

## **OIG Issues Special Advisory Bulletin On Practices Of Consultants**

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Recently, the Department of Health and Human Services (“DHH”) Office of Inspector General (“OIG”) issued a Special Advisory Bulletin (“Bulletin”) alerting providers, suppliers, and practitioners involved in the health care industry to certain marketing and other practices used by consultants. According to the Bulletin, while certain business practices may not actually rise to the level of fraud and may not be illegal, such practices increase the risk of abuse of the Medicare and Medicaid programs. By publishing the Bulletin the OIG is encouraging providers, suppliers and practitioners to recognize and protect themselves and the Medicare and Medicaid programs against such questionable practices.

The Bulletin provides that while the OIG believes that most consultants (such as accountants, attorneys, business advisors and reimbursement specialists) are honest and that the vast majority provide legitimate services, the OIG has been alerted to a small minority of unscrupulous consultants engaging in improper practices or encouraging abuse of the Medicare and Medicaid programs. The OIG warns that these practices expose both the consultants and their clients to potential legal liability and that the hiring of a consultant does not relieve the provider of responsibility for ensuring the integrity of its dealings with the Medicare and Medicaid programs.

The Bulletin alerts providers to the following questionable business practices:

### Illegal or Misleading Representations

Consultants may make illegal or misleading statements or representations about their relationship with the Medicare or Medicaid programs or the OIG. For example, consultants may misrepresent that they have “inside” or “special” access to the OIG or to OIG materials. In other cases, consultants may represent that their services or products are approved, certified, or

recommended by Medicare, Medicaid, HHS, or the OIG. Illegal or misleading statements or representations include, for example:

An educational consultant misrepresenting that its Medicare reimbursement seminars are mandatory for obtaining or maintaining a Medicare provider number. Although such training may be valuable, the Medicare program does not require a provider to attend training courses in order to participate in the Medicare program.

- A consultant misrepresenting that providers who failed to attend its “Medicare-sanctioned” seminars would be subject to government penalties when in truth, the government does not penalize providers for such conduct.
- A consultant improperly using Federal program logos or symbols on its marketing materials.
- A consultant claiming it was recommended by the OIG when in truth the OIG does not recommend or endorse particular consultants or their services.
- A compliance consultant falsely asserting that it offers recognized accreditation or certification for compliance programs or compliance officers.

#### Promises and Guarantees.

Consultants may explicitly or implicitly promise or guarantee specific results that are unreasonable or improbable. In some cases, consultants may resort to improper means to effectuate these promises or guarantees, such as submitting false claims or preparing false cost reports on behalf of a client. Problematic promises would include, for example:

- A valuation consultant promising or assuring a client that its appraisal of a physician’s practice will yield a “fair market value” that satisfies the client’s need for a particular valuation, regardless of the actual value of the practice.
- A billing consultant promising a prospective client that its advice or services will produce a specific dollar or percentage increase in the client’s Medicare reimbursements. The consultant’s fee is often based on a percentage of this increased reimbursement.

### Encouraging Abusive Practices.

In some cases, reimbursement specialists or other consultants have advocated that their clients engage in aggressive billing schemes or unreasonable practices that are fraudulent or abusive of the Medicare and Medicaid programs. For example:

- A reimbursement specialist may suggest that a client use inappropriate billing codes in order to elevate reimbursement and describe methods to avoid detection.
- A consultant may encourage a client to modify or customize routine medical supplies in an insignificant manner to justify billing the supplies as a device that generates higher reimbursement.
- A reimbursement specialist may advise a client to bill for an expensive item or service with a high reimbursement rate when a less expensive item or service with a lower reimbursement rate was actually provided to the patient.
- A consultant may advise a client to adopt a patently unreasonable interpretation of a reimbursement law, regulation, or rule to justify substantially greater reimbursement.
- A consultant may promise to increase Medicare revenues for laboratory services by showing its clients how to disguise double billings and claims for medically unnecessary services.
- A consultant may suggest the creation of deceptive documentation in order to mislead potential reviewers.

### Discouraging Compliance Efforts.

Some consultants may make statements that a client should not undertake certain compliance efforts (such as retrospective billing reviews) or cooperate with payor audits, regardless of the client's circumstances. As reflected in OIG's compliance guidances, the OIG believes that voluntary compliance efforts, such as internal auditing and self-review, are important tools for doing business with the Federal health care programs. Left undetected and, therefore, unchecked and uncorrected, improper billing or other conduct may exacerbate fraud and abuse problems for a provider in the future.

Conclusion:

Because the potential legal and financial expose that can result from such practices, providers, suppliers and practitioners in the health care industry are urged to be cautious when selecting and relying on business consultants. If a consultant's advice appears to be too good to be true, it probably is.

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