

Bonus and Incentive Compensations: Emblems of Fraud?

According to a new theory posed by the U.S. Department of Justice, corporate compensation policies which directly reward employees based on their attributable billings and collections are actually supplying incentives for fraud. Investigators looking into Medicare and Medicaid overpayments, billing and coding irregularities, and imperfect compliance have revealed that ordinary compensation and bonus policies are possible sources of fraud.¹ Prosecutors have marked bonus and incentive policies as potential “red flags” for fraud,² and companies are encouraged to replace employee bonuses with salary-based performance incentives so as to not arouse prosecutorial suspicion.³

These new compensation “red flags” are consistent with the DOJ’s newfound penchant for regulation by prosecution. CMS has implemented the Recovery Audit Contractor⁴ (RAC) program and Medicaid Integrity Program⁵ (MIP) in an attempt to identify Medicare and Medicaid claim reimbursement outliers, increasing agency scrutiny on healthcare reimbursement fraud. Attorney General Eric Holder and Secretary of Health and Human Services, Kathleen Sebelius, announced in May 2009 they were directing millions of dollars and dozens of agents towards an effort to combat Medicare fraud.⁶

Through the Medicare Fraud Strike Force--a team of federal, state and local investigators charged with the task of combating Medicare fraud through the use of Medicare data analysis techniques and community policing⁷--the Attorney General has recovered \$371 million in false Medicare claims.⁸ Additionally, through the RAC program, a congress mandated program to detect and correct improper payments in the Medicare program, Medicare recovered more than \$1 billion since its inception in 2005, 85% of which was taken from hospitals.⁹ From this, CMS was able to return \$693.6 million to the Medicare trust fund.¹⁰

The attack on healthcare fraud has been a key component of the Obama administration, particularly as part of the President’s proposed Fiscal Year 2010 budget which invests \$311 million to strengthen program integrity within CMS.¹¹ Attorney General Eric Holder has said,

“Every year we lose tens of billions of dollars in Medicare and Medicaid funds to fraud. Those billions represent health care dollars that could be spent on medicine, elder care or emergency room visits, but instead are wasted on greed. This is unacceptable, and the Justice Department is committed to working with the Department of Health and Human Services to eradicate it.”¹²

¹ Source: “Bonuses and Incentive Compensation as Emblems of Fraud: DOJ’s Latest ‘Teaching Moment?’” By Jeremy D. Frey and Frank C. Razanno, Pepper Hamilton LLP, August 4, 2009.

² Source: “Bonuses and Incentive Compensation as Emblems of Fraud: DOJ’s Latest ‘Teaching Moment?’” By Jeremy D. Frey and Frank C. Razanno, Pepper Hamilton LLP, August 4, 2009.

³ Source: “Bonuses and Incentive Compensation as Emblems of Fraud: DOJ’s Latest ‘Teaching Moment?’” By Jeremy D. Frey and Frank C. Razanno, Pepper Hamilton LLP, August 4, 2009.

⁴ Source: “CMS: RAC program has recovered more than \$1B,” FierceHealthcare, July 14, 2008, <http://www.fiercehealthcare.com> (Accessed August 6, 2009).

⁵ Source: “Comprehensive Medicaid Integrity Plan (CMIP),” Centers for Medicare and Medicaid Services, August 4, 2009, http://www.cms.hhs.gov/DeficitReductionAct/02_CMIP.asp (Accessed August 6, 2009).

⁶ Source: “Dozens Arrested in Medicare Fraud Busts Across US” New York Times, July 29, 2009.

⁷ Source: “Medicare Fraud Strike Force Operations Lead to Charges Against 32 Doctors and Health Care Executives for More than \$16 Million in Alleged False Billing in Houston,” U.S. Department of Justice, U.S. Attorney’s Office, Southern District of Texas, Press Release, July 29, 2009, <http://houston.fbi.gov/dojpressrel/pressrel09/ho072909.htm> (Accessed 8/18/09).

⁸ Source: “Dozens Arrested in Medicare Fraud Busts Across US” New York Times, July 29, 2009.

⁹ Source: “CMS: RAC program has recovered more than \$1B,” FierceHealthcare, July 14, 2008, <http://www.fiercehealthcare.com> (Accessed August 6, 2009).

¹⁰ Source: “The Medicare Recovery Audit Contractor (RAC) Program: An Evaluation of the 3-Year Demonstration” Centers for Medicare and Medicaid Services, June 2008, p.2.

¹¹ Source: “Attorney General Holder and HHS Secretary Sebelius Announce New Interagency Health Care Fraud Prevention and Enforcement Action Team” News Release, U.S. Department of Health and Human Services, May 20, 2009.

¹² Source: “Attorney General Holder and HHS Secretary Sebelius Announce New Interagency Health Care Fraud Prevention and Enforcement Action Team” News Release, U.S. Department of Health and Human Services, May 20, 2009.



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