



Monthly Compliance News

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October 2022



OIG/DOJ Enforcement

In September 2022, there were 39 OIG health care fraud enforcement cases.

- **25 of the cases involved criminal charges.**
- **In 14 cases, enforcement was at the owner/executive level.**
- **Trends include:**
 - **Medical necessity**
 - **Kickbacks**
 - **Genetic testing**
 - **DME**
 - **False statements or documentation**



False Claims / Health Care Fraud Enforcement

According to the DOJ, 4,200 defendants have been charged and more than \$19 billion has been collected from the program's start in 2007 through May 2022.

The Department of Justice uses its Criminal Division Health Care Fraud Strike Force Program to battle health care fraud. The program continues to evolve with the creation of the National Rapid Response Strike Force in 2020 to focus on fraud cases that involve larger or regional health care providers operating in multiple jurisdictions.

Cost report fraud

- **Who:** Non-profit Maranatha Human Services, Inc.
- **What:** False claim
- **Allegations:** Cost report "allowable expenses" included excessive salaries to its founder's relatives, and personal expenses.
- **Settlement:** \$850,000.

Unlawful practice of medicine

- **Who:** A physician assistant
- **What:** The physician assistant's license was suspended in July 2021. The physician assistant continued to treat mental health patients by using the identities of other practitioners.
- **Indictment:** Charged with seven counts of health care fraud and four aggravated identity theft charges.

More False Claims / Health Care Fraud Enforcement:

“One of the top outliers for billing”

- **Who:** An eye doctor and his company
- **What:** False claims
- **Allegations:** Billing for medically unnecessary injections for age-related macular degeneration.
- *** The OIG found these false claims because it identified the eye doctor as “one of the top outliers for billing the Medicare program across all medical specialists in West Virginia.”**
- **Settlement:** \$907,075



Kickback Enforcement

The Federal Anti-Kickback Statute makes it a criminal offense to offer, solicit, pay or receive any remuneration to induce or reward referrals of items or services reimbursable by a federal health care program such as Medicare or Medicaid. “Remuneration” can mean anything of value, such as money, free goods or services, discounts, or cross-referrals. This means it is illegal to give or receive (or attempt to give or receive) anything of value for Federal health care program referrals (i.e., Medicare and Medicaid patients).

Examples of kickbacks enforcement:

DME kickbacks and false claims

- **Who:** A sleep and respiratory durable medical equipment manufacturer
- **Allegations:**
 - **Kickbacks.** Provided DME suppliers with physician prescribing data free of charge. The data could assist DME suppliers with their physician marketing efforts.
 - **False claims.** DME suppliers then used the data to submit claims for ventilators, oxygen concentrators, CPAP and BiPAP machines, and other respiratory-related medical equipment
- **Enforcement action:** \$24 million settlement; 5-year Corporate Integrity Agreement

Improper loan violates anti-kickback statute and false claims act

- **Who:** Same sleep and respiratory equipment manufacturer
- **Allegations:**
 - **Kickbacks.** The company helped a DME supplier obtain an interest-free loan and guaranteed the loan upon default.
 - **False claims.** The loan may influence medical decisions for financial reasons rather than what is best for the patient.
- **Enforcement action:** \$1.2 million settlement and 5-year corporate integrity agreement

OIG Work Plan

In September 2022, the OIG added four items to its Work Plan:

Recently Added Items

Announced	Agency	Title	Component	Report Number(s)
September 2022	Centers for Medicare and Medicaid Services	Medicaid Managed Care Plans' Focus on Fraud Referrals	Office of Evaluation and Inspections	OEI-03-22-00410
September 2022	Centers for Medicare and Medicaid Services	Hospital Price Transparency	Office of Audit Services	WA-22-0013 (W-00-22-35890)
September 2022	Centers for Medicare and Medicaid Services	Inpatient Rehabilitation Facility Nationwide Audit	Office of Audit Services	WA-22-0014 (W-00-22-35891)
September 2022	Administration for Children and Families	Protecting Children in Foster Care From Identity Theft	Office of Evaluation and Inspections	OEI-07-22-00510

MPA recommends reviewing the recently added work plan items every month, determining if any items are relevant to your organization, and documenting your review and any audits or other compliance action items that are necessary.

OIG Advisory Opinion

The OIG issued Advisory Opinion No. 22-18, involving “a proposal to incentivize the Medigap Plan policyholders to seek inpatient care from a hospital within the PHO’s network.”

The proposed arrangement includes the following incentives:

- Discount on the Medicare Part A inpatient deductible
- \$100 premium credit to each Policyholder who selects a Network Hospital for a Medicare Part A-covered inpatient stay
- The Medigap Plan would pay the PHO a monthly administrative fee as compensation for establishing the hospital network and the Medicare Part A inpatient deductible discount arrangement.

The OIG concluded that the proposed arrangement would not result in the imposition of sanctions against the Medigap Plan or PHO.

OIG Advisory Opinion - New template

The OIG issued a template that parties can use to submit advisory opinion requests. The template is voluntary, but can help prepare a submission.

Nursing Home Lawsuit News

Intentional understaffing. A lawsuit filed against six Chicago nursing homes alleges intentional understaffing, which led to endangering residents, illness, and injury.

Racial abuse. The U.S. Equal Employment Opportunity Commission (EEOC) sued a Vermont nursing home over racial abuse claims. The lawsuit alleges that the nursing home violated federal law when it permitted Black employees to be subjected to racial harassment, which included racial slurs and physical assaults.

From the Blog

Time versus Money: What's in your compliance budget?

By Margaret Scavotto, JD, CHC

A compliance officer recently asked me: How much do healthcare providers typically budget for compliance?

I'm sharing my answer on the blog, because it's a common question - and while there are multiple answers and no "right answer" - there are guidelines that apply to most organizations.

The size of your compliance budget is based on a consideration of two variables: 1) your resources (personnel time and expertise); and 2) the level of compliance risk that is acceptable to the leadership of the organization.

Here are some items we like to see in a compliance budget:

Compliance Officer

- **Compliance Officer salary (or, contract amount for an outside consultant. For example, MPA provides outsourced compliance support to providers who cannot dedicate sufficient staff hours in-house)**
- **Education and training for the Compliance Officer. This could include HCCA membership, attendance at the annual HCCA meeting, and webinars/CEUs.**

Policies, procedures, and audit tools

- **Staff time and expertise to draft policies and audit tools, and continually update them. OR a budget for purchasing policies and audit tools.**

Training

- **Compliance training for employees**
- **Compliance training for the Board**
- **Compliance Week. This is optional! And I have seen successful compliance weeks with a small budget (\$300 (for prizes, treats, and printing flyers)**
- **Any other compliance-related training that is not otherwise included in the budget. For example, HIPAA training, QAPI training, etc.**

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1) your resources (personnel time and expertise); and

2) the level of compliance risk that is acceptable to the leadership of the organization.



Audits

- **Third party audits if used. For example, a third party vendor comes in to conduct therapy documentation audits.**
- **Exclusion screening vendor (if not included in HR budget)**
- **Compliance program annual review (if not done internally)**
- **HIPAA Security Risk Analysis (if not done internally)**
- **Any other compliance-related audits that are not otherwise included in the budget**
- **Compliance survey (if a third party is used or if there is a cost with a survey software program)**

Legal

- **Legal review of compliance issues (if not included in legal expenses line item of budget)**

Other Vendors

- **Anonymous compliance hotline (if outsourced to a vendor)**

It's all relative

It can also be helpful to consider how much is spent on compliance versus other departments. Did Compliance Week get a "no" in the budgeting process - but a ski retreat for the Board got a "yes"? That raises an eyebrow about the organization's commitment to compliance. On the other hand, if the compliance department asked for \$4,000 for stress balls with the hotline number on them, and there simply isn't money for that - but \$300 for printing flyers and buying candy was approved, that could be seen as reasonable.

Time IS money

One more factor to consider – if these items are done in-house, time needs to be budgeted. If there isn't time, then money needs to be budgeted to use outside help. If neither time or money is budgeted, it doesn't get done. Time also includes an opportunity cost. Any time devoted to compliance comes at a reduction in time devoted to other tasks or responsibilities.

Not enough time for compliance? MPA can help

MPA has compliance policies and other tools for download on our store. We can also conduct your compliance program annual review.



Margaret Scavotto, JD, CHC
President
Management Performance Associates
314.394.2222 ext. 124
12166 Old Big Bend Road, Suite 303
Kirkwood, MO 63122
mcs@healthcareperformance.com



Scott T. Gima, RN, MHA
Executive VP & COO
Management Performance Associates
314.394.2222 ext. 121
12166 Old Big Bend Road, Suite 303
Kirkwood, MO 63122
stg@healthcareperformance.com

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