Eli's Rehab Report

Compliance: Brace for Major Compliance Changes in Healthcare Reform

One guilty-until-proven-innocent provision will shutter some blameless providers, expert says.

While the new healthcare reform bill shows lots of promise for rehab providers (see the last issue of Rehab Report), beware the compliance landmines lurking below.

Keep Your Business Practices Squeaky-Clean, or Else

Under the health care reform law's tough new fraud-fighting provisions, regulators will take your money first and ask questions later.

"The [Health and Human Services] Secretary may suspend payments to a provider of services or supplier ... pending an investigation of a credible allegation of fraud against the provider of services or supplier, unless the Secretary determines there is good cause not to suspend such payments," reads the Patient Protection and Affordable Care Act (PPACA).

The Department of Health and Human Services (HHS) will "consult with" the HHS Office of Inspector General (OIG) to determine whether the allegation of fraud is credible and therefore triggers the suspension, continues the legislation that **President Obama** signed into law March 23.

Timeline: The law contains no implementation date for this provision but does direct HHS to publish regulations about the change.

This provision finds the provider guilty without a trial, protests consultant **Tom Boyd** with Rohnert Park, Calif.-based Boyd & Nicholas. Because providers get "no cash while waiting for clearance," he notes, the provision could close some innocent providers' doors forever.

Watch out: The payment suspension provision is just one of many fraud-fighting initiatives included in PPACA. The Obama administration expects the law's fraud and abuse measures to raise millions to pay for overall health care reform.

Home Health Therapists, DME Suppliers: Be on Your Toes

Medicare providers must establish a compliance plan "as a condition of enrollment" in Medicare, PPACA says. HHS and the OIG together will establish "core elements" for the required compliance program. HHS has discretion on which providers will fall under this requirement and what their deadline will be, according to the law.

Target: Durable medical equipment and home care "are two industry sectors that the HHS may prioritize in establishing mandatory compliance program requirements," predicts law firm Morgan Lewis in an analysis of the new provision. That's due to "the relatively low rate of compliance program adoption by ... DME and home health, as compared to other industry sectors, such as hospitals and health systems," the firm notes. The law and the Centers for Medicare & Medicaid Services' (CMS) focus on enrollment requirements for DME and home health also may be a good indicator.

Take note: Small providers are likely to feel the burden of this provision the most, Morgan Lewis expects. That's because "many, if not most, larger health care providers already have some form of compliance program." So if you're a home health rehab manager, find out from your agency if it has a compliance program before the feds turn up the heat. Therapists in other sectors should make sure they have compliance plans as well.

Start Tracking Your Overpayments

Providers must return any overpayments within 60 days of identifying them, the law spells out. If providers knowingly fail to return overpayments by the deadline, they are subject to False Claims Act-level penalties -- treble damages and fines, notes BKD's **Tom Watson** on the firm's Web site.

Watch out: The law sets the deadline for this provision as May 22, Watson warns. "Providers that may be aware of known or potential overpayments should carefully assess their repayment obligations prior to that date to avoid possible FCA provisions," he urges. CMS hasn't yet defined what the definition is for "identification" of overpayments, Watson adds. Stay tuned to forthcoming CMS regulations for more details.