

Re: **Corporate Compliance Programs**

Dear Madam or Sir:

Over the last year or so, every healthcare provider has become familiar with the phrase “HIPAA compliance.” However, many providers do not realize that implementing and maintaining an effective “Corporate Compliance” program may be of greater importance.

### **What is a Corporate Compliance Program?**

A corporate compliance program is a detailed, written program of preventive and reactive plans to ensure compliance with regulatory and legal requirements including the false claims act, Stark II and the Federal and State anti-kickback laws. An effective program must include a plan to prevent and detect violations of law and a plan to respond to government audits and investigations.

### **Why is a Corporate Compliance Program Important?**

When a provider is investigated and/or prosecuted for a violation such as health care fraud, the existence of an effective compliance program can be used to persuade the government to rely on less draconian remedies than criminal prosecution, exclusion from government programs and excessive fines.

The U.S. Sentencing Guidelines (the “Guidelines”) provide for mandatory sentencing guidelines in federal courts. The Guidelines allow judges to exercise discretion in sentencing based upon certain factors. For example, sentencing judges utilize a sophisticated equation to compute monetary penalties. One factor in the equation is known as the “culpability score,” and it is determined based upon specific aggravating and mitigating factors. The Guidelines clearly indicate that the following mitigating factors allow the sentencing judge to reduce the fines imposed upon a corporate defendant: (i) having in place an effective compliance program; (ii) self-reporting of the criminal conduct; and (iii) cooperation with the investigating authorities. The importance of having a corporate compliance program in effect *before* an investigation and/or prosecution takes place cannot be overstated. An effective program aims to prevent violations in the first place, and may mitigate the sentences for violations that occur in spite of the compliance program.

### **What does a Corporate Compliance Program entail?**

Under the Guidelines, to minimize the likelihood of prosecution and maximize the mitigation of punishment, the organization must have established compliance standards and procedures that are “reasonably capable” of reducing the prospect of criminal conduct. Effective corporate compliance programs must, among other things:

- be the product of analysis of the organization and of applicable laws;
- be designed for the organization, not “borrowed” from another organization;
- include a statement of corporate philosophy, code of conduct and employee manual;
- be adopted by a corporation’s board of directors;
- be updated regularly to reflect changes in laws and regulations;

- assign overall responsibility to oversee compliance to a specific individual within high-level personnel of the organization;
- include reasonable steps to achieve compliance with its standards, e.g., by utilizing monitoring and auditing systems reasonably designed to detect criminal conduct by its employees and other agents and by having in place and publicizing a reporting system whereby employees and other agents could report criminal conduct by others within the organization without fear of retribution; and
- provide for consistent enforcement of standards through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect an offense.

### **The OIG's 2004 Investigative Focus**

Every year, the Office of Inspector General (OIG) publishes a Work Plan that describes its intended areas of focus with respect to its mission of minimizing fraud waste and abuse in the Department of Health and Human Services' programs. The 2004 Work Plan includes program audits aimed at assessing the medical necessity of diagnostic tests; "incident-to" services provided by allied health professionals; and place-of-service billing errors. Additionally, the OIG has indicated that it will concentrate its resources in 2004 to, among other things, investigating individuals, facilities or entities that:

- bill Medicare and/or Medicaid for services not rendered;
- manipulate payment codes to inflate reimbursement amounts;
- violate the anti-kickback statutes;
- engage in illegal schemes to market, obtain, use and distribute prescription drugs; and
- improperly bill for medically unnecessary services and/or services not rendered to patients of nursing facilities.

The cost of not having a corporate compliance program may be significantly greater than the cost of implementing one. An effective program should be simple to understand, easy to implement, and customized to the circumstances of the provider. At Filer & Levitt, LLC, we have helped dozens of health care providers implement practical corporate compliance programs. The fees associated with the implementation of a basic compliance program for a small to medium-sized medical practice are usually less than \$1,500.