

Part B Insider (Multispecialty) Coding Alert

COMPLIANCE :New Law Tightens Scope of False Claims Act

What looked like a law that cracks down on mortgage and financial fraud could pack a punch for your practice.

If you've watched the news over the last few weeks, you're aware that President Obama signed the Federal Enforcement and Recovery Act (FERA) of 2009 to focus on mortgage and banking fraud. But what you may not have known is that also tucked into the legislation is language that could greatly affect your health care practice.

Section 4 of the bill, titled Clarifications to the False Claims Act (FCA) to Reflect the Original Intent of the Law, makes several changes that apply to medical practices.

First, the law defines obligation to include the phrase, arising from statute or regulation, or from the retention of any overpayment, regardless of whether you originally submitted a false claim.

This suggests that you could be obligated under the False Claims Act if you have, for instance, created backdated medical records to support a claim you've already submitted, according to a news release by **James G. Sheehan**, New Yorks Medicaid Inspector General.

Also: Proof of specific intent to defraud is not required under the FCA, says **Scot T. Hasselman, Esq.** with Reed Smith, LLP, in Washington, DC. The law requires that a person knowingly cause the submission of a false claim (or the corollary causes of action). Knowingly is defined in several ways, but can include acting in deliberate ignorance or reckless disregard of the truth. This is a fairly low bar for the government to overcome.

How it affects you: The law now explicitly creates liability for individuals who improperly avoid an obligation to return an overpayment to the government, Hasselman says.

So now the low intent standard of the FCA can be applied to a situation where a practice has been overpaid, and does not realize that it has been overpaid, if the failure to recognize the overpayment was a result of deliberate ignorance or reckless disregard of the truth.

The bottom line is that providers should be as concerned about underpayments as they are about overpayments and have processes in place to regularly reconcile and return any overpayments to payers, Hasselman advises.