

February 2005

2005 PREDICTIONS: AREAS RIPE FOR INVESTIGATION

As we enter 2005, I believe OIG/FBI inquiries into health care providers will continue with the same or greater force than we saw in 2004. Among the areas to consider are the following "hot buttons":

1. The OIG Will Start to Examine Medical Director Contracts.

- Are agreements with Medical Directors in writing and reviewed yearly?
- Are services contracted for actually being provided?
- Is the Director's salary Fair Market Value?

2. False Claims Acts Based Upon "Implied Certification" Will Continue.

- QuiTam plaintiff will use violations of the anti-kick back statute as predicate to a False Claims Act case.
- Significant Recoveries (based upon treble damages and a \$5,000 to \$10,000 penalty) will continue.

3. Expect Undercover Operations Against Physicians.

- Undercover FBI Agents have posed as physicians to catch two (2) DME suppliers offering kickbacks. Expect the same operations with drug companies that still seek to "pay off" doctors.

4. Compliance Programs Will be Evaluated for "Effectiveness."

- Just because you have a compliance program you won't win points with the OIG unless you can prove your program is effective.
- Many compliance programs are just "paper tigers".

5. Proving Quality Is Job One.

- The OIG, JCAHO will be stressing quality of care issues.
- If you fail to provide quality care and bill Medicare/Medicaid, you just filed a false claim.

6. Watch Out for Management Contracts that Have a Marketing Component.

- Are you paying for management services or are you paying for the referral of patients?
- In a time when hospitals need additional revenue just to approach "break even," contracts that offer extraordinary increases to the "bottom line" need careful review.

7. Doctors Will be the Target of Financial Fraudsters.

- Offers to get a 24% return on your money from an offshore entity is just what it seems like... too good to be true and legitimate.

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