

## **THE OIG'S NEW ROADMAP ON AVOIDING FRAUD AND ABUSE – A HELPFUL TOOL FOR ALL PHYSICIANS.**

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On November 5, 2010, the Office of Inspector General (“OIG”) released its most recent compliance guidance for physicians. This latest guidance is an informational pamphlet targeted to new physicians entitled: *A Roadmap for New Physicians: Avoiding Medicare and Medicaid Fraud and Abuse*. The document can be accessed at [www.oig.hhs.gov](http://www.oig.hhs.gov). According to the OIG, the purpose of this *Roadmap* is to educate medical students, residents, and fellows about fraud and abuse and how to avoid violating the applicable Federal laws.

While the *Roadmap* is intended as a primer for new physicians, it is an excellent resource for established practitioners as well. In fact, given that the health care environment has drastically changed over the years, physicians of all experience levels can benefit from a fraud and abuse refresher. This is particularly true since physicians must understand that they are personally liable for claims submitted under their NPIs regardless of whether or not they personally code or bill the services. Although a physician can certainly delegate such tasks from a business and administrative perspective, the physician continues to have a significant stake in ensuring compliance. Some physicians are surprised to learn that every CMS 1500 form that is submitted contains a certification statement wherein the physician personally attests that the services were medically necessary and that (absent an exception permitted under the regulations), he or she personally furnished the service.

The *Roadmap* should be viewed as a starting point only as it does not, nor does it purport to, comprehensively address all red flag issues. CMS has published a more comprehensive physician guide that physicians should also consider reviewing entitled “Medicare Physician Guide: A Resource for Residents, Practicing Physicians and Other Health Care Professionals” available at [www.cms.gov/MLNProducts/downloads/physicianguide.pdf](http://www.cms.gov/MLNProducts/downloads/physicianguide.pdf).

### **The Roadmap**

The *Roadmap* summarizes the elements of the five main Federal fraud and abuse laws impacting physicians - the False Claims Act, the Anti-Kickback Statute, the Physician Self-Referral Law (Stark Law), the Exclusion Statute, and the Civil Monetary Penalties Law. It then provides tips on how physicians should comply with these laws in what the OIG considers the three “most common” relationships that physicians encounter in their careers: relationships with payers, vendors, and fellow providers. There are also specific “case examples” given to demonstrate how physicians have violated these laws within each of the three relationships.

### **Physician Relationships with Payers**

The *Roadmap* outlines the common violations committed by practitioners in relation to fraudulent billing of claims to third party payors including commercial insurers, Medicare and

Medicaid. Physicians are advised of the need to develop and maintain systems in their practice to oversee they are accurately coding and billing for services rendered to patients and diligently maintaining accurate and complete medical records and documentation to support the fact that the services billed for were necessary and have actually been provided.

In addition to the fraud and abuse implications resulting from poor documentation practices, physicians should keep in mind that the primary reason for denial in post-payment audit cases (e.g. Medicare audits requesting refunds of alleged overpayments) typically relates to documentation deficiencies. Although the *Roadmap* just scratches the surface of documentation, enhancement of documentation practices in any physician practice should unquestionably be a top priority.

### **Physician Relationships with Fellow Providers: Physicians, Hospitals, Nursing Homes, Etc.**

Within these relationships, the *Roadmap* outlines how physicians must steer clear of any situation in which their decision making with respect to patient referrals or use of products or services is based on anything other than what is medically necessary and appropriate for the patient. As most physicians have figured out by now, the fraud and abuse laws are complicated, however, physicians are held accountable for ensuring that relationships are structured in a compliant manner. Physicians can avoid the pitfalls of improper arrangements by making sure that they appropriately consult with experts prior to entering into the relationship. Unfortunately, the fact that a physician was unaware of the implications of the fraud and abuse laws to the relationship is not a legitimate defense.

### **Physician Relationships with Vendors**

A particular area of vulnerability for physicians involves relationships with pharmaceutical and medical device industries. Physicians are cautioned against allowing the pharmaceutical or medical device industries from buying their loyalty or otherwise inducing them to prescribe or use products based on anything other than what is a medical necessity. The OIG offers some practical questions a physician should ask him or herself to test the propriety of any proposed compensation relationship with these entities. Physicians are also encouraged to review the OIG's Compliance Program Guidance for Pharmaceutical Manufacturers available at [www.oig.hhs.gov/authorities/docs/03/050503FRCPGPharmac.pdf](http://www.oig.hhs.gov/authorities/docs/03/050503FRCPGPharmac.pdf). The *Roadmap* also reminds physicians that under the Patient Protection and Affordable Care Act of 2010 ("PPACA"), transparency is coming in the form of requiring drug, device, and biologic companies to publicly report nearly all gifts or payments they make to physicians beginning in 2013.

### **The Days of Voluntary Compliance Programs Are Over**

As some physicians may be aware, the voluntary nature of compliance programs is soon coming to an end. The *Roadmap* reminds physicians that under PPACA, if they treat Medicare and Medicaid beneficiaries, they will be required to establish a compliance program. The *Roadmap* outlines the seven components to establishing a "solid" compliance program.

### **Where To Go For Help-Maybe?**

The *Roadmap* concludes with a helpful list of additional resources and a list of steps to take “[i]f you are engaged in a relationship you think is problematic or have been following billing practices you now realize were wrong.” The reality is that the *Roadmap* is written from the government’s perspective and physicians faced with such significant compliance or potential compliance issues ought to obtain the assistance of qualified health care legal counsel to help navigate the laws and provide the best strategy for protecting their interests.

As the stakes continue to be raised with the ever increasing enforcement and audit activity, now, more than ever, it is imperative that every physician have in place a sophisticated compliance program that is tailored to his/her particular practice and specialty.