Overview

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- Internal Reporting
- Disclosure Decision Considerations
- SDP: Self-Disclosure Protocol Requirements
- Internal Investigation
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- OIG Hot Topics
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Protocol Results (mid-2008)

$ 379 disclosures accepted into the Protocol
  $ 165 resolved with monetary results
  $ 53 submissions in 2007 calendar year

$ Over $118 Million returned to Medicare Trust Fund

Incentives for Disclosure

$ HHS OIG enforcement activity for FY2008
  $ $2.35 billion in fraud and abuse investigative receivables
  $ $3129 exclusions of individuals and entities
  $ $575 criminal actions
  $ $342 civil actions

$ State MFCUs FY2007
  $ $1.1 billion recovered
  $ 1205 convictions
Incentives for Disclosure

- § April 15, 2008 OIG Open Letter to Providers

Incentives for Disclosure

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- § Carrot: potential to lower penalties, avoid CIA and OIG exclusion
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§ April 15, 2008 OIG Open Letter to Providers
§ Carrot: potential to lower penalties, avoid CIA and OIG exclusion
§ Stick: False Claims Act treble damages and steep fines

Incentives for Disclosure

§ Repayment/Disclosure Duties
  § 18 USC 1001, Concealment of a Material Fact
  § 18 USC 1347, Health Care Fraud/Intentional Concealment
  § 18 USC 4, Misprision of a Felony
    § Need affirmative act such as false statement to auditor
  § 42 USC 1320a-7b(a)(3)
    § felony failure to disclose a known overpayment
    § applies even if initially obtained without knowledge
  § 42 USC 1395nn(g)(2), Stark Law
  § MA and Part D Plans Self-Reporting
    § voluntary, but likely mandatory soon
Incentives for Disclosure: Other Reporting Duties

- **Organization’s Compliance Policies and Procedures**
  - Some are explicit that organization will report and refund payments.
  - Ethical/Moral imperative?
- **HHS OIG Compliance Program Guidance**
  - Suggest organizations should report and refund. Voluntary, non-binding guidance.
- **Services furnished by excluded individuals?**

Internal Reporting

- Internal reports may come from:
  - Compliance Hotline (800 number)
  - Compliance Officer
  - Department Heads
  - Exit interviews
  - HR Department
    - training session questions
    - disciplinary actions
  - Ongoing audits
Internal Reporting

Why encourage internal reporting?

- Deficit Reduction Act requires False Claims Act training for providers receiving $5 million or more in Medicaid funds
- Internal reporting allows organization to nip problems in the bud.
- Internal reporting promotes culture of compliance

Disclosure Decision Considerations

- Evidence of specific intent to defraud
- Strong evidence of recklessness or deliberate indifference
- Strong likelihood of whistleblower and compelling evidence of wrongdoing
- Purchased a problem (and escrow covers it)
- Clear overpayment – it’s not your money!
- Compliance Program and Tone from the Top
Disclosure Decision Considerations

§ Need: violation?

§ Risks?
  § Cost/disruption/penalties
  § No leniency guarantee
  § Trigger investigations, civil lawsuits, market repercussions
  § Potential waiver of confidentiality

§ Timing?

§ Which entity/agency?
  § OIG/HHS, DOJ/US Attorney Office
  § State Medicaid Fraud Control Unit
  § CMS Contractors (FI, etc.)

SDP: OIG Self-Disclosure Protocol

§ OIG’s commitment to voluntary compliance

§ Protocol set out recommended investigative & audit measures

§ Protocol is available at OIG’s website: www.oig.hhs.gov
SDP: What to Submit

- Billing for medically unnecessary services
- Billing for services performed by excluded individuals
- E&M Upcoding
- DRG Upcoding
- Duplicate billing
- Alteration of records
- Kickbacks & Stark Law Violations

SDP: Initial Written Disclosure

- Within 60 days of credible evidence per 63 Fed. Reg. 8987, 8998 (Feb. 23, 1998)
- Within 30 days per FCA, 31 U.S.C. 3729(a)(7)(A)-(C)
- Provider/entity information
- Under gov’t investigation?
- Full description of matter
- Type of provider/program affected
- Reasons for belief that violation may have occurred
- Certification
SDP: April 15, 2008 Open Letter

Also need:

$ description of conduct
$ description of self-assessment (or commitment to date of completion)
$ estimate of damages and methodology used to calculate estimate (or commitment to date of completion)
$ laws potentially violated
$ final report within 3 months after acceptance into the Protocol, but no self-assessment if ongoing fraud

SDP: Investigation Guidelines

$ Identify causes of incident or practice
$ Describe origin and continuation of incident or practice
$ Identify departments and related entities affected
$ Impact on health, safety, quality of care?
$ Time period
$ Corporate officials/employees who knew, or should have known, of incident or practice
$ Estimate of monetary impact on federal health program
$ Response taken
Internal Investigation

- Determine scope of allegations
  - involve counsel immediately when appropriate
  - build rapport with source to gain more information
    - external source: show government investigator that company is committed to compliance
    - internal source: show employee that company is making an effective response

- Preserve documents
  - allegation may be tip of iceberg; be over inclusive
  - preservation memo
  - work with IT department to prevent routine purging of e-mail, etc.
  - potential criminal penalties for destruction of evidence
Internal Investigation

- Conduct thorough investigation
  - review and evaluate documents
  - interview witnesses
  - privilege and confidentiality issues
  - compartmentalize information to avoid cross-contamination
  - “civil Miranda” advisements
  - no retaliation for good faith reports

- Remediate
  - End conduct/disciplinary action
  - Enhance procedures, policies, and controls

- Training
  - In house
  - Web-based
  - Documentation of training
  - Refunds (subject to approval)
Internal Investigation

- Audit to verify remediation
- Independent consultants
- Routine internal audits
- Audit can help demonstrate lack of need for CIA or other oversight

Internal Investigation

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- Preserve documents
- Conduct thorough investigation
- Remediate
- Audit to verify remediation
OIG’s Process

$ OIG receives disclosure & verifies if the Provider is already under investigation

$ OIG Agent & Attorney are assigned to:
  $ Verify information contained in submission
  $ Request missing information
  $ Interview parties involved
  $ Evaluate the Provider’s disclosure

OIG’s Process

$ Agent & Attorney review the disclosure and determine appropriate resolution:
  $ FCA Settlement
  $ CMP Settlement
  $ Referral to CMS Contractor for refund
  $ Closed with no recovery or settlement
  $ Compliance obligations
Resolution

$ Resolution may include:
  $ Settlement of CMP at multiplier of impact at lower end of range, i.e., Anti-Kickback rather than Stark (per April 24, 2006 Open Letter)
  $ Settlement of FCA at double damages rather than triple
  $ Refund to CMS Contractor
  $ No recovery/settlement
    $ Exclusion
    $ Prosecution
  $ Ongoing compliance obligations? CIA/CCA?

Stark Law Self-Disclosures

$ Any CMS discretion to compromise Stark Law repayment obligation?
$ OIG Authority to Compromise
$ April 24, 2006 Open Letter
  $ An “initiative” for Stark and AKA self-disclosures to resolve CMPL liability
  $ OIG confers with DOJ, although not binding on DOJ
  $ May settle on lower continuum of multiple of kickback or inducement, and not multiple of claim
**OIG 2009 Work Plan: Hot Topics**

- MA Part A Encounter Data
- MA Bid Admin Costs
- MA Risk Adjustment Validation
- MA Beneficiary Appeals
- MA & D: Deceased members
- Part D Sponsors’ Identification of Fraud & Abuse
- Part D Bid Submission Reviews
- Part D Data Used For Reconciliations

**Red Flags**

- Employee complaints about encounter data/reimbursement
- We are too small for the government to care
- EPSDT: What we don’t know can’t hurt us
- Every other plan markets this way and we need to compete
Thank you!

For more information please contact:

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