

THE EVOLVING LEGAL AND COMPLIANCE LANDSCAPE OF FIRE- BASED EMS

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1

FEDERAL BULLSEYE ON FIRE BASED EMS

OFFICE OF INSPECTOR GENERAL (OIG) WORK PLAN

How We Plan Our Work

“We assess relative risks in HHS programs and operations to identify those areas most in need of attention and, accordingly, to set priorities for the sequence and proportion of resources to be allocated.”

<https://oig.hhs.gov/reports-and-publications/workplan/index.asp>



2024 OFFICE OF INSPECTOR GENERAL (OIG) WORK PLAN

Prior OIG work found that Medicare made inappropriate payments for advanced life support emergency transports. We will determine whether Medicare payments for ambulance services were made in accordance with Medicare requirements.

<https://oig.hhs.gov/reports-and-publications/workplan/index.asp>



OIG SOCIAL MEDIA POST



Medicare Fraud **STRIKE FORCE**

OIG.HHS.GOV

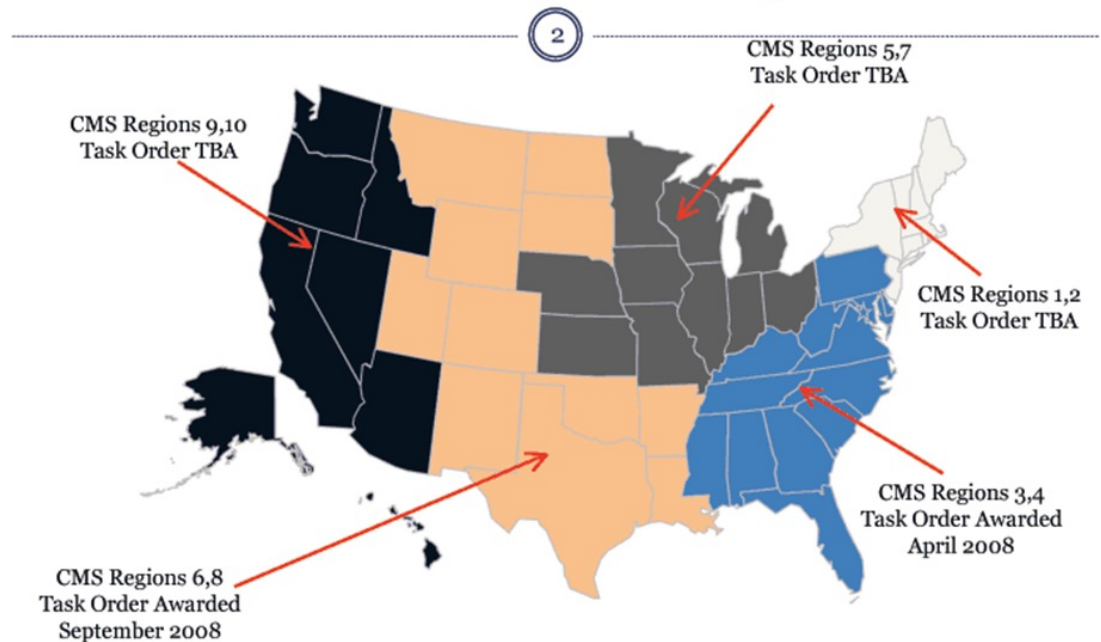
“Medicare Fraud Strike Force teams harness data analytics and the combined resources of federal, state, and local law enforcement entities to identify, investigate, prevent and combat health care fraud, waste, and abuse.”

Read more:
go.usa.gov/xJMWf.

MEDICARE AUDITS

A primary source of referral to the OIG and the **DOJ** are the Medicare Administrative Contractors which implement the Medicare program, as well as the Program Safeguard Contractors (PSCs), Zone Program Integrity Contractors (ZPICs), and the Recovery Audit Contractors (RACs) who work on a contingent fee or **bounty hunting basis**.

MICs' Regional Map



TARGETED PROBE AND EDUCATE (TPE) AUDIT

“Most providers will never need TPE. TPE is intended to increase accuracy in very specific areas.

MACs use data analysis to identify:

- providers and suppliers who have high claim error rates or unusual billing practices, and
- items and services that have high national error rates and are a financial risk to Medicare.

Providers whose claims are compliant with Medicare policy won't be chosen for TPE.”

Source: www.CMS.gov; TPE Audit web page; last accessed 11-9-2022

FEDERAL INVESTIGATION EXAMPLES

- All Fire Departments or Fire Protection Districts
- All outsourced their billing to companies specializing in EMS
- Federal players:
 - United States Attorney – Civil and Criminal Healthcare Division
 - Attorney with the Office of Inspector General (OIG) in Washington, D.C.
 - Primary Investigators: Agents with FBI, OIG and DOJ
- Feds investigating **False Claims Act** violations
- Organization Size: Volunteer FD doing 100 Medicare transports per year up to very Large Municipal FDs
- Clients have absolutely no idea they may be billing improperly

FALSE CLAIMS ACT LIABILITY

Liability under the FCA requires a defendant to act “knowingly,” which the statute defines broadly to include:

- Actual knowledge.
- Deliberate ignorance of the truth or falsity of the information.
- Reckless disregard of the truth or falsity of the information.

Specific intent to defraud is not required. (31 U.S.C. § 3729(b)(1).)

AUDIT OF AMBULANCE SERVICES SUPPLEMENTAL PAYMENT PROGRAMS

We will conduct audits of selected States to determine whether the States' claims for Federal reimbursement for supplement payments to these providers complied with Federal and State requirements.

<https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000786.asp>



TEXAS AMBULANCE SERVICES SUPPLEMENTAL PAYMENT PROGRAM (ASSPP)

“Governmental ambulance providers may receive a supplemental payment if the governmental ambulance provider's allowable costs exceed the fee-for-service revenues received during the same period.”

<https://pfd.hhs.texas.gov/acute-care/ambulance-services>

<https://pfd.hhs.texas.gov/acute-care/ambulance-services/ambulance-services-supplemental-payment-program-asspp-cost-report-training-information>

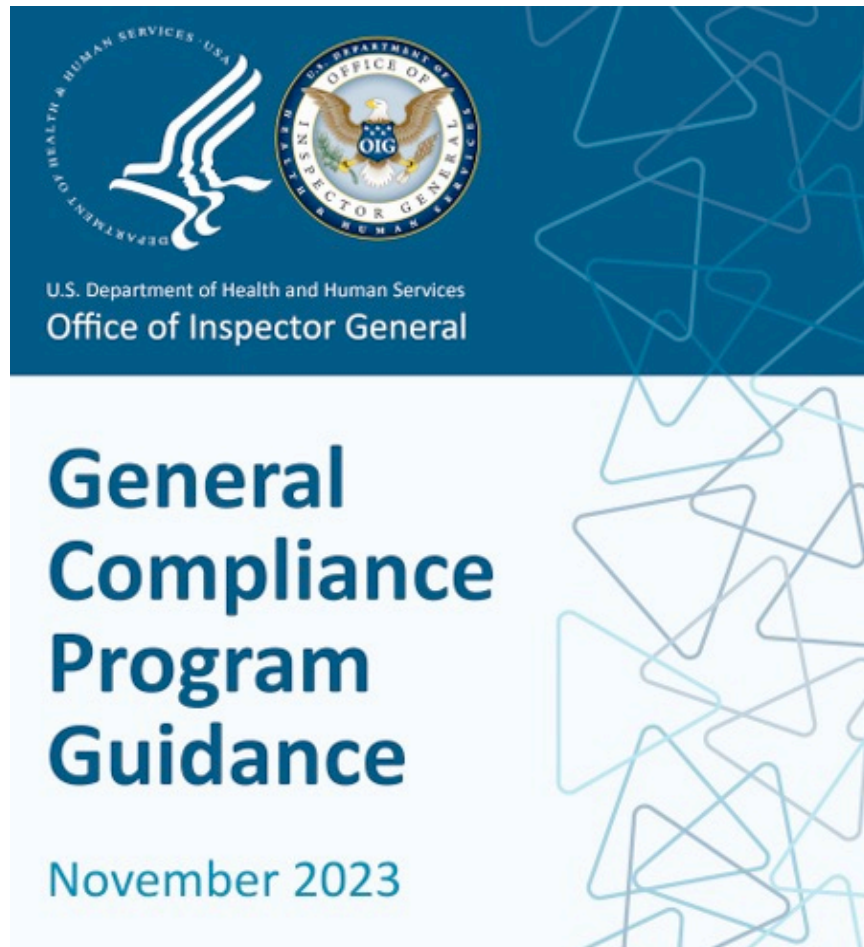
2

WHAT IS AN OIG COMPLIANCE PROGRAM AND WHY DO I NEED ONE?

1998 – 2008: OIG ISSUED INDUSTRY SEGMENT SPECIFIC COMPLIANCE PROGRAM GUIDANCE DOCUMENTS:

- *Hospitals*
 - *Home health agencies*
 - *Clinical laboratories*
 - *Third-party medical billing companies*
 - *Durable medical equipment, prosthetics, orthotics, and supply industry*
 - *Hospices*
 - *Medicare Advantage organizations*
 - *Nursing facilities*
 - *Physicians*
 - *Pharmaceutical manufacturers*
 - **Ambulance suppliers (2003)**
- <https://oig.hhs.gov/compliance/compliance-guidance/>

NOVEMBER 2023



“Welcome to OIG’s General Compliance Program Guidance (GCPG):

The GCPG is a reference guide for the health care compliance community and other health care stakeholders. The GCPG provides information about relevant Federal laws, compliance program infrastructure, OIG resources, and other information useful to understanding health care compliance.”

<https://oig.hhs.gov/compliance/general-compliance-program-guidance/>

COMPLIANCE PROGRAMS FOR SMALL ENTITIES

*“**Small entities**, such as individual and small-group physician practices, or other entities with a small number of employees, may face financial and staffing constraints that other entities do not.”*

“While still encompassing the seven elements discussed above, a small entity’s compliance program should be structured so that the entity can gain the benefits and protection of a compliance program within the constraints under which the entity operates.”



HHS Office of Inspector General

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HHS-OIG reminds the health care compliance industry that a health care entity must have an appropriate compliance program in place that is legally effective, properly implemented, and consistently enforced internally. Learn more in the new General Compliance Program Guidance: <https://direc.to/fgDG>



OIG'S MODERNIZATION INITIATIVE – A ROADMAP GOING FORWARD

“First, our General CPG (GCPG) applies to all individuals and entities involved in the health care industry.”

“**Second, starting in 2024, we will be publishing industry segment-specific CPGs (ICPGs) for different types of providers, suppliers, and other participants in health care industry subsectors or ancillary industry sectors relating to Federal health care programs.**”

AUDITING AND RISK ASSESSMENT

“Small entities should conduct at least an annual audit. The risk assessment can help the entity to determine what types of claims or other areas to select for the audit. Based on the audit results, the entity will be able to determine whether there are issues that it should address. Remediation could include:

- repayment of overpayments;
- changing of entity processes; and
- education of personnel.”

WHAT IS NOT A COMPLIANCE PROGRAM?

“**Small entities** that cannot support a compliance officer on either a full-time or part-time basis should consider designating one person as the entity’s **compliance contact****This person should not** have any responsibility for the performance or supervision of legal services to the entity and, whenever possible, should not **be involved in the billing, coding, or submission of claims.**”

**Your billing company is not and cannot be your
“compliance program”!!!**

POLICIES AND PROCEDURES – ACCESS & TRAINING

“A small entity should have policies, procedures, and **training on how to perform duties and activities in compliance** with government health care and other applicable legal requirements. **It should also instruct its personnel on its compliance program.**”

CODE OF CONDUCT

“CEOs can demonstrate their embrace of the organization's commitment to compliance with a signed introduction in the code. **To demonstrate broader organizational commitment to compliance, the board also may wish to include a signed endorsement or a similar written statement.”**

INVESTIGATION – WHO'S IN THE ROOM?

- EMS Chief?
- Fire Chief?
- City Finance Director?
- City Administrator?
- Mayor?
- Board of Directors?
- City Council?
- **Hint: It's all of the above. Who's going to get blamed? Probably you.**

HIPAA – EMS IS A MAJOR TARGET FOR CRIMINALS

- Cities, Counties, Fire Departments/Districts, Ambulance Districts, Dispatch Centers, etc. fall in the “sweet spot”

- **Class Action Lawsuits are Increasing:**

“Data breaches involving PHI provide an attractive target for class action litigation because they often arise out of a single event and provide a large pool of people for a potential class, which increases the settlement value of a case. Additionally, data breaches incite anxiety and fear in potential class members.”

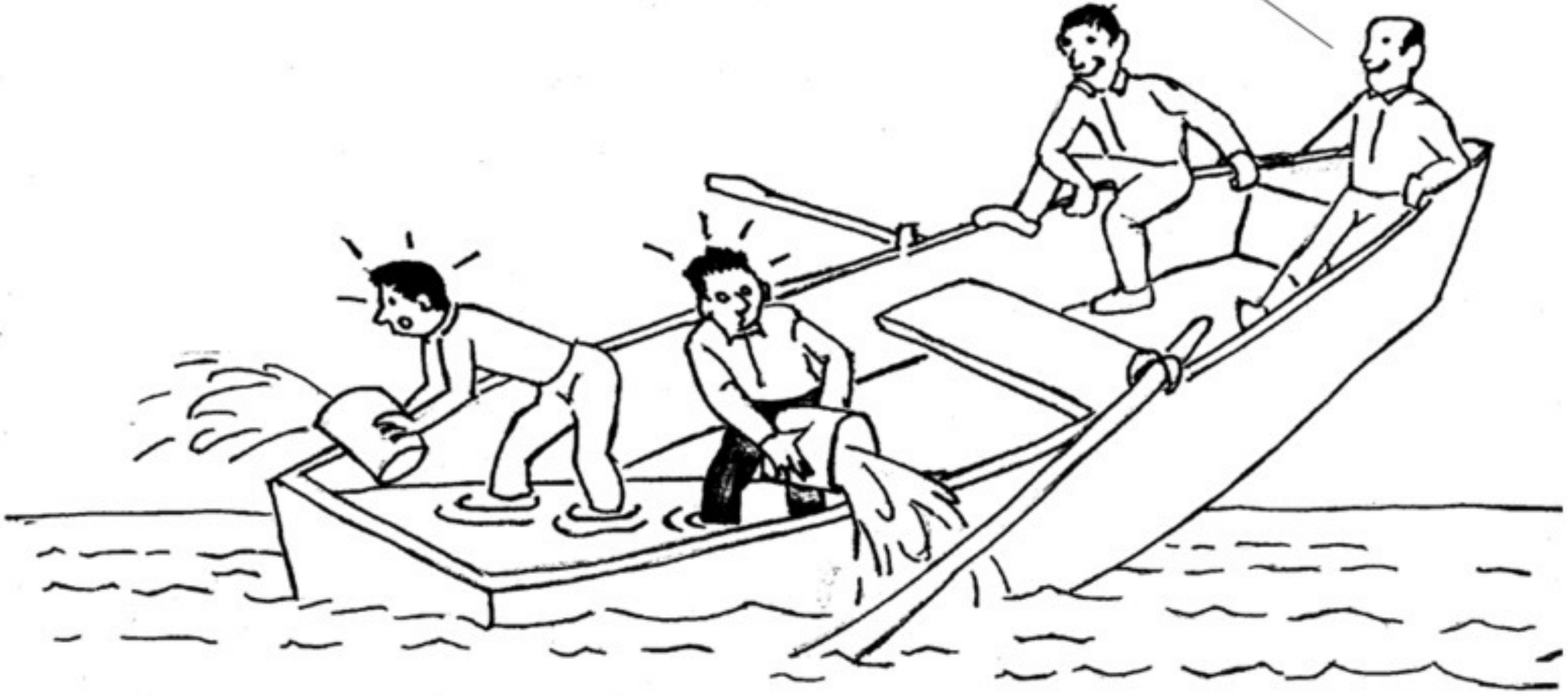
HIPAA: RECENT EMS EVENTS AND CLASS ACTIONS

ESO Solutions. Two class actions related to its disclosed cyberattack and data breach that affected almost 2.7 million individuals. Two lawsuits – Claybo v. ESO Solutions Inc. and Essie Jones f/k/a Essie McVay v. ESO Solutions Inc. – were filed in the U.S. District Court for the Western District of Texas.

HHS Statement Regarding the Cyberattack on Change Healthcare:

“HHS is also leading interagency coordination of the Federal government’s related activities, including working closely with the Federal Bureau of Investigations (FBI), the Cybersecurity and Infrastructure Security Agency (CISA), the White House, and other agencies to provide credible, actionable threat intelligence to industry wherever possible.”

Sure glad the hole isn't at our end.



THANK YOU

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