Over 3 Billion Reasons to Know the Government's Plan

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Civil cases involving fraud against the government continue to be lucrative for the federal government. For the second year in a row, the federal Department of Justice recovered over $3 billion relying on the federal False Claims Act (and its treble damages provision). In fiscal year 2011, $2.4 billion of the $3 billion recovery came from alleged fraud against federal health care programs, such as Medicare and Medicaid that were paid by health care providers and suppliers. Anticipate continued aggressive enforcement against providers in 2012, and take the time now to review your compliance with health care laws and regulations.

How can you protect yourself? A myriad of laws and regulations affect hospitals, and you can best protect your business by following these three steps. First, know what the government is interested in. Second, consider which of the government's concerns apply to your hospital, assess how your hospital handles these concerns in practice, and develop a plan to address vulnerabilities. Third, seek appropriate counsel if you determine that your current practices may subject your hospital to governmental scrutiny.

How do you find out what the government is reviewing? Review the work plan issued by the lawyers for the federal Department of Health and Human Services (HHS) and the Office of Inspector General (OIG). This publicly available plan identifies the arrangements or activities that the OIG believes are sensitive to fraud and abuse. Each year, the OIG Work Plan includes some initiatives from the prior year(s) along with new concerns. The Work Plan identifies 23 initiatives focused on hospitals, but only six are new this year. The new initiatives include (1) accuracy of present-on-admission indicators submitted on Medicare claims, (2) review of Medicare inpatient and outpatient payments to acute care hospitals through focused reviews of claims, (3) acute-care hospital inpatient transfers to inpatient hospice care with an eye toward financial relationships/ownership between the two providers, (4) Medicare outpatient dental claims, (5) appropriateness of admissions to inpatient rehabilitation facilities, and (6) profiling of critical access hospitals as to their structure and types of services provided. Several existing initiatives were added through the Affordable Care Act (same day admissions, reliability of hospital-reported quality measure data); others have been ongoing for several years.

Remember that the government is armed with new, expansive powers under health care reform and has every incentive to review claims for overpayments. The government will use data mining, sampling, and other comprehensive methods to identify risky claims and submitters of these claims. Assess your practices now to make sure your facility isn't contributing to a record-breaking fraud recovery next year.

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