

The Compliance Revolution *Will* Be Televised: As Government Turns Up Heat on Healthcare Fraud, OIG Videos Offer Practical Compliance Pointers

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The U.S. Department of Health and Human Services (HHS) Office of Inspector General's (OIG's) Health Care Fraud Prevention and Enforcement Action Team (HEAT) has garnered headlines for its coordinated Medicare fraud criminal sweeps. However, the team is not just focused on enforcement; since February, HEAT has hosted a series of compliance trainings throughout the country for compliance professionals, healthcare businesses, and in-house counsel.¹ On Friday, June 3, OIG posted a video of the Washington, D.C. training on HEAT's website, <http://oig.hhs.gov/heat/>. In addition to a video of the complete 3-hour, 45-minute training, OIG will release a series of shorter videos broken down into discrete subject areas so viewers can choose which segments to watch. Presentation slides for the training and 11 related handouts are also available on the HEAT website. These materials offer a valuable tool healthcare organizations can use to develop or deliver internal compliance training and to raise internal awareness of compliance. Compliance professionals will want to ensure that annual and effectiveness review efforts acknowledge these OIG materials as part of any effectiveness review.

Compliance Training Overview

The training, "Take the Initiative: Cultivate a Culture of Compliance with Health Care Laws,"² features remarks from Inspector General Daniel Levinson, and offers guidance on compliance fundamentals. This is useful information for any healthcare business involved in federal or state healthcare programs. In the training, OIG addresses the following subjects:

- Navigating healthcare fraud and abuse laws
- Compliance program basics
- How to navigate the Centers for Medicare and Medicaid Services (CMS) and its partners when compliance issues arise
- Healthcare fraud enforcement initiatives
- Effectiveness reviews

1. Sessions were held in Houston, Texas; Tampa, Florida; Kansas City, Missouri; Baton Rouge, Louisiana; Denver, Colorado; and Washington, D.C. (information is available online at <http://compliance.oig.hhs.gov/enrollment.html>, last visited on June 1, 2011).

2. HEAT Provider Compliance Training Presentation, "Take the Initiative: Cultivate a Culture of Compliance with Health Care Laws," is available online at <http://oig.hhs.gov/compliance/provider-compliance-training/files/Provider-Compliance-Training-Presentationv2.pdf> (last visited June 1, 2011).

To assist organizations in addressing new obligations related to health reform, or the Patient Protection and Affordable Care Act (PPACA), supplemental materials include the Inspector General's (IG's) list of questions that compliance professionals should ask as they prepare for health reform.³ The IG's questions cover three priority areas: transparency, quality, and accountability.

- Transparency questions probe the adequacy of systems and technology necessary for complying with new reporting and disclosure requirements, as well as the security and privacy protections necessary to protect underlying data.
- Quality questions consider proper charting and reporting of quality of care, getting compliance departments involved in discussions and decisions about quality, the degree of quality expertise within the compliance department, and board and management awareness of the heightened role of quality of care under health reform.
- Accountability questions address compliance plan development; screening of individuals or businesses; risk areas associated with new payment and delivery systems (such as medical homes, accountable care organizations, and value-based purchasing); quality of care compliance obligations; and data mining to detect improper claims.

In its discussion of key fraud and abuse laws, OIG offers tips on Stark Physician Self-Referral Law and Anti-Kickback Statute compliance. Stark risk areas highlighted include documentation of financial relationships with referring physicians, lease valuations, productivity bonuses, and gifts. Anti-Kickback compliance tips emphasize the “one-purpose test,” which deems a payment an illegal kickback where any part of a payment is determined to be for the purpose of inducing the referral of Medicare or Medicaid items or services. Additional pointers address compliance with fair market value requirements, and ensuring that payments are for legitimate services that are actually performed.

Recommendations regarding provider exclusions are also included. OIG continues to recommend that healthcare entities and professionals screen against the OIG exclusion list at www.oig.hhs.gov/fraud/exclusions.asp, make voluntary self-disclosures⁴ of instances of employing excluded individuals, and maintain documentation of exclusion list searches performed on employees or contractors.

An important compliance enhancement for the provider and supplier workforce is to ensure all licensed healthcare professionals providing services by contract or employment remain in full licensure status. Credentialing and licensure failures can lead to overpayment liability in many circumstances.

In addition to addressing the seven fundamental components of an effective compliance program, OIG offers its own practical tips for implementing effective compliance programs:

1. Make compliance plans a priority.
2. Know your fraud and abuse risk areas.
3. Manage financial relationships.

3. HEAT Provider Compliance Training Presentation Materials, “Some Questions Compliance Professionals Should Ask as They Prepare for Health Care Reform,” are available online at <http://oig.hhs.gov/compliance/provider-compliance-training/files/HealthCareReformQsforComplianceProfessionals508.pdf> (last visited June 1, 2011).

4. HHS OIG Voluntary Self-Disclosure Protocol is available online at <http://oig.hhs.gov/authorities/docs/selfdisclosure.pdf> (last visited June 1, 2011).

4. Just because your competitor is doing something doesn't mean you should.
5. When in doubt, ask for help.

OIG also advises that organizations involve the board of directors in establishing compliance programs, monitoring risk areas, and developing benchmarks and goals for compliance effectiveness. The issue of board and management accountability is prominently referenced in recent OIG corporate integrity agreements (CIAs) with management accountability certifications and independent board compliance resources and compliance reviews. The OIG CIAs continue to be an important benchmarking resource. In addition, in supporting materials addressing measurements of compliance program effectiveness, OIG instructs companies to evaluate whether the compliance program has sufficient funding and supporting.⁵

To help organizations navigate CMS, the presentation offers several useful resources, including listings of key CMS officials, maps, explanations regarding Medicare and Medicaid program contractors, and websites for CMS entities and contractors involved in program integrity or fraud detection and prevention.

HEAT Enforcement Initiative

After the prosecution successes of the Department of Justice (DOJ) and HHS Medicare Fraud Strike Force, in 2009 DOJ and HHS announced the creation of HEAT, a multiagency effort aimed at aggressively pursuing Medicare fraud enforcement and expanding Strike Forces in fraud “hot spots” nationwide. Since its inception, HEAT has established Strike Force fusion centers in nine fraud hot spots: Baton Rouge, Brooklyn, Detroit, Houston, Los Angeles, Miami-Dade, Tampa Bay, Dallas, and Chicago. HEAT employs state-of-the-art technology to attempt to identify fraud in real-time and uses collaborative data sharing between DOJ and HHS to track fraud and abuse patterns.

Since 2007, Strike Force efforts have resulted in charges against more than 990 individuals involving \$2.3 billion in alleged false billings to Medicare. In a one-day sweep in February 2011, the Strike Force charged 111 individuals in Miami, Brooklyn, Chicago, and Baton Rouge with Medicare fraud involving more than \$225 million in alleged false billings related to home healthcare, durable medical equipment, diagnostic testing, physical therapy, and prescription drug claims.

As OIG and DOJ expand their fraud and abuse enforcement efforts, and new laws put healthcare professionals and entities under closer regulatory scrutiny, the effective review of compliance programs that address key risk areas and foster a culture of compliance is essential for healthcare businesses and professionals. Morgan Lewis will continue to monitor HEAT and OIG enforcement developments and provide further updates as new materials are released.

If you have any questions or would like more details on any of the information discussed in this LawFlash, please contact its authors, **Kathleen McDermott** (202.739.5458; kmcdermott@morganlewis.com) and **Arianne Callender** (202.739.5280; acallender@morganlewis.com).

5. HEAT Provider Compliance Training Presentation Materials, “Operating an Effective Compliance Program,” are available online at <http://oig.hhs.gov/compliance/provider-compliance-training/index.asp> (last visited June 1, 2011).

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