



Compliance Programs for Federal Health Care Programs – Part II

By Christy Morrow

The federal government has continually made clear its intent to detect and prosecute anyone who commits healthcare fraud and abuse. In 1976, it established the Office of Inspector General (OIG) under the Department of Health and Human Resources to do just this. Prior to HIPAA (Health Insurance Portability and Accountability Act), most activities involving healthcare fraud were subject to criminal sanctions only through statutes such as the False Claims Act. HIPAA created new criminal statutes specifically for certain healthcare fraud activities. A violator could face monetary fines or imprisonment, or both.

Any medical office treating Medicare patients must be aware of the strict fraud and abuse rules governing them. Any person who is involved in providing healthcare services or advising healthcare providers regarding regulatory issues is exposed to potential involvement in civil or criminal proceedings. This involvement can be either as a witness, a subject, or as a target of an investigation.

A well-designed and properly implemented compliance program is the key to surviving any government investigation. This is a complex matter, but there are a few proactive steps which will allow an entity to respond to regulatory activities and service of legal process.

First, a compliance program must be implemented and well-documented. Compliance programs not only help to identify and prevent errors, but also show the physician is making a good faith effort to submit claims appropriately. It is an important management tool that gives the physician a better grasp of the business side of the practice.

Second, a response plan must be in place. A clear and simple plan will help employees respond appropriately to detected violations through the investigation of allegations and the disclosure of incidents. A response team should be set up with a hotline available to employees that can be reached at anytime regarding an investigation.

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Third, educate all employees, and I do mean ALL. They need to know how to respond to and what to expect from an investigation, as well as, what their rights are. If an employee is approached by a government agent, the agent is not required to tell the employee if the physician is being investigated and generally will receive no warning. An employee or former employee may be approached by interview, subpoena, or search warrant.

If approached for an interview, employees should take the following steps:

1. Ask for identification,
2. Decline the interview until a later date,
3. Tell the employer, and
4. Seek legal counsel.

If served with a subpoena, employees should take the following steps:

1. Ask for identification,
2. Do not turn over any documents requested, and
3. Do not discuss the case with the person who serves the subpoena.

If presented with a search warrant, employees should take the following steps:

1. Cooperate fully within the extent of your rights,
2. Ask for a copy of the search warrant and the business card of the agent in charge,
3. Be sure the office manager or another member of the response team is informed of the situation,
4. Make sure only those items referred to in the search warrant are taken, and
5. Get a written inventory of all items taken before the agents leave the premises.

Remember, investigations by the government are commonplace and seldom result in criminal prosecutions. The mere fact that an inquiry is made does not in any way suggest that an entity has acted negligently or improperly. Each provider to the health industry is well advised to assess its regulatory risk and develop a Corporate Compliance Program that includes procedures for responding to government audits and investigations.



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