

LEGAL ALERT

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HEALTH CARE LAW UPDATE

OIG Issues Draft Compliance Program Guidance for Individual and Small Group Physician Practices

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On June 7, 2000 the Office of Inspector General ("OIG") published its Draft Compliance Program Guidance for Individual and small Group Physician Practices. This Draft Guidance applies to all doctors of medicine or osteopathy, all doctors of dental surgery or dental medicine, all podiatrists, all optometrists, and all chiropractors. Portions of the Draft Guidance also apply to other independent practitioners such as psychologists, physical therapists, speech language pathologists, and occupational therapists. The OIG will accept comments for 45 days after the Draft Guidance is published in the Federal Register on June 12, 2000. After reviewing the comments it receives, the OIG will publish a final version of the Guidance later this year.

Corporate compliance programs contain policies and procedures designed to ensure compliance with federal and state law, with an emphasis on compliance with Medicare and

Medicaid reimbursement requirements. An effective corporate compliance program can help protect a physician by reducing his or her exposure to monetary fines and criminal sanctions following an investigation.

While the Draft Guidance acknowledges the "voluntary" nature of such plans, the OIG unambiguously states its expectation that all physician practices, regardless of size, structure or available resources, should develop and implement a compliance program of some form. Therefore, even though these comment guidelines appear only in "draft" form, we recommend that physicians not delay in beginning to develop a compliance program. Historically, the OIG has not made significant revision to its compliance guidance in going from proposed to final version, and no major changes are expected in this case.

The Draft Guidance stresses the need for serious and meaningful efforts that represent a long-term

commitment to a culture of compliance rather than a superficial or hastily constructed program. Therefore, purchasing a "canned" or pre-packaged compliance program is generally discouraged and thought to be an unproductive use of resources.

To develop an efficient compliance program, this Draft Guidance mandates that all physician practices address seven basic elements the OIG has deemed fundamental:

1. Establishing compliance standards through the development of a code of conduct and written policies and procedures;
2. Assigning compliance monitoring efforts to a designated compliance officer or contact;
3. Conducting comprehensive training and education on practice ethics, policies and procedures;
4. Conducting internal monitoring and auditing

focusing on high-risk billing and coding issues through performance of periodic audits;

5. Developing accessible lines of communication, such as discussions at staff meetings regarding fraudulent or erroneous conduct issues in community bulletin boards, to keep practice employees updated regarding compliance activities;
6. Enforcing disciplinary standards by making clear, or ensuring employees are aware, that compliance is treated seriously and that violations will be dealt with consistently and uniformly; and
7. Responding appropriately to detected violations through the investigation of allegations and the disclosure of incidents to appropriate Government entities.

Beyond these elements, some of the most significant aspects of this Draft Guidance are the requirement of formal written policies and procedures in small office settings, the designation of a compliance officer in a small office setting, and the mandatory review of all contracts, verbal and written, by legal counsel familiar with anti-kickback, false claims, and Stark laws.

The OIG unambiguously states that written policies and procedures are essential to all physician practices regardless of size and capability. Where resources are an issue,

physicians are advised to focus first on risks that are most likely to arise in their operations. The OIG has identified coding and billing, reasonableness and necessity of services, documentation, and improper inducements, kickbacks, and self-referrals as major risk areas for physician practices. The Draft Guidance suggests that it may be helpful to develop policies for employee hiring and retention, coding and billing competency and responsibilities, general marketing, patient quality of care, patient outreach and communication and correct coding initiatives. It may also be helpful to develop systems for the creation, maintenance and updating of encounter forms, including the registration form, history and physical form and charge master.

Under the Draft Guidance, each physician is expected to compile and implement HCFA's instructions and bulletins, the summaries of key OIG documents such as Special Fraud Alerts, Advisory Bulletins, inspection and audit reports, and the OIG's work plan.

Physicians are expected to designate a compliance officer. This person is responsible for overseeing the practice's compliance program. If having a compliance officer is not feasible, the practice can assign, in their policies and procedures, certain employees as "compliance contacts." Another way a practice can meet the compliance officer requirement is to hire a third

party to sufficiently interact with the practice, such as a consultant or attorney, to serve as the practice's compliance officer. The compliance officer's primary duties include overseeing and monitoring the program, reviewing the program periodically and making appropriate changes as needed.

We strongly urge you to read the Draft Compliance Program Guidance for Individual and Small Group Physician Practices. You can access the Draft Guidance through the link at our web site, http://www.shrr.com/law_links.htm

We also strongly urge you to initiate or accelerate the implementation of a meaningful corporate compliance program with your own practice.

- Given the volume of daily administrative tasks facing the individual physician and group physician practice these days, we recommend that you begin to focus on and assess your actions in the following areas:
- Knowledge of local medical review policies
- Use of advanced beneficiary notices
- Certification of DME and home health services
- Billing for non-covered services
- Patient anti-dumping statute

- Teaching physician billing and documentation
- Third-party billing services
- Professional courtesy
- Space rental agreements.

Smith Haughey Rice & Roegge is uniquely situated to assist physicians in implementing compliance programs. Our attorneys and consultants have extensive experience working closely with physicians in all areas of law. Because of this experience, the firm is well

situated to act as a partner in the creation of cost-effective corporate compliance programs. We are able to identify and evaluate systems and policies that physicians already have in place, and when feasible, modify and upgrade them, resulting in less disruption and adjustment than with an entirely new set of systems and policies. Our services can be performed expeditiously and thoroughly because of our familiarity with and understanding of physician practices. Compliance

programs for individual and small group practices should not be overly burdensome in their cost or demand on human resources. They should be created with controlled, deliberate progress consistent with the capacity and risks to the practice

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