

Health Information Compliance Alert

Compliance: Tackle Your Compliance Questions With 2 FAQs

Would you know how to write an annual report to the OIG? We've got expert tips.

Medical practices hear so much about compliance and billing fraud that it can be hard to separate fact from reality. But today we've got the expert answers to two compliance questions submitted by our readers.

Button Up Your Annual Reports

Question: Our practice was under OIG scrutiny, and long story short, we're now under a five-year corporate integrity agreement (CIA). We're required to submit an annual report to the OIG to outline our compliance activities, but aren't sure how to write it. Should the physician write it himself, or is it okay for the office manager to do it?

Answer: "Since these annual reports are in large part factual confirmations, it is probably tempting to do them without incurring the expense of outside counsel or consultants," says attorney **William W. Horton** with Haskell Slaughter Young & Rediker, LLC in Birmingham, Ala. "However, for a provider that does not have a reasonably sophisticated internal legal or compliance staff, I believe there are significant risks incurred in going it alone," Horton suggests.

"The OIG's reporting requirements appear to me to be becoming more lengthy and detailed," Horton says. Therefore, "at a minimum, an outside lawyer or consultant can help the provider verify that it has taken appropriate steps to respond accurately and completely to all reporting items."

In addition, advisors experienced in healthcare compliance can help ensure that the actual language of any disclosures clearly expresses the relevant information and does not suggest that the provider is stonewalling or providing misleading information, Horton says. "While each situation has different factors, I believe that most providers would be well advised to enlist competent assistance in meeting their reporting obligations."

CMP Does Not Require Exclusion

Question: We believe the government is about to impose a civil monetary penalty (CMP) on our practice. Is it possible that we might still be allowed to participate in the Medicare program? Or does a CMP always go hand-in-hand with an exclusion?

Answer: The OIG can (and does) impose civil money penalties separate and aside from seeking exclusion, says **Mark Wachlin, Esq.**, a former OIG attorney who now practices with Dilworth Paxson, LLP in Philadelphia. "Generally, these CMPs are negotiated through settlements and the OIG will often be willing to release its exclusion authority in exchange for the healthcare provider entering into a corporate integrity agreement."

For instance, the OIG agreed upon a \$10 million settlement with Lincare, Inc., with a five-year CIA following investigation of a Civil Monetary Penalties Law violation. However, the OIG did not exclude Lincare from Medicare participation, Wachlin says.

"The OIG does not initiate formal proceedings very often," Wachlin says. "When it does, the office will generally seek a period of exclusion but that is not a foregone conclusion. The OIG is very sensitive to using the exclusion power because it effectively shuts down a provider. The office does not take such an action lightly."