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The Department of Health and Human Services (HHS) Office of Inspector General reported healthcare fraud, waste and abuse savings and recoveries of nearly \$21 billion last year. In addition, Congress enacted the Fraud Enforcement and Recovery Act of 2009 (FERA). FERA dramatically increases funding for enforcement activity and also amends the False Claims Act (FCA) to create additional risk areas for physicians and medical practice groups. Now more than ever, medical groups need a solid compliance program to avoid costly investigations and penalties.

Physicians can immediately reduce this exposure by enhancing their ability to:

- Promptly return overpayments;
- Correctly bill government contractors such as Medicaid Managed Care Organizations and Medicare Advantage plans; and
- Protect non-employee agents and contractors from retaliation for good faith attempts to stop FCA violations, including whistleblowing activities.

Under FERA, it's now a FCA violation to improperly retain an overpayment even if the overpayment is not the result of the submission of a fraudulent claim. In addition, a claim that is fraudulent can violate the FCA even if it is never "presented" directly to the government for payment. It's enough if the claim is submitted to a federal contractor such as a Medicaid or Medicare managed care plan. It's also enough if an "under arrangements" provider submits a false claim to a hospital that receives Diagnosis Related Group (DRG) Medicare payments.

That means that plans and hospitals will be monitoring billing by their providers like never before. At the same time, anti-retaliation protection has been extended to agents and contractors, so physicians must guard against actions during billing disputes that could be misconstrued as retaliation against plans and hospitals.

What can you do right now to protect your practice? For starters:

- Implement a system for tracking and promptly returning overpayments;
- Step up monitoring and audits to ensure appropriate claims; and
- Revise your anti-retaliation policy to protect agents and contractors, and train your staff so they don't inadvertently create the basis for

such a claim during a billing dispute.

For more information, please contact Matt Weber in Holland & Hart's Denver office at 303-395-8565, mweber@hollandhart.com or through his LinkedIn profile.

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