FRAUD AND ABUSE LAWS

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Fraud and Abuse

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https://www.justice.gov/opa/pr/justice-department-recovers-over-28-billion-false-claims-act-cases-fiscal-year-2018

Justice Department Recovers ...

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Justice Department Recovers Over $2.8 Billion from False Claims Act Cases in Fiscal Year 2018

NOTE: The 2018 False Claims Act statistics can be found here.

The Department of Justice obtained more than $2.8 billion in settlements and judgments from civil cases involving fraud

- $2.5 billion recovered for healthcare fraud in 2018.
- For every $1 spent in enforcement, government recovered $4.

PM 2019

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Increased Penalties

	Old Penalty	New Penalty
False Claims Act	$5,500 to $11,000 /claim	$10,781 to $21,563 /claim
• Failure to repay		$20,000 per claim
Anti-Kickback Statute	$25,000 criminal penalty 5 years in prison	$100,000 criminal penalty 10 years in prison
	$50,000	$100,000 civil penalty
Ethics in Patient Referrals Act (“Stark”)	$15,000 per claim	$24,748 per claim
• Circumvention scheme	$100,000	$164,992
Civil Monetary Penalties Law		$20,000 to $100,000
• Induce beneficiaries	$10,000	$20,000
• Induce physicians	$2,000	$5,000
• Excluded Provider	$10,000	$20,000
(See 45 CFR 102.3)		

To Make Matters Worse…

Now you must narc on yourself!

- Affordable Care Act report and repay requirement.
- DOJ focus on individual accountability.

Fraud and Abuse Laws

- False Claims Act
- Anti-Kickback Statute ("AKS")
- Eliminating Kickbacks in Recovery Act ("EKRA")
- Ethics in Physician Referrals Act ("Stark")
- Civil Monetary Penalties Law ("CMPL")
- Wyoming State Laws

False Claims Act

- Cannot knowingly submit a false claim for payment to the federal government.
- Must report and repay an overpayment within 60 days.

(31 USC 3729; 42 USC 1320a-7a(a); 42 CFR 1003.200)

- Penalties
  - Repayment plus interest
  - Civil monetary penalties of $11,000* to $22,000* per claim
  - 3x damages
  - Exclusion from Medicare/Medicaid
  - *Qui tam* litigation

(42 USC 1320a-7a(a); 42 CFR 1003.210; 45 CFR 102.3)

False Claims Act

- *Qui Tam* Suits: private entities (*e.g.*, employees, patients, providers, competitors, *etc.*) may sue the hospital under False Claims Act on behalf of the government.
  - Government may or may not intervene.
  - *Qui tam* relator
    - Receives a percentage of any recovery.
    - Recovers their costs and attorneys fees.

False Claims Act

- *U.S. ex rel. Drakeford v. Tuomey Healthcare System* (4th Cir. 2013)
  - Part-time employment contracts violated Stark.
    - $39,313,065 x 3 damages = $117,939,195
    - 21,730 false claims x $5,500 per claim = $119,515,000

    $237,454,195 judgment
  - Ultimately settled for $72.4 million.
  - Relator received $18 million.

False Claims Act: Examples

- Claims for services that were not provided or were different than claimed.
- Failure to comply with quality of care.
  - Express or implied certification of quality.
  - Provision of "worthless" care.
- Failure to comply with relevant regulations that materially impact reimbursement, fraud and abuse laws.
  - Express or implied certification of compliance when submit claims (e.g., cost reports or claim forms).

(*Univ. Health Serv., Inc. v. US ex rel. Escobar,* 136 S.Ct. 1989 (2016))

Wyoming Medicaid False Claims Act

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Wyoming Medicaid False Claims Act

- Cannot knowingly submit a false claim under Medicaid program.
- Cannot benefit from inadvertent submission of a false claim when, after discovery, fail to disclose the false claim and make satisfactory arrangements for repayment within 90 days of discovery.
- Penalties
  - Repayment
  - 3x damages
  - Civil penalty of $1,000 to $10,000 per violation.
  - Cost of litigation.
  - ➢ Damages and penalties capped if timely cooperate.

(WSA 42-4-301 et seq.)

Wyoming Dept. of Health Regulations

- Prohibits engaging in fraudulent or abusive conduct to obtain overpayment of Medicaid benefits, e.g.,
  - Misrepresentations.
  - Upcoding.
  - Claims not supported by documentation.
  - Excessive or inappropriate patterns of referral.
  - Claims for medically unnecessary services.
  - Claims for servicers that do not meet standard of care.
  - Claims that do not comply with rules.
  - Violation of any state or federal re provision of services.

(DOH Medicaid Program Integrity, Ch. 16)

Wyoming Dept. of Health Regulations

- DOH has broad authority to impose sanctions for fraud and abuse, including:
  - Recovery of overpayments.
  - Suspension of payments.
  - Suspension or termination of provider agreement.
  - Additional sanctions.
  - Referral to other agencies.

(DOH Medicaid Program Integrity, Ch. 16)

Anti-Kickback Statute

Anti-Kickback Statute

- Cannot knowingly and willfully offer, pay, solicit or receive remuneration to induce referrals for items or services covered by government program unless transaction fits within a regulatory safe harbor.

(42 USC 1320a-7b(b); 42 CFR 1003.300(d))

- "One purpose test"
  - Anti-Kickback Statute applies if one purpose of the remuneration is to induce referrals.

    (U.S. v. Greber, 760 F.2d 68 (3d Cir. 1985))
  - Difficult to disprove.
  - Ignorance of the law is no excuse.

Anti-Kickback Statute

- Penalties
  - 10 years in prison
  - $100,000 criminal fine
  - $100,000 penalty
  - 3x damages
  - Exclusion from Medicare/Medicaid

(42 USC 1320a-7b(b); 42 CFR 1003.310; 45 CFR 102.3)

- Anti-Kickback violation = False Claims Act violation
  - Lower standard of proof
  - Subject to False Claims Act penalties
  - Subject to qui tam suit.

(42 USC 1320a-7a(a)(7))

- OIG Self-Disclosure Protocol: minimum $50,000 settlement.

Anti-Kickback Statute

Anti-Kickback Statute

- Applies to any form of remuneration to induce or reward referrals for federal program business.
  - Money.
  - Free or discounted items or services (e.g., perks, gifts, space, equipment, meals, insurance, trips, CME, etc.).
  - Overpayments or underpayments (e.g., not fair market value).
  - Payments for items or services that are not provided.
  - Payments for items or services that are not necessary.
  - Professional courtesies.
  - Waivers of copays or deductibles.
  - Low interest loans or subsidies.
  - Business opportunities that are not commercially reasonable.
  - Anything else of value…

Anti-Kickback Statute: Safe Harbors

- Bona fide employment
- Personal services contracts
- Leases for space or equipment
- Investments in group practice
- Investments in ASCs
- Sale of practice
- Recruitment
- Certain investment interests
- Waiver of beneficiary coinsurance and deductible amounts.

(42 CFR 1001.952)

- Transportation programs
- OB malpractice insurance subsidies
- Electronic health record items or services
- Referral services
- Referral arrangements for specialty services
- Warranties
- Discounts
- Others

Advisory Opinions

- OIG may issue advisory opinions.
  - Listed on OIG fraud and abuse website, www.oig.hhs.gov/fraud
  - Not binding on anyone other than participants to the opinion.
  - But you are probably fairly safe if you act consistently with favorable advisory opinion.

Advisory Opinions

In accordance with section 1128(D)(b) of the Social Security Act (42 U.S.C. 1320a-7d(b)) and 42 CFR part 1008, OIG issues advisory opinions about the application of OIG's fraud and abuse authorities to the requesting party's existing or proposed business arrangement. As required by the statute, these advisory opinions are being made available to the public through this OIG Web site.

One purpose of the advisory opinion process is to provide meaningful advice on the application of the anti-kickback statute and other OIG sanction statutes in specific factual situations. Please note, however, that advisory opinions are binding and may legally be relied upon only by the requestor. Since each opinion will apply legal standards to a set of facts involving certain known persons who provide specific statements about key factual issues, no third parties are bound nor may they legally rely on these advisory opinions.

Related

- Recent Advisory Opinions
- Advisory Opinion FAQs
- CMS Advisory Opinion website
- Compliance Guidance
- Enforcement Actions
- Advisory Opinion Archive

We have redacted specific information regarding the requestor and certain privileged, confidential, or financial information associated with the individual or entity, unless otherwise specified by the requestor.

Adobe® Acrobat® is required to read PDF files.

Quick Links/Resources

- Preliminary Checklist for Advisory Opinion Requests
- Recommended Preliminary Questions and Supplementary Information
- The full and current regulatory text of regulations governing requests for advisory opinions is available on the Code of Federal Regulations Web site. 42 CFR part 1008.
- The OIG Final Rule (73 Fed. Reg. 40982) revising the procedural aspects for submitting payments for advisory opinion costs.
- The OIG Interim Final Rule (73 Fed. Reg. 15937) revising the procedural aspects for submitting

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Select One

- Accountable Care Organizations
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- Open Letters
- RAT-STATS
- Safe Harbor Regulations
- Self-Disclosure Information
- Special Fraud Alerts, Bulletins, and Other Guidance

EXCLUSIONS DATABASE

REPORT FRAUD

Wyoming Anti-Kickback Statute

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WYOMING ANTI-KICKBACK STATUTE

Effective 2/26/19:

- A person shall not knowingly, in whole or in part:

  (i) Act on behalf of a provider to purchase or lease a service or supply for which payment may be made, in whole or in part, under Medicaid and then solicit or accept anything of additional value in connection with the purchase or lease;

  (ii) Sell or lease to a provider a service or supply for which payment may be made, in whole or in part, under Medicaid, and offer, transfer or pay anything of additional value in connection with the sale or lease;

  (iii) Refer an individual to a provider for the provision of a service or supply for which payment may be made, in whole or in part, under Medicaid, and solicit or accept anything of value in connection with the referral;

  (iv) Act on behalf of a provider to charge, solicit, accept or receive anything of value in addition to the amount payable for a service or supply under Medicaid.

(WS 42-4-407(a))

WYOMING ANTI-KICKBACK STATUTE

- Penalties
  - Felony
  - Up to 5 years in prison
  - Up to $10,000 fine.
  - Exclusion from Medicaid program.

(WS 42-4-407(b); 42-4-410)

ELIMINATING KICKBACK IN RECOVERY ACT ("EKRA")

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Eliminating Kickback in Recovery Act ("EKRA")

- Cannot solicit, receive, pay or offer any remuneration in return for referring a patient to a laboratory, recovery homes or clinical treatment facility unless arrangement fits within regulatory exception.
- Penalties
  - $200,000 criminal fine
  - 10 years in prison

(18 USC 220(a))

➢Applies to referrals paid by private or public payers.

Ethics in Patient Referrals Act ("Stark")

Stark

- If a physician (or their family member) has a financial relationship with an entity:
  - The physician may not refer patients to that entity for designated health services, and
  - The entity may not bill Medicare or Medicaid for such designated health services ("DHS")

  unless arrangement structured to fit within a regulatory exception.

(42 USC 1395nn; 42 CFR 411.353 and 1003.300)

Stark

- Penalties
  - No payment for services provided per improper referral.
  - Repayment of payments improperly received within 60 days.
  - Civil penalties.
    - $24,748* per claim submitted
    - $164,992* per scheme

(42 CFR 411.353, 1003.310; 45 CFR 102.3)

- Likely Anti-Kickback Statute violation
- Likely False Claims Act violation.

* Subject to annual inflation adjustment.

Stark


WARNING
Any financial relationship or item of value between a physician (or their family) and an entity providing DHS.

Stark

- Applies to referrals by physician to entities with which the physician (or their family member) has financial relationship.

  - Physician =
    - MDs
    - Dos
    - Oral surgeons
    - Dentists
    - Podiatrists
    - Optometrists
    - Chiropractors

  (42 CFR 411.351)

  - Family member =
    - Spouse
    - Parent, child
    - Sibling
    - Stepparent, stepchild, stepsibling
    - Grandparent, grandchild
    - In-law

Stark

- Applies to referrals by physician to entities with which physician (or their family member) has financial relationship.
  - Direct relationship.
  - Indirect relationship (e.g., ownership in another entity).
- Financial relationship =
  - Ownership or investment: stocks, bonds, partnership, membership shares, secured loans, securities, etc.
  - Compensation: employment, contract, lease, payments, gifts, free or discounted items, and virtually any other exchange of remuneration.

(42 CFR 411.351 and .354)

Stark

- Applies to referrals (orders, requests, plan of care, certification) by physician for DHS performed by others.
  - Other providers or facilities.
  - Others in physician's own group.
  - Other employees or contractors.
- Does not apply to services physician personally performs.
  - Physician may perform his own DHS.
  - Beware ancillary, technical, facility fees.

(42 CFR 411.351)

Stark

- Applies to referrals for designated health services ("DHS") payable in whole or part by Medicare.
  - Inpatient and outpatient hospital services
  - Outpatient prescription drugs
  - Clinical laboratory services
  - Physical, occupational, or speech therapy
  - Home health services
  - Radiology and certain imaging services
  - Radiation therapy and supplies
  - Durable medical equipment and supplies
  - Parenteral and enteral nutrients, equipment, and supplies
  - Prosthetics and orthotics
- CMS website lists some of the affected CPT codes.

(42 CFR 411.351)

Stark: Exceptions for Both Ownership and Compensation

- Physician services rendered by another physician in same group practice* or under such physician's supervision.
- In-office ancillary services provided through group practice*.
- Prepaid health plans.
- Certain services furnished in academic medical center.
- Implants in ASC.
- Preventive screening tests, immunizations, and vaccines.
- EPO and other dialysis-related drugs.
- Eyeglasses and contact lenses following cataract surgery.
- Intra-family rural referrals.

(42 CFR 411.355)

* Must qualify as "group practice" under 42 CFR 411.352.

Stark: Exceptions for Only Ownership or Investments

Ownership or investment interests in:

- Rural providers.
- The whole hospital, not a part of the hospital.
  - Subject to limits in 42 CFR 411.362.
- Publicly traded securities.
- Large, regulated mutual funds.

(42 CFR 411.356)

Stark: Exceptions for Only Compensation Arrangements

- Bona fide employment relationships.
- Personal services contracts.
- Space or equipment rental.
- Timeshare arrangement
- Physician or midlevel recruitment.
- Physician retention.
- Remuneration unrelated to DHS.
- Fair market value.

(42 CFR 411.357)

- Non-monetary compensation up to $416*.
- Medical staff incidental benefits.
- Compliance training.
- Community-wide health information system.
- Professional courtesy.
- Certain payments by a physician for items or services at FMV.
- Others.

Stark

- Proposed modifications would:
  - New or revised safe harbors re:
    - Value-based purchasing arrangements.
    - Remuneration to physicians of less than $3500 per year.
    - Cybersecurity support.
    - Remuneration unrelated to provision of DHS.
    - Provision of certain telehealth services.
  - Modify FMV and "commercially reasonable standards"
  - Modify standards for requiring referrals.

http://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/index.html

- Advisory opinions
- FAQs
- DHS by CPT code
- Self-Referral Disclosure Protocol
- Recent settlements

Civil Monetary Penalties Law

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Civil Monetary Penalties Law

Prohibits certain specified conduct, e.g:

- Submitting false or fraudulent claims, misrepresenting facts relevant to services, or engaging in other fraudulent practices.
- Violating Anti-Kickback Statute or Stark law.
- Violating EMTALA.
- Failing to report and repay an overpayment.
- Failing to grant timely access.
- Misusing "HHS", "CMS", "Medicare", "Medicaid", etc.
- Failing to report adverse action against providers.
- Offering inducements to program beneficiaries.
- Offering inducements to physicians to limit services.
- Submitting claims for services ordered by, or contracting with, an excluded entity.

(42 USC 1320a-7a; 42 CFR 1003.200-1100)

Civil Monetary Penalties Law

- Penalties vary based on conduct, but generally range from:
  - $5,000 to $100,000 fines
  - 3x amount claimed
  - Denial of payment
  - Repayment of amounts improperly paid
  - Exclusion from government programs
- CMPL violations may also violate:
  - False Claims Act
  - Anti-Kickback Statute
  - Stark

Inducements to Government Program Patients

- Cannot offer or transfer remuneration to Medicare or state program beneficiaries if you know or should know that the remuneration is likely to influence the beneficiaries to order or receive items or services payable by federal or state programs from a particular provider.

(42 USC 1320a-7a(a)(5); 42 CFR 1003.1000(a)).

- Penalty:
  - $20,000 for each item or service.
  - 3x amount claimed.
  - Repayment of amounts paid.
  - Exclusion from Medicare and Medicaid.

(42 CFR 1003.1010(a); 45 CFR 102.3

- Also a likely Anti-Kickback Statute violation

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Inducements to Government Program Patients

- "Remuneration" = anything of value, including but not limited to:
  - Items or services for free or less than fair market value unless satisfy certain conditions.
  - Waiver of co-pays and deductibles unless satisfy certain conditions.

(42 USC 1320a-7a(i); 42 CFR 1003.110; OIG Bulletin, *Gifts to Beneficiaries*)

Inducements to Government Program Patients

- "Remuneration" does not include:
  - Waivers or co-pays based on financial need or after failed collection efforts if certain conditions met.
  - Items or services if financial need and certain conditions met.
  - Incentives to promote delivery of preventative care if certain conditions met.
  - Payments meeting Anti-Kickback Statute safe harbor.
  - Retailer coupons, rebates or rewards offered to public.
  - Any other remuneration that promotes access to care and poses a low risk of harm to patients and federal health care programs.
  - Certain other situations.

(42 USC 1320a-7a(i); 42 CFR 1003.110)

Payment to Limit Services

- Hospital or CAH cannot knowingly make a payment, directly or indirectly, to a physician as an inducement to reduce or limit medically necessary services provided to Medicare or Medicaid beneficiaries who are under the direct care of the physician.
  - May include many "gainsharing" programs.

(42 USC 1320a-7a(b)(1))

- Penalties:
  - $5000 for each individual with respect to whom payment made.
  - Any other penalty allowed by law.

(42 CFR 1003.1010(a); 45 CFR 102.3)

Excluded Entities

- Excluded person cannot order or prescribe item or service payable by federal healthcare program.
- Cannot submit claim for item or service ordered or furnished by an excluded person.
- Excluded owners cannot retain ownership interest in entity that participates in Medicare.
- Cannot hire or contract with excluded entity to provide items or services payable by federal programs.

(42 USC 1320a-7a(a)(8); 42 CFR 1003.200(a)(3), (b)(3)-(6))

➢Applies if knew or should have known of exclusion.

(42 CFR 1001.1901(b) and .1003.200(a))

Excluded Entities

- Penalties
  - $20,000 per item or service ordered.
  - $10,000/day prohibited relationship exists.
  - 3x amount claimed.
  - Repayment of amounts paid.
  - Exclusion from Medicare and Medicaid

(42 USC 1320a-7a(a)(8); 42 CFR 1003.210; OIG Bulletin, *Effect of Exclusion*)

LEIE Downloadable Databases

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Download the LEIE Database

ANNOUNCEMENT: As of the September 2013 update, only the LEIE files containing the NPI, Waiver, and Waiver States fields will be available.

Instructions and information About the LEIE Files.

Below files updated: 05-08-2015

LEIE Database

- 04-2015 Updated LEIE Database: EXE | ZIP

Current Monthly Supplements

- 04-2015 Exclusions: EXE | ZIP
- 04-2015 Reinstatements: EXE | ZIP
- Monthly Supplement Archive

Profile Updates

- 04-2015 Profile Corrections

Current Record Layout

- Current Database Record Layout

Related Information

- Waiver Info
- Search the Online LEIE Database

How To Use These Files

View a video tutorial on using the downloadable files.

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- Quick Tips
- Background Information
- Applying for Reinstatement
- Contact the Exclusions Program
- Frequently Asked Questions
- Special Advisory Bulletin and Other Guidance

EXCLUSIONS DATABASE

REPORT FRAUD

Instructions

List of Excluded Individuals and Entities ("LEIE")

- OIG maintains LEIE and updates monthly: https://oig.hhs.gov/exclusions/exclusions_list.asp
  - Check LEIE before hiring or contracting with entities.
    - Employees, contractors, vendors, medical staff, etc.
  - Check LEIE periodically to determine status.
    - Employees, providers, vendors, medical staff members, ordering providers, others?
- Condition contracts and medical staff membership on non-exclusion.
- Respond promptly if receive notice of excluded entity.

Advisory Opinions

- OIG may issue advisory opinions.
  - Listed on OIG fraud and abuse website, www.oig.hhs.gov/fraud .
  - Not binding on anyone other than participants to the opinion.
  - But you are probably fairly safe if you act consistently with favorable advisory opinion.

Repay Overpayments
(18 USC 1347; 42 CFR 401.301 et seq.)

Repaying Overpayments

- If provider has received an "overpayment", provider must:
  - Return the overpayment to federal agency, state, intermediary, or carrier, and
  - Notify the entity of the reason for the overpayment.
- Must report and repay within the later of:
  - 60 days after overpayment is identified.
  - date corresponding cost report is due.

(42 USC 1320a-7k(d); 42 CFR 401.305)

Overpayments: Penalty

- "Knowing" failure to report and repay by deadline =
  - False Claims Act violation
    - $11,181* to $22,363* per violation
    - 3x damages
    - *Qui tam* lawsuit

    (31 USC 3729)
  - Civil Monetary Penalty Law violation
    - $20,000 penalty
    - 3x damages
    - Exclusion from Medicare or Medicaid

    (42 USC 1320a-7a(a)(10))

Overpayments

- "Overpayment" = funds a person receives or retains to which the person, after applicable reconciliation, is not entitled, e.g.,
  - Payments for non-covered services
  - Payments in excess of the allowable amount
  - Errors and non-reimbursable expenses in cost reports
  - Duplicate payments
  - Receipt of Medicare payment when another payor is primary
  - Payments received in violation of Stark, Anti-Kickback Statute, Exclusion Statute.
- 6 year lookback period. (42 CFR 401.305(f))

Overpayments: Identified

- Identify overpayment = person has or should have, through exercise of reasonable diligence, determined that they received overpayment.
  - Actual knowledge
  - Reckless disregard or intentional ignorance
- Have duty to investigate if receive info re potential overpayment, e.g.,
  - Significant and unexplained increase in Medicare revenue
  - Review of bills shows incorrect codes
  - Discover services rendered by unlicensed provider
  - Internal or external audit discloses overpayments
  - Discover AKS, Stark or CMPL violation
- "Reasonable diligence" =
  - Proactive monitoring
  - Reactive investigations

(81 FR 7659-61)

Overpayments: Deadline

- 60-day deadline begins to run when either:
  - Person completes reasonably diligent investigation which confirms:
    - Received overpayment, and
    - Quantified amount of overpayment.
  - If no investigation, the day the person received credible information that should have triggered reasonable investigation.
- "Reasonable diligence" = timely, good faith investigation
  - At most 6 months to conclude diligence
  - 2 months to report and repay
- Deadline suspended by:
  - OIG Self-Disclosure Protocol
  - CMS Stark Self-Referral Disclosure Protocol ("SRDP")
  - Person requests extended repayment schedule

(42 CFR 401.305(a); 81 FR 7661-63)

Overpayments: Reporting

May either:

- Use Medicare contractor process for reporting overpayments, e.g.,
  - claims adjustment
  - credit balance
  - self-reported refund
- Use OIG or CMS self-disclosure protocol that results in settlement.

(42 CFR 401.305(d))

Overpayments: Reporting

- Repayment per Repayment Rule does not resolve violations or penalties under other laws, e.g.,
  - Anti-Kickback Statute, Civil Monetary Penalties Law, or False Claims Act, which are resolved by OIG or DOJ.
  - Stark, which is resolved by CMS.
- If Medicare contractor believes repayment involves violation of federal law, contractor may report repayment to the OIG, CMS, or other federal agency.

Overpayments: Reporting

- May want to consider other disclosure protocols.
  - OIG Self-Disclosure Protocol, https://oig.hhs.gov/compliance/self-disclosure-info/index.asp
  - Stark Self-Referral Disclosure Protocol, https://www.cms.gov/medicare/fraud-and-abuse/physicianselfreferral/self_referral_disclosure_protocol.html

Self-Reporting

If you think you have a problem,

- Contact compliance officer
- Consider contacting knowledgeable attorney
- Self-report, if appropriate.

Better to Comply in the First Place!

Action Items

- Identify remuneration to referral sources (e.g., providers, facilities, vendors, government program patients).
  - Contracts (employment, independent contractors, etc.).
  - Group compensation structures.
  - Leases (space, equipment, etc.).
  - Subsidies or loans.
  - Joint ventures or partnerships.
  - Free or discounted items or services (e.g., use of space, equipment, personnel or resources; professional courtesies; gifts; etc.).
  - Marketing programs.
  - Financial policies.

Action Items

- Review relationships for compliance with statute or exception, e.g.,
  - No intent to induce referrals for government program business.
  - Written contract that is current and signed by parties.
  - Compliance with terms of contract.
    - Parties providing required services.
    - Documentation confirming that services provided.
  - Fair market value.
  - Compensation not based on volume or value of referrals.
  - Arrangement is commercially reasonable and serves legitimate business purpose.

Action Items

- Implement method to track and monitor relationships with referral sources for compliance.
  - Central repository for contracts or deals.
  - Method to track contract termination dates.
  - Process for confirming compliance before payment.
  - Require review and approval by compliance officer, attorney or other qualified individual.
    - Contracts.
    - Joint transactions with referral sources.
    - Benefits or perks to referral sources.
    - Marketing or advertising.

Action Items

- Ensure your compliance policies address fraud and abuse laws.
- Train key personnel regarding compliance.
  - Administration.
  - Compliance officers and committees.
  - Human resources.
  - Physician relations and medical staff officers.
  - Marketing / public relations.
  - Governing board members.
  - Purchasing.
  - Accounts payable.
- Document training.

If you think you have a problem

- Suspend payments or claims until resolved.
- Investigate problem per compliance plan.
  - Consider involving attorney to maintain privilege.
- Implement appropriate corrective action.
  - But remember that prospective compliance may not be enough.
- If repayment is due:
  - Report and repayment per applicable law.
  - Self-disclosure program.
    - To OIG, if there was knowing violation of False Claims Act, Anti-Kickback Statute or Civil Monetary Penalties Law.
    - To CMS, if there was violation of Stark.

Additional Resources

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U.S. Department of Health & Human Services

Office of Inspector General
U.S. Department of Health & Human Services

Compliance

Accountable Care Organizations

The Affordable Care Act contains several provisions that support the development of Accountable Care Organizations to manage and coordinate care for beneficiaries.

Read More

Advisory Opinions

The OIG issues advisory opinions about the application of OIG's fraud and abuse authorities to the requesting party's existing or proposed business arrangement.

Read More

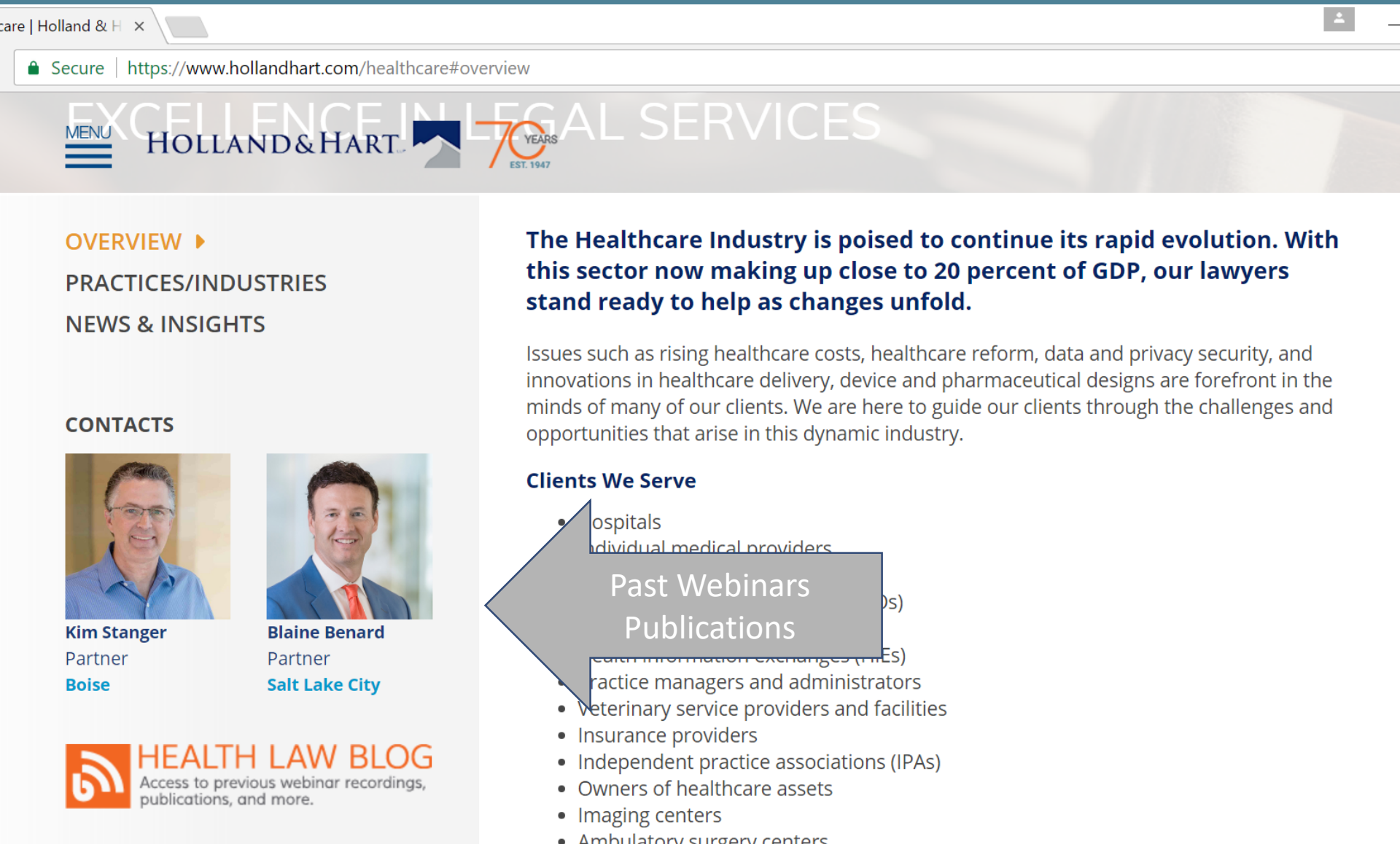
I'm looking for

Let's start by choosing a topic

Select One

- Accountable Care Organizations
- Advisory Opinions
- Compliance 101 and Provider Education
- Compliance Guidance
- Corporate Integrity Agreements
- Open Letters
- RAT-STATS
- Safe Harbor Regulations

https://www.hollandhart.com/healthcare#overview



QUESTIONS?

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