



Medicare/Medicaid Fraud and Compliance

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IHS, Tribes, and M/M

- Sec. 1880 of the Social Security Act authorizes Medicare payments to IHS facilities (whether operated by IHS or by a tribe) as long as the requirements for payment are met.
- Sec. 1911 does the same for Medicaid.
- Tribal entities operating an IHS facility under P.L. 93-638 bill M/M under these provisions and additional requirements in IHClA.





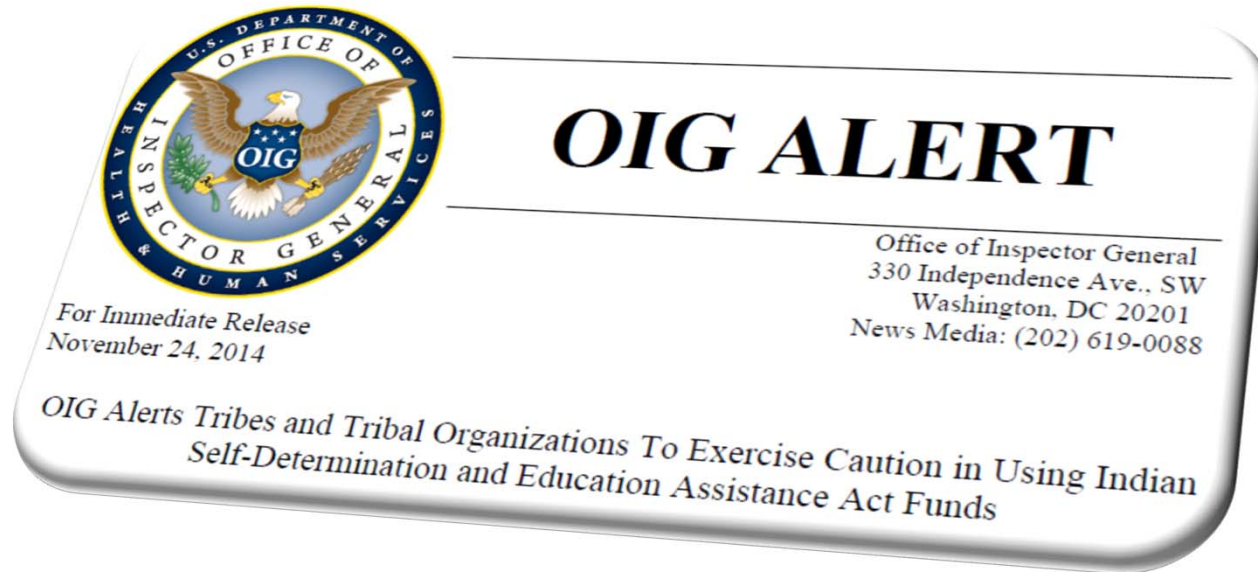
OIG 2014 Alert

- Tribes may use P.L. 93-638 funds only for purposes authorized by the law, the contract/compact, and the funding agreement.
- M/M reimbursements must be reinvested in health care services or facilities. Non-compliance may lead to loss of billing authority.





OIG 2014 Alert



- Find the alert at:
<http://oig.hhs.gov/compliance/alerts/guidance/index.asp>





OIG Admin. Authority

- Exclusion:
 - No payment will be provided for any items or services furnished, ordered, or prescribed by an excluded individual or entity.
 - This includes Medicare, Medicaid, and all other Federal plans and programs that provide health benefits funded directly or indirectly by the United States (excluding FEHBP)





OIG Admin. Authority

- OIG must exclude (mandatory) those who are convicted of:
 - M/M fraud or any other offenses related to the delivery of items or services under M/M, SCHIP, or other State health care programs
 - patient abuse or neglect;
 - felony convictions for other health care-related fraud or financial misconduct; or
 - felony convictions relating to controlled substances.





OIG Admin. Authority

- OIG may exclude (permissive) those who are convicted of, among other crimes:
 - Misdemeanor offenses relating to health care fraud;
 - Misdemeanor offenses relating to controlled substances.
- Other grounds for permissive exclusion include:
 - Loss of license for reasons relating to competence or financial integrity;
 - Defaulting on student loan or scholarship obligations can also lead to exclusion





OIG Admin. Authority

- OIG may seek Civil Monetary Penalties against individuals/entities who, among other conduct:
 - Present false claims, including those based on a prohibited self-referral;
 - Engage in a kickback scheme;
 - Dump patients; or
 - Fail to grant timely access to HHS or OIG.





OIG Admin. Authority

- Statute authorizes significant penalties
 - up to \$50,000 per violation (depending on the type of violation) and
 - Assessments of up to three times the amount claimed.





Civil False Claims Act

- Provides for monetary recovery by the government for the submission of false claims, including to M/M.
- For example, billing for:
 - Services not rendered
 - Miscoded (upcoded) services
 - Services unsupported by documentation
 - Claims for services in violation of Anti-Kickback Statute and Physician Self-Referral (Stark) laws.





Civil False Claims Act

- FCA does not apply to innocent mistakes, but to claims that the provider knew or should have known were false.
- FCA liability is based on:
 - Actual knowledge
 - Reckless disregard
 - Deliberate ignorance





Civil False Claims Act

- Remember:
 - Even innocent providers must repay identified overpayments within 60 days.
 - Failure to comply can lead to CMP or FCA liability.





Civil False Claims Act

- Penalties:
 - Treble damages (three times the loss to the program), plus
 - \$11,000 per claim
- Whistleblowers can receive up to 30% of recovery
- Providers often must enter Integrity Agreements with OIG to avoid exclusion, in conjunction with a settlement.





Anti-Kickback Statute

- Prohibits “knowingly and willfully” asking or receiving anything of value to induce or reward referrals of Federal health care program business, including M/M.
- Inducements can include cash, reduced rent on office space, lavish dinners or vacations, return referrals, no-show directorships or speaking engagements – anything of value.





Anti-Kickback Statute

- Criminal Penalties
 - Fines up to \$25,000 per violation, 5 year prison term, or both
- Civil Penalties
 - False Claims Act liability
- Program Exclusion
- Civil Monetary Penalties
- Exceptions are called “safe harbors”





Physician Self-Referral

- Limits physician referrals for certain services when there is a financial relationship with the referral entity.
- Prohibits submission of claims based on such referrals.
- Designated health services include hospital and clinical laboratory services.
- If the referral is covered by the law, it *must* fit into an exception to be legal.





Other Criminal Laws

- Apart from these health care specific laws, the Federal and State/local governments can also prosecute using other laws, such as:
 - Theft
 - Embezzlement
 - False statements
 - Wire fraud





OIG Resources

- Visit the Compliance/Compliance 101 page on the OIG website at <http://oig.hhs.gov>.
- Contains many useful resources and videos that provide further detail on *FCA and physician self-referrals*.
- Can be easily incorporated into your compliance training efforts and programs.





Preventing/Mitigating Fraud

- Compliance Programs:
 - Internal policies and procedures to help comply with the law
 - Can improve quality of care and reduce costs
 - See OIG Compliance Program Guidance on the Compliance/Compliance Guidance page of the OIG website at oig.hhs.gov. on the Compliance/Compliance Guidance page of the OIG website at <http://oig.hhs.gov>.





Preventing/Mitigating Fraud

- Seven principles:
 - Written policies and procedures
 - Compliance professionals
 - Effective training and education
 - Effective communication between the compliance office and employees
 - Internal monitoring
 - Enforce compliance standards
 - Prompt response to issues





Preventing/Mitigating Fraud

- **OIG Provider Self-Disclosure Protocol**
 - Disclosure in good faith demonstrates commitment to culture of compliance
 - Work collaboratively with government to find resolution
 - Applies only to potential fraud, not innocent mistakes
 - Disclosure may be made to OIG





Preventing/Mitigating Fraud

- Visit the Compliance/Compliance 101 page on the OIG website at <http://oig.hhs.gov>.
- Contains many useful resources and videos that provide further detail on *compliance programs and self-reporting*.
- Can be easily incorporated into your compliance training efforts and programs.





Integrity Agreements

- Generally, OIG will require, as a part of an FCA settlement, that an entity enter into a corporate integrity agreement in exchange for releasing exclusion authority.
- CIAs help the provider develop a culture of compliance by requiring a compliance officer, training, policies and procedures, annual audits, confidentiality for whistleblowers, and annual reports.





Integrity Agreements

- CIAs are generally for at term of 5 years.
- Visit the Compliance/Corporate Integrity Agreement page on the OIG website at <http://oig.hhs.gov> to see a list of current CIAs.





Other Resources

- Visit the Reports page of the OIG website at oig.hhs.gov for specific examples of fraudulent conduct investigated by the government.
- OIG's Semi-Annual Reports and the annual Health Care Fraud and Abuse Control report provide dozens of examples of prosecutions and settlements.

