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Issue 9, Spring 2015

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## Medicare Health Care Fraud Prevention and Enforcement Efforts Net \$3.3 Billion in FY 2014

The government's health care fraud prevention and enforcement efforts recovered \$3.3 billion in taxpayer dollars in Fiscal Year (FY) 2014 from individuals and companies that attempted to defraud federal health programs, including programs serving seniors, persons with disabilities or those with low incomes. For every dollar spent on health care-related fraud and abuse investigations in the last three years, the administration recovered \$7.70. This is about \$2 higher than the average return on investment in the HCFAC program since it was created in 1997.

Read the full press release here:

<http://www.hhs.gov/news/press/2015pres/03/20150319a.html>

## 6 Compliance Trends that will Affect Physician Practices

Here's what we can expect in the coming months:

**#1: More practices will have to deal with extrapolation.** Extrapolation, also known as statistical sampling, is a process used by CMS auditors such as zone program integrity contractors (ZPICs) and recovery auditors (RACs) to project billing errors of all claims based on the billing errors found in a sample of claims. In recent months, extrapolation has become a popular tool for auditors and will be used even further, in large part because so few practices contest its use, enabling the government to recoup a lot of money that way, warns Frank Cohen, director of analytics for Doctors Management in Spring Hill, Florida.

**#2: Regulators will start reviewing accountable care organizations (ACOs) as they become more operational and more patients obtain treatment through them.** State regulators will look at ACOs, many of which don't participate in the Medicare Shared Savings Program, to determine how they're structured and whether they are an insurance risk or a payment risk, which can affect their licensing and compliance with state laws.

**#3: Telemedicine will take a jump forward.** More practices will use telemedicine as an adjunct to their operations to treat patients that can't come to the office, for translation services, to bring more specialized services into a setting and other uses.

**#4: The Stark law and anti-kickback statute increasingly will be enforced against physicians, making compliance with the laws more important than ever.** The government always has been concerned about



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enforcing the Stark Law and the anti-kickback statute. "They lead to the highest payout for the government and are the easiest to prove," says attorney Scott Grubman, a former Assistant United States Attorney now with Rogers & Hardin in Atlanta. Now, the government is enforcing these laws more against the physicians involved in the unlawful activity.

**#5: Practices and business associates will refine their agreements, all as they come under more scrutiny.** One provision that practices may see more of in newer business associate agreements is one that would allow a business associate that deals with large amounts of data - such as a cloud electronic health records vendor - to use the practice's de-identified patient data for the business associates' own uses. An industry is developing around the aggregation of data for purposes such as research or predicting patient outcomes, and some business associates are moving to capitalize on that data and use it or market it to others. Practices will need to determine whether they want to grant business associates such permission to use the data that way, says Litten.

**#6: Expect even more HIPAA and related enforcement activities in 2015.** Breaches of patient and consumer data continue to proliferate; the tremendous publicity that some breaches have received, such as the hacking of Home Depot and Sony, will create more pressure on HHS' Office for Civil Rights (OCR) to enforce HIPAA breaches, says attorney Michael Kline of Fox Rothschild in Princeton, N.J. Practices also should expect increased enforcement from the Federal Trade Commission enforcing consumer protection laws and the Food and Drug Administration protecting the integrity of medical devices, warns attorney Elizabeth Litten, also with Fox Rothschild. Additionally, expect more private litigation using HIPAA compliance as the standard of care.

*SOURCE: January 5, 2015 Issue of Medical Practice Compliance Alert*

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## **CMS Delays Repayment Final Rule a Year**

Medicare providers and suppliers of services under Parts A and B of title XVIII are required under the Affordable Care Act to return overpayments within 60 days.

The Centers for Medicare & Medicaid Services (CMS) on Tuesday, February 17, 2015, made official its plan to postpone until February 16, 2016, implementation of a new rule that would give CMS a 10-year "look-back" period on claims not identified by a provider or supplier, something that has led to harsh industry criticism that the agency is overstepping its statutory authority because it conflicts with shorter look-back periods for Part C and D overpayments.

Despite the delay in implementing regulations, providers still are obligated to give back overpayments within 60 days or potentially face false claims liability.

Read the full article here:

<http://www.mcknights.com/cms-delays-repayment-final-rule-a-year/article/398693/>

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