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Part B Insider (Multispecialty) Coding Alert

Fraud and Abuse: Look for Big Compliance Changes Thanks to Healthcare Reform

One guilty-until-proven-innocent provision could shutter some blameless providers, expert says.

Under the healthcare reform law's tough new fraud-fighting provisions, regulators will take your money first and ask questions later.

"The [HHS] Secretary may suspend payments to a provider of services or supplier ... pending an investigation of a credible allegation of fraud against the provider of services or supplier, unless the Secretary determines there is good cause not to suspend such payments," says section 6402 of the Patient Protection and Affordable Care Act (PPACA).

The Department of Health and Human Services (HHS) will "consult with" the HHS Office of Inspector General to determine whether the allegation of fraud is credible and therefore triggers the suspension, continues the legislation that President Obama signed into law March 23.

Timeline: The law contains no implementation date for this provision, but does direct HHS to publish regulations about the change.

This provision finds the provider guilty without a trial, protests consultant Tom Boyd with Boyd & Nicholas in Rohnert Park, Calif. Because providers get "no cash while waiting forclearance," he notes, the provision could close some innocent providers' doors.

The payment suspension provision is just one of many fraud-fighting initiatives included in PPACA. The Obama administration expects the law's fraud and abuse measures to raise millions to pay for overall healthcare reform.

Other PPACA compliance provisions include:

››**Compliance programs.** Medicare providers must establish a compliance plan "as a condition of enrollment"in Medicare, PPACA says. HHS and the OIG in conjunction will establish "core elements" for the required compliance program.

HHS has discretion on which providers will fall under this requirement and what their deadline will be, according to the law.

››**Repayment timeliness.** Providers must return any overpayments within 60 days of identifying them, the law spells out. If providers knowingly fail to return overpayments by the deadline, they are subject to False Claims Act-level penalties -- treble damages and fines,notes BKD's **Tom Watson** on the firm's Web site.

Watch out: The law sets the deadline for this provision as May 22, Watson warns. "Providers that may be aware of known or potential overpayments should carefully assess their repayment obligations prior to that date to avoid possible FCA provisions," he urges.

CMS hasn't yet specified what the definition is for "identification" of overpayments, Watson adds. Stay tuned to forthcoming CMS regulations for more details.

False claims liability increases. PPACA makes some dramatic changes that will increase false claims liability. For one, penalties for kickback violations will increase. "A claim that includes items or services resulting from a [kickback] violation ...constitutes a false or fraudulent claim," the law says. "A person need not have actual knowledge of this

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section or specific intent to commit a violation of this section."

Secondly, as of March 23, the reform legislation "lifted the bar for qui tam relators to use public documents to bring a whistleblower lawsuit under the qui tam provisions in the False Claims Act," reports attorney Neville Bilimoria with Duane Morris in Chicago. Previously, the whistleblower ad to be the original source of the information about the provider, he adds.

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