

An Introduction to the OIG's Compliance Guidelines

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The preeminent topic for debate, discussion and potential confusion amongst practitioners today is unquestionably the “OIG Compliance Program for Individual and Small Group Physician Practices” as issued by the Office of the Inspector General (OIG) of the US Department of Health and Human Services (HHS).

Despite the enormous obligations placed on physicians under these new OIG guidelines, every physician should be aware that the guidelines (a) are not mandatory and (b) do not provide physicians with a readily adoptable compliance program or outline. Rather, the guidelines offer a “procedural and structural” skeleton on “fundamental elements” and “principles” that physicians must consider in “developing and implementing their own “effective compliance programs.”

Full Implementation of the OIG guidelines will require physicians to craft compliance programs that meet the following seven elements:

1. Conducting internal monitoring and auditing through the performance of periodic audits.
2. Implementing compliance and practice standards through the development of written standards and procedures.
3. Designating a compliance officer or contract(s) to monitor compliance efforts and enforce practice standards.
4. Conducting appropriate training and education on practice standards and procedures.
5. Responding appropriately to detected violations through the investigation of allegations and the disclosure of incidents to appropriate government entities.
6. Developing open lines of communication, such as (1) discussions at staff meetings regarding how to avoid erroneous or fraudulent conduct and (2) community bulletin boards, to keep practice employees updated regarding compliance activities.
7. Enforcing disciplinary standards through well-publicized guidelines.

Although the OIG claims to recognize that full implementation may not be feasible for all

physicians' practices, it does require that physicians must show, as a first step, that they have engaged in good-faith implementation. In contrast, however, any failure to demonstrate efforts to implement an effective, ongoing compliance program will result in increased exposure to liability, with dramatic penalties.

According to the OIG, the “benefits” to be derived from such compliance programs would include:

- The development of effective internal procedures within physicians' offices to ensure compliance with regulations, payment policies, coding rules.
- Avoidance of conflicts with the self-referral and anti kickback statutes.
- Improved medical record documentation.
- Improved education for practice employees.
- Minimized billing mistakes, a reduction in the denial of claims, and quicker proper payment of claims.
- More streamlined business operations through better communication and more comprehensive policies.
- Reduced chances of an audit by the Health Care Financing Administration (HCFA) or OIG.
- The avoidance of potential liability arising from noncompliance.
- Reduced exposure to penalties.

While any actual achievement pattern for these “benefits” has yet to be discerned, what is without debate is the fact that the OIG guidelines send a clear message that every physician must anticipate future reviews, conducted under a dramatically increased level of scrutiny. Even though the OIG characterizes the implementation of a compliance program as “voluntary,” failure to implement a compliance program will shift the burden from the government proving that a physician has engaged in criminal activity to requiring a physician to prove that he or she has not “deliberately” remained ignorant of government requirements.

Under this new climate of essentially “coerced compliance,” the perception is growing exponentially that the development and implementation of (and adherence to) a sound compliance program is fundamental to the conduct of a successful (and lawful) practice. Whether physicians agree with the root cause for such perceptions, that fact remains that the failure to implement an effective, ongoing compliance program will result in increased exposure to liability for dramatic penalties.