

## OIG releases 2013 Work Plan highlighting upcoming enforcement activity

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### SUMMARY

The U.S. Department of Health & Human Services Office of Inspector General has released its Fiscal Year 2013 Work Plan. This important document provides a roadmap of potential enforcement activity by the OIG and is a friendly reminder of the subject areas that will face scrutiny during the fiscal year.

In October, the U.S. Department of Health & Human Services Office of Inspector General ("OIG") released its Fiscal Year 2013 Work Plan (<https://oig.hhs.gov/reports-and-publications/archives/work-plan/2013/Work-Plan-2013.pdf>).

The Work Plan is essential reading for all participants in the health care delivery system. As described in the Introductory Message, the Work Plan "summarizes new and ongoing reviews and activities that OIG plans to pursue with respect to HHS programs and operations during the next fiscal year (FY) and beyond."

The Work Plan is divided into nine sections: Medicare Part A and B; Medicare Part C and D; Medicaid Reviews; Legal and Investigative Activities Related to Medicare and Medicaid; Public Health Reviews; Human Services Reviews; Other HHS-Related Reviews; Affordable Care Act Reviews; and, Recovery Act Reviews. The last two sections mostly reiterate reviews already covered in earlier sections of the Work Plan.

Within each section, the OIG describes the various projects in which it is currently engaged, the expected year in which a report will be issued, and the new projects it will be starting during the current fiscal year. One of four offices in OIG: Audit Services; Evaluation and Inspections; Investigations; or, Counsel to the Inspector General is charged with responsibility for each project identified.

There are 11 new hospital projects in the Work Plan, and seven new projects affecting medical equipment and supply issues. There are a total of 29 initiatives as part of the Affordable Care Act, and 17 initiatives included in the Recovery Act section of the Work Plan though, as mentioned above, many are found in other sections of the Work Plan.

Within the Medicare Part A and B section addressing hospitals, examples of some of the new OIG initiatives in the Work Plan include: consideration of bundling outpatient services delivered up to 14 days prior to an inpatient hospital admission; assessing the impact of non-hospital owned physician practices billing Medicare as provider-based physician practices; evaluating the costs incurred by Medicare related to inpatient hospital claims for canceled surgical procedures; and, the expenditure consequences of hospitals acquiring ambulatory surgical centers and converting them to hospital outpatient departments.

The release of the Work Plan is a reminder that the OIG and CMS have different – and sometimes conflicting – policy initiatives. For example, CMS has been engaged in a campaign for several years to deny inpatient admissions that, according to its standards, should be observation visits. Conversely, the OIG is concerned that too many observation visits are being recorded because beneficiaries are subject to higher payments in the form of deductibles and coinsurance when experiencing an observation visit rather than being admitted. At best, only one of these positions can be accurate, but hospitals are caught in a “Catch 22.” There is a similar issue with the OIG investigating improper use of EHRs while CMS and the Office of the National Coordinator of Health IT promote expansive use of EHRs.

The Work Plan is an important document to review because it provides a roadmap of potential enforcement activity by the OIG. Limited resources do not permit OIG to investigate every facet in the health care arena. The Work Plan provides a friendly reminder to potentially affected parties of the subject areas that will face scrutiny during the fiscal year. Participants in the health care delivery system should review the Work Plan and re-double their efforts to ensure compliance with areas flagged by OIG as the subject of further investigation, and understand potential inconsistencies with positions taken by CMS or other federal agencies.

The Work Plan notes that in FY 2011, OIG reported expected recoveries of \$5.2 billion, and the exclusion of 2,662 individuals and entities from participation in federal health care programs.

The prevention of health care fraud and abuse and the prudent expenditure of federal dollars for health care services remains a focal point of the OIG, HHS, and CMS. The reviews and reports produced by the OIG from the Work Plan can lead to new legislation or regulatory refinements to ensure adequate cost controls, and may spur federal investigations to curb abhorrent behavior.

Saul Ewing’s health care attorneys can assist you in reviewing Work Plan elements and ensuring your current practices are compliant.

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