

Report on Medicare Compliance Volume 31, Number 37. October 10, 2022

CIA Changes Have Implications for Voluntary Compliance; IROs Will Calculate Net Overpayments

By Nina Youngstrom

Some material changes have come to corporate integrity agreements (CIAs), and they have implications for voluntary compliance programs, according to an official from the HHS Office of Inspector General (OIG).

In addition to adding transition plans to CIAs, OIG is now allowing independent review organizations (IROs) to calculate overpayments by subtracting underpayments. There is also revised language about the role of a compliance officer and heightened requirements for the compliance committee in CIAs, among other changes.

“Section 3 of any CIA has all the substantive requirements. We are putting those in there because we think that’s what is needed for a robust compliance program or what at least will contribute to a robust compliance program,” said OIG Senior Counsel Laura Ellis at the American Health Law Association’s Fraud and Compliance Forum in Baltimore Sept. 29.^[1] “Everything we are sharing with you today we are sharing with you in the hopes you will take it back and talk to people about it and maybe implement some of these ideas in your own compliance program.”

On the compliance officer’s role, older CIAs stated that “any noncompliance job responsibilities of the compliance officer shall be limited and shall not interfere or conflict with the compliance officer’s ability to perform the duties outlined in this CIA.” New CIA language is stronger. It states, “The compliance officer shall not have any noncompliance job responsibilities that, in OIG’s discretion, may interfere or conflict with the compliance officer’s ability to perform the duties outlined in this CIA.”

The reason for this change is OIG’s concern about what Ellis called “intensive job creep” over the past five or six years. Although they’re not general counsel, as OIG advises, compliance officers “are taking on other roles we think are not appropriate.” Ellis, who monitors CIAs, described some she has seen in the past year where compliance officers wore other hats:

- Responsibility for all patient services at a skilled nursing facility except rehabilitation. “This just blew my mind,” Ellis said.
- Responsibility for medical reviews and administrative appeals. “In OIG’s opinion, you can’t be the compliance officer saying, ‘These are the rules and we have to follow them,’ and then arguing to the government its interpretation of the rules is wrong,” she said.
- Responsibility for negotiating contracts. Compliance officers are supposed to ensure organizations have processes in place to follow rules and be an objective voice providing advice and evaluations, “but not making decisions,” Ellis noted. “You should not be negotiating contracts with anybody. There are other people in the organization who are better suited to do that.”

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