



# OFFICE OF INSPECTOR GENERAL

## SPECIAL ADVISORY BULLETIN

### Practices of Business Consultants

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June 2001

#### INTRODUCTION

The Office of Inspector General (OIG) was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, abuse, and waste in the Department's programs, including the Medicare and Medicaid programs, and to promote efficiency, economy, and effectiveness in departmental operations. Historically, the OIG has primarily carried out this mission through a nationwide program of audits, investigations, and inspections. More recently, the OIG has augmented its efforts to detect fraud, abuse, and waste with increased efforts to promote prevention through the issuance of guidance to the health care industry.

Providers, suppliers, and others<sup>1</sup> involved in the health care industry not only serve the health care needs of Federal program beneficiaries, but they also play an essential role in safeguarding the integrity of the Federal programs. As part of our commitment to working with industry, we want to alert providers to certain marketing and other practices used by some independent consultants that should concern providers and that may put the Medicare and Medicaid programs at increased risk of abuse. While some of the practices described in this bulletin may not themselves rise to the level of fraud and may not be illegal in all cases, all of the practices increase the risk of abuse of the Medicare and Medicaid programs. We encourage providers to recognize and protect themselves and the Federal programs against these questionable practices.

Providers use the legitimate services of consultants, such as accountants, attorneys, business advisors, and reimbursement specialists, for many *bona fide* reasons, including,

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<sup>1</sup>For purposes of simplicity, the term “providers” as used in this bulletin refers to providers, suppliers, and practitioners that provide items or services payable in whole or in part by a Federal health care program.

for example, improving the efficiency and effectiveness of the provider's operations (including its coding and billing systems), enhancing the accuracy of the provider's claims, conserving resources through outsourcing, and ensuring compliance with applicable laws, regulations, and rules. Responsible consultants play an integral role in developing and maintaining practices that enhance a client's business objectives, as well as in improving the overall integrity of the health care system.

We believe that most consultants, like most providers, are honest and that the vast majority of relationships between providers and consultants are legitimate business activities. Unfortunately, a small minority of unscrupulous consultants engage in improper practices or encourage abuse of the Medicare and Medicaid programs. Depending on the circumstances, these practices may expose both the consultants and their clients to potential legal liability.<sup>2</sup> Hiring a consultant does not relieve a provider of responsibility for ensuring the integrity of its dealings with the Federal health care programs.

## QUESTIONABLE PRACTICES

To safeguard themselves, providers engaging the services of consultants should be alert to the following questionable practices:

**Illegal or Misleading Representations.** Consultants may make illegal or misleading statements or representations about their relationship with the Medicare program, the Centers for Medicare and Medicaid Services (CMS),<sup>3</sup> or the OIG. For example, consultants may misrepresent that they have "inside" or "special" access to the OIG or to OIG materials. In other cases, consultants may misrepresent that their services or products are approved, certified, or recommended by Medicare, CMS, the Department of Health or Human Services,

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<sup>2</sup>The practices described in this bulletin are illustrative, and this bulletin does not purport to identify every potentially improper practice arising from the relationship between a provider and a consultant, nor does it purport to identify every potential violation of the criminal or civil statutes. In particular, this bulletin is not intended to identify every potential violation of the False Claims Act or the Anti-Kickback Statute, although some of the practices described may contribute to, or increase the risk of, violations of these provisions. This bulletin does not address the many fraud and abuse concerns that arise from sham consulting arrangements.

<sup>3</sup>The Health Care Financing Administration (HCFA) is being renamed the Centers for Medicare and Medicaid Services; misuse of either the new or former name would be equally deceptive.

or the OIG. Such claims are misleading and potentially harmful to well-meaning providers. Illegal or misleading statements or representations include, for example:

- An educational consultant misrepresenting that its Medicare reimbursement seminars are mandatory for obtaining or maintaining a Medicare provider number. Although such training may be valuable, the Medicare program does not require a provider to attend training courses in order to participate in the Medicare program.
- A consultant misrepresenting that a provider that fails to attend its “Medicare-sanctioned” seminars will be subject to government penalties. In truth, the government does not penalize providers for such conduct.
- A consultant improperly using Federal program logos or symbols on its marketing materials.<sup>4</sup>
- A consultant claiming that it is recommended by the OIG. The OIG does not recommend or endorse particular consultants or particular consultants’ services.
- A compliance consultant falsely asserting or implying that it offers recognized accreditation or certification for compliance programs or compliance officers.

**Promises and Guarantees.** Consultants may explicitly or implicitly promise or guarantee specific results that are unreasonable or improbable. In some cases, consultants may resort to improper means to effectuate these promises or guarantees, such as submitting false claims or preparing false cost reports on behalf of a client. This misconduct potentially subjects both the consultant and the

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<sup>4</sup>Section 1140 of the Social Security Act prohibits the improper use of the words "Medicare", "Medicaid", "Health Care Financing Administration", "HCFA", "Department of Health and Human Services", "DHHS", "Health and Human Services", "HHS", "Social Security", "Social Security Account", "Social Security System", "Social Security Administration", "Supplemental Security Income Program", "SSI", and "SSA", and any variation on these words, as well as the symbols or emblems for the SSA, HCFA and HHS. Violations are punishable by civil money penalties of \$5,000 per violation (in the case of mail solicitation or advertisement, each piece of mail constitutes a separate violation) or \$25,000 in the case of a broadcast or telecast. The OIG enforces this authority.

provider to liability under the False Claims Act.<sup>5</sup> Problematic promises would include, for example:

- A valuation consultant promising or assuring a client that its appraisal of a physician's practice will yield a "fair market value" that satisfies the client's need for a particular valuation, regardless of the actual value of the practice.
- A billing consultant promising a prospective client that its advice or services will produce a specific dollar or percentage increase in the client's Medicare reimbursements. The consultant's fee is often based on a percentage of this increased reimbursement.

**Encouraging Abusive Practices.** Some consultants may knowingly encourage abuse of the Medicare or Medicaid programs. In some cases, reimbursement specialists or other consultants advocate that their clients engage in aggressive billing schemes or unreasonable practices that are fraudulent or abusive of the Medicare or Medicaid programs. This conduct potentially subjects both the consultant and the client to liability under the False Claims Act. For example:

- A reimbursement specialist may suggest that a client use inappropriate billing codes in order to elevate reimbursement and may describe methods to avoid detection.
- A consultant may encourage a client to modify or customize a routine medical supply in an insignificant manner to justify billing the supply as a device that generates higher reimbursement.
- A reimbursement specialist may advise a client to bill for an expensive item or service with a high reimbursement rate when a less expensive item or service with a lower reimbursement rate was actually provided to the patient.
- A consultant may advise a client to adopt a patently unreasonable interpretation of a reimbursement law, regulation, or rule to justify substantially greater reimbursement.

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<sup>5</sup>The False Claims Act ascribes liability only where the party knows or acts with reckless disregard or deliberate ignorance of the falsity of the claim.

- A consultant may promise to increase Medicare revenues for laboratory services by showing its clients how to disguise double billings and claims for medically unnecessary services.
- A consultant may suggest the creation of deceptive documentation in order to mislead potential reviewers.

**Discouraging Compliance Efforts.** Some consultants may make absolute or blanket statements that a client should not undertake certain compliance efforts (such as retrospective billing reviews) or cooperate with payor audits, regardless of the client's circumstances. As reflected in the OIG's compliance guidances,<sup>6</sup> the OIG believes that voluntary compliance efforts, such as internal auditing and self-review, are important tools for doing business with the Federal health care programs. Left undetected and, therefore, unchecked and uncorrected, improper billing or other conduct may exacerbate fraud and abuse problems for a provider in the future.

## CONCLUSION

Consultants who abuse their position of trust pose a risk to their provider clients, to the Federal health care programs, and to themselves. While most consultants are honest and provide valuable services to their clients, a small minority engage in questionable practices or promote abuse of the Federal health care programs. In general, if a consultant's advice seems too good to be true, it probably is. We urge providers to be vigilant and to exercise judgment when selecting and relying on consultants.

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<sup>6</sup>The OIG's compliance guidances are available on our webpage at <http://www.hhs.gov/oig>.