

# Staying Ahead

with Saul Ewing

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## Life Sciences Law

### HHS Issues Supplemental Compliance Guidance For Hospitals

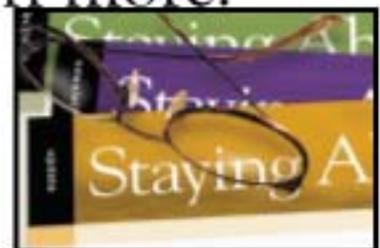
#### What happened?

The Office of Inspector General of the U.S. Department of Health and Human Services (“OIG”) issued a supplemental guidance to help hospitals improve their voluntary compliance programs and comply with regulations governing Federal health care programs.

#### What does it mean?

While the supplemental guidance is not binding on hospitals, it will help hospitals update and evaluate their voluntary compliance programs.

Learn more.



Turn the page to read more.

On January 31, 2005, the Federal Register published the OIG Supplemental Compliance Program Guidance for Hospitals (the "Supplemental Guidance"). According to the OIG, the Supplemental Guidance was published to reflect the significant changes in the way hospitals deliver, and are reimbursed for, healthcare services. It is not intended to replace the initial 1998 OIG hospital guidance document. The Supplemental Guidance provides hospitals with suggestions for improving their voluntary compliance programs and establishes "a benchmark or comparison against which to measure" their compliance efforts.

One of the intriguing aspects of the Supplemental Guidance is the recommendations it includes to measure a hospital compliance program's effectiveness. While the 1998 document focused upon internal controls for hospitals, the Supplemental Guidance highlights the important role in the design and maintenance of a hospital's compliance program. There are two primary recommendations to help ensure effectiveness: the development of a code of conduct and the review, at least annually, of the compliance program to identify weaknesses and implement appropriate changes.

The Supplemental Guidance notes that while no one factor is determinative of the effectiveness of a compliance program, certain elements are usually present. These include:

- Designation of a Compliance Officer and Compliance Committee;
- Development of compliance policies and procedures;
- Keeping open lines of communication;
- Appropriate training and education;
- Internal monitoring and auditing;
- Responding to detected deficiencies; and
- Enforcement of disciplining standards

For each of these elements, the Supplemental Guidance identifies a series of issues that should be addressed by the hospital when implementing or updating its compliance program.

The Supplemental Guidance also highlights several potential risk areas that threaten a hospital's compliance with federal fraud and abuse statutes. Nine risk areas are highlighted: (1) submission of accurate claims and information; (2) the referral statutes; (3) payments to reduce or limit services; (4) the Emergency Medical Treatment and Labor Act (EMTALA); (5) substandard care; (6) relationships with Federal health care beneficiaries; (7) HIPAA Privacy and Security Rules; (8) billing Medicare and Medicaid substantially in excess of usual charges; and (9) other areas of general interest.

The OIG states that perhaps the single biggest risk area for hospitals is the preparation and submission of claims or other requests for payment from the Federal healthcare programs. Several other risk areas were highlighted:

- The coding of outpatient services, the status of patient admissions and discharges, requests for supplemental payments under Medicare, and, information technology and the outpatient prospective payment system;
- Issues relating to compliance with the Stark Law and Anti-Kickback Statute, including joint ventures and physician compensation and recruitment arrangements;
- The appropriateness of gainsharing arrangements with physicians;
- Scrutinizing relationships with Federal healthcare beneficiaries, including gifts and free transportation services; and
- General guidance with regard to discounts for uninsured patients, preventive care services, and the use of professional courtesy.

The Supplemental Guidance provides an important and contemporaneous perspective for hospitals with regard to the OIG's assessment of fraud and abuse risk areas, the elements of an effective compliance program, and the overall benefits of a thorough compliance program.

Even though the OIG concedes that the Supplemental Guidance is not binding and there is not a one-size-fits-all approach to compliance, hospitals that have an existing compliance program should measure their program components up against the Supplemental Guidance. Hospitals that have no compliance program should take the opportunity to use the Supplemental Guidance as a means to develop their compliance program as soon as possible.

A complete copy of the Supplemental Guidance is located at <http://www.oig.hhs.gov/fraud/docs/complianceguidance/012705HospSupplementalGuidance.pdf>

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