Highest Risk ← → Lower Risk

Exclusion Heightened Scrutiny Integrity Obligations No Further Action Release (Self-Disclosure)


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







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




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 **OIG Self-Disclosure Protocol**

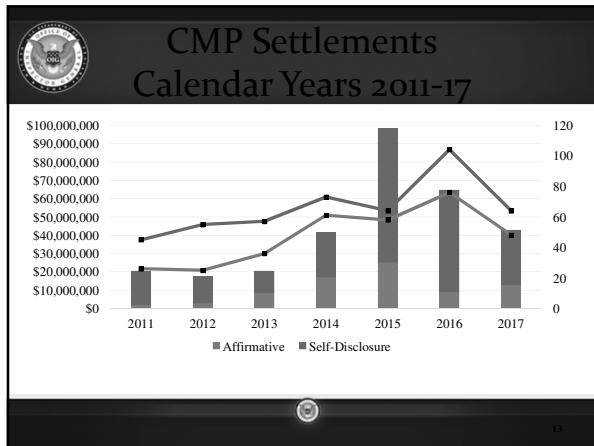
- Quick resolution
- Consistent damages calculations and 1.5 multiplier
- Presumption of no Corporate Integrity Agreement
- 6-year statute of limitations
- Tolling of the 60-day Overpayment Rule period after submission
- No FCA release, but may limit exposure
- More predictable process, but DOJ may become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

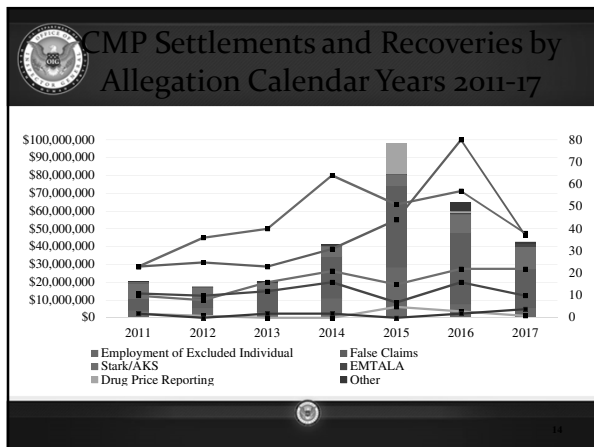
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 **Common Self-Disclosure Mistakes**

- 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

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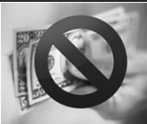
Shands Jacksonville Medical Center

- \$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
<https://oig.hhs.gov/exclusions/files/sab-05092013.pdf>




 **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





 **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**

 DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL 
WASHINGTON, DC 20001

Fraud Alert: Physician Compensation Arrangements May Result in Significant Liability
 June 9, 2015

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



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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



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Dr. Vinod Sharma


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



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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/>



REPORT FRAUD