

Paving the Way: OIG Issues Fraud and Abuse Roadmap for Physicians
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The Office of Inspector General (OIG) has turned its attention to fraud and abuse training in medical education. In an effort to promote voluntary compliance and exposure to consistent fraud and abuse guidance for physicians, beginning in medical school, the OIG conducted a survey of medical schools and institutions that offer residency and fellowship programs.¹ This survey represents the OIG's effort to determine the exposure of medical students, residents, and fellows to fraud and abuse training and the scope of such training, both institutionally and nationwide.

On October 18, 2010, the OIG published its survey results of medical schools and institutions offering residency and fellowship programs. The OIG surveyed deans at 131 allopathic and twenty-nine osteopathic medical schools, all of which are accredited by either the Association of American Medical Colleges or the American Association of Osteopathic Colleges, as well as 660 institutions offering residency and fellowship programs accredited by the Accreditation Council for Graduate Medical Education.² Of the medical schools and institutions providing residency and fellowship programs contacted, 82% of medical school deans and 59% of institutions responded.³

No current federal law mandates training on compliance with Medicare and Medicaid fraud and abuse laws during a physician's medical education, residency, or fellowship training.⁴ Nevertheless, the OIG discovered that approximately 44% of medical schools and 68% of institutions offering residency and fellowship programs reported providing Medicare and Medicaid fraud and abuse training in 2010.⁵ However, according to the survey, such instruction

is limited to about two hours or less in 25% of responding medical schools and four hours or less in 50% of responding institutions with residency or fellowship programs.⁶ Over 90% of medical schools and institutions responding to the OIG's survey expressed interest in receiving educational materials covering fraud and abuse laws, particularly the False Claims Act, the Anti-Kickback Statute, and the Physician Self-Referral Law.⁷ As a result, the OIG proposed to take three steps: (1) prepare educational materials for medical schools; (2) distribute these materials; and (3) seek feedback from medical schools and institutions on ways to improve the materials, including comments on compliance challenges confronting physicians, hospitals and other providers.⁸

On November 5, 2010, less than one month after publication of the survey results, the OIG took the first step and released *A Roadmap for New Physicians: Avoiding Medicare and Medicaid Fraud and Abuse*⁹ (the Roadmap). This physician primer on Medicare and Medicaid fraud and abuse begins with a brief general overview of the "five most important Federal fraud and abuse laws that apply to physicians": the False Claims Act (FCA), the Anti-Kickback Statute (AKS), the Physician Self-Referral Law (Stark), the Exclusion Authorities, and the Civil Monetary Penalties Law.¹⁰ This overview addresses who enforces these laws, the nature of each law, the intent requirements, if any, the penalties, and the availability of exceptions.

The balance of the publication covers physician relationships with three types of parties: Payers, Providers, and Vendors. In each section, the OIG highlights case examples and important issues and provides a glimpse at its perspective on specific problems within each type of relationship.

- Physician Relationships with Payers¹¹: This section specifically addresses the importance of accurate coding and billing for healthcare services. The OIG cautions physicians against “upcoding,” assignments to excluded providers, and misuse of provider and prescription numbers.
- Physician Relationships with Fellow Providers¹²: This section focuses on physician investments, including key questions to ask when presented with an investment opportunity. It also discusses common issues relating to recruitment of graduating residents and fellows, including incentives for relocating to practice in a hospital’s geographic area. Tips for medical directors are provided as well, including case examples of improper medical directorships.
- Physician Relationships with Vendors¹³: This section covers proper and improper uses of free drug samples and promotion of off-label drug uses by physicians at pharmaceutical company-sponsored educational conferences. It provides guidance on consulting arrangements and other relationships with pharmaceutical and medical device companies and explains the increased transparency in these relationships and required disclosures by drug, device, and biologic companies set forth in the Patient Protection and Affordable Care Act of 2010 (PPACA).

The Roadmap also provides some guidance in order to promote voluntary compliance and ward off potential fraud and abuse problems before they occur. It includes key components to be considered when establishing a compliance plan for a physician practice and mentions that PPACA requires physicians treating Medicare and Medicaid beneficiaries to establish such a program.¹⁴ It lists resources helpful to physicians considering particular billing practices, compensation arrangements, or business ventures, including compliance guides and advisory

opinions by both the Center for Medicare & Medicaid Services (CMS”) and the OIG.¹⁵ Finally, the Roadmap supplies a list of steps to follow if a physician suspects a fraud and abuse problem has occurred, provides a brief description of the OIG Provider Self-Disclosure Protocol, and furnishes contact information for the OIG Fraud Hotline for reporting fraud and abuse against Federal healthcare programs.¹⁶

With its survey of medical schools and institutions offering residency and fellowship programs and the subsequent release of the Roadmap, the OIG demonstrated a desire to promote fraud and abuse awareness and education at the earliest stages of a medical student or resident's training. The results of the survey, as well as the Roadmap, can be found on the OIG's website.¹⁷ The Roadmap provides a basic, standardized overview of the major fraud and abuse issues that commonly impact both new and practicing physicians. Although best exercised in conjunction with a seminar or other classroom presentation, the Roadmap likely will provide medical schools and other institutions that choose to utilize it with an educational foundation for fraud and abuse training, as well as a guide in structuring their curricula in this area of medical education. However, its use should not be restricted to new physicians or medical education alone. In addition to being a useful tool for attorneys unfamiliar with the field, it also serves as a helpful tool for existing physicians and established practices looking to improve fraud and abuse awareness.

1. Daniel R. Levinson, Department of Health & Human Services, Office of Inspector General, *Medicare and Medicaid Fraud and Abuse Training in Medical Education*, OEI-01-10-00140 at *ii (October 2010), available at <http://http://oig.hhs.gov/oei/reports/OEI-01-10-00140.pdf>.

2. *Id.* at 4.

3. *Id.*

4. *Id.* at 1.

5. *Id.* at 5.

6. *Id.*

7. *Id.* at 6.

8. *Id.* at 7.

9. U.S. Dept. Of Health & Human Services, Office of Inspector General, *A Roadmap for New Physicians: Avoiding Medicare and Medicaid Fraud and Abuse* (November 5, 2010), available at <http://oig.hhs.gov/fraud/PhysicianEducation/>.

10. *Id.* at 3-8.

11. *Id.* at 9.

12. *Id.* at 16.

13. *Id.* at 21.

14. *Id.* at 26.

15. *Id.* at 26-7.

16. *Id.* at 28-9.

17. See Daniel R. Levinson, Department of Health & Human Services, Office of Inspector General, *Medicare and Medicaid Fraud and Abuse Training in Medical Education*, OEI-01-10-00140 (October 2010), available at <http://oig.hhs.gov/oei/reports/OEI-01-10-00140.pdf>; See also U.S. Dept. Of Health & Human Services, Office of Inspector General, *A Roadmap for New Physicians: Avoiding Medicare and Medicaid Fraud and Abuse* (November 5, 2010), available at <http://oig.hhs.gov/fraud/PhysicianEducation/>.