

OIG Speaks on Providers' Use of Business Consultants

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INTRODUCTION

The Office of Inspector General ("OIG") issued a Special Advisory Bulletin in June 2001 that alerts providers who engage the services of consultants to certain questionable practices employed or promoted by an unscrupulous few consultants that could result in providers making unnecessary expenditures or could expose them to potential legal liability. The bulletin, titled "Practices of Business Consultants," available at <http://www.oig.hhs.gov/frdalrt/consultants.htm>, encourages providers to recognize and protect themselves and the Medicare and Medicaid programs against these questionable practices.

The OIG recognizes that consultants--such as "accountants, attorneys, business advisors, and reimbursement specialists"--"play an integral role in developing and maintaining" programs that improve the efficiency and effectiveness of providers' operations while also improving the integrity of the health care system by enhancing the accuracy of the providers' claims and ensuring the providers' compliance with applicable laws, regulations, and rules. Instead of discouraging providers from engaging consultants, the bulletin purports to enlist providers' help in maximizing the potential value of consultants by purging the ranks of consultants of dishonest elements. To safeguard themselves, providers engaging the services of consultants should be alert to the certain questionable practices. Specifically, the OIG alerts providers to four broad areas of practices which, it states, "may not themselves rise to the level of fraud and may not be illegal in all cases, [but] increase the risk of abuse of the [Federal] programs":

- *Illegal or misleading representations;*

- *Promises of improbable results;*
- *Encouraging abusive practices; and*
- *Discouraging compliance efforts.*

This article discusses each of these areas briefly in turn.

ILLEGAL OR MISLEADING REPRESENTATIONS

The bulletin warns that consultants may make illegal or misleading statements about their relationship with the Medicare program, the Centers for Medicare and Medicaid Services ("CMS"), or the OIG. For example, consultants may represent that their services or products are approved, certified, or recommended by Medicare, CMS, the Department of Health or Human Services, or the OIG. In fact, the OIG and other federal agencies do not recommend or endorse particular consultants or particular consultants' services. Alternatively, an educational consultant may represent that its Medicare reimbursement seminars are mandatory for obtaining or maintaining a Medicare provider number. In fact, the Medicare program does not require a provider to attend training courses in order to participate in the Medicare program.

PROMISES OF IMPROBABLE RESULTS

The OIG cautions that consultants may expose providers to liability under the False Claims Act by promising specific, improbable results and then resorting to improper means--such as submitting false claims or preparing false cost reports on behalf of the provider--to effectuate these promises. For example, a billing consultant may promise that its advice or services will produce a specific dollar or percentage increase in the client's Medicare reimbursements. Providers ought to be wary of such promises, especially if the consultant proposes a fee arrangement which gives him a proprietary interest in the promised increased reimbursement--e.g., a contingent fee arrangement. The consultant might resort to submitting false claims on behalf of the provider in an attempt to secure the promised increased reimbursement.

While contingent fee arrangements are not illegal *per se*, providers and consultants should avoid contingent fee arrangements because they create the incentives that the OIG questions. Consultants should advise providers in the requirements for compliant and accurate documentation in all circumstances without regard to financial impact. Consultants should not have any incentive or opportunity to create the false claims that concerns the OIG.

ENCOURAGING ABUSIVE PRACTICES

The bulletin warns providers not to adopt recommendations that they engage in aggressive billing schemes or unreasonable practices that are fraudulent or abusive of the Medicare or Medicaid programs. It warns that "hiring a consultant does not relieve a provider of responsibility for ensuring the integrity of its dealings with the Federal health care programs." Thus, a provider ought to disregard

recommendations that it use inappropriate billing codes in order to elevate reimbursement and methods to avoid detection; a provider should dismiss suggestions that it 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 provider should ignore suggestions that it create deceptive documentation in order to mislead potential reviewers.

Instead, providers should seek out the many competent and honest consultants who can help them to institute more complete and accurate documentation practices than they currently use. The providers are ultimately responsible for creating and verifying the truth of the documentation. Documentation and coding practices should strictly follow the Coding Clinic for ICD-9-CM, the definitive authority for Medicare coding issues.

DISCOURAGING COMPLIANCE EFFORTS

The OIG cautions providers against heeding the advice of a consultant who tells them that they should not undertake certain compliance efforts (such as retrospective billing reviews) or that they should not cooperate with payer audits. The OIG makes clear that it believes that voluntary compliance efforts, such as internal auditing and self-review, are important tools for doing business with the Federal health care programs. It suggests that providers can forestall fraud and abuse problems by engaging consultants who encourage and enable compliance efforts.

CONCLUSION

The OIG recognizes and approves of providers' use of consultants in helping them to comply with the complex web of laws and rules regulating the provision of health care. The Special Advisory Bulletin it issued in June 2001 constitutes its attempt to ensure that providers are vigilant in selecting and relying upon consultants.

BIOGRAPHY

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NOTE: This site includes a summary of certain compliance issues facing healthcare providers today. This site does not, and is not intended to, give legal advice. Reference should be made to full text of statutes and regulations for complete analysis. Consultation with competent counsel is strongly recommended.

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