

OIG STRATEGIC PLAN ANNOUNCES PRIORITIES FOR COVID-19 ENFORCEMENT

On May 26, 2020, OIG released its [Strategic Plan for Oversight of COVID-19 Response and Recovery](#) (“Strategic Plan”). The Strategic Plan lays out OIG’s priorities for ensuring that HHS’s COVID-19 relief funds are appropriately disbursed and used, and it gives insights into the enforcement activities that relief fund recipients can expect to see going forward.

BACKGROUND

HHS’s response to the COVID-19 pandemic has taken a number of forms, including the adoption of blanket waivers by CMS, the distribution of billions of dollars to health care providers, the creation of a new payment system to provide care for the uninsured, and public announcements of enforcement discretion by CMS and OIG. For more information on these developments and others, refer to Hall Render’s [COVID-19 Resource Center](#).

With billions of dollars at stake, it comes as no surprise that HHS’s COVID-19 response programs are potential targets of fraud, waste and abuse. In [testimony before Congress](#) on May 26, 2020, Principal Deputy Inspector General Christi Grimm stated, “We know from experience that fraud schemes proliferate during emergencies, as greedy perpetrators exploit fear and confusion to steal. It is despicable and it is happening during this pandemic.” As we described in [our recent article](#), providers who participate in these programs should ensure that they do so in compliance with all program requirements and existing fraud and abuse laws. Through the Strategic Plan, OIG provides important insights into how it intends to identify potential fraud and focus its resources to protect the federal health care programs and the beneficiaries they serve.

STRATEGIC PLAN—PROVIDERS AND FUND RECIPIENTS TAKE NOTICE

The Strategic Plan lays out four priorities for OIG: protect people; protect funds; protect infrastructure; and promote the effectiveness of HHS programs—now and into the future. By describing how OIG intends to achieve these goals, the Strategic Plan gives providers and fund recipients specific guidance into the steps they can take to avoid becoming the target of an investigation.

A. *Use of Data Analytics and Artificial Intelligence*

One of the most important aspects of the Strategic Plan is what it does not do: Commit OIG to a specific enforcement roadmap. Instead, OIG will use advanced tools, including artificial intelligence (“AI”), to direct its enforcement activities. OIG has considerable experience using data analytics to identify potential fraud, particularly through its joint Medicare Fraud Strike Forces, and it is expected to bring the full advantages of this experience to bear in its COVID-19 enforcement activities. For many providers, this is good news because reliable data analysis will reduce the need for routine audits. As Principal Deputy Inspector General Grimm stated, OIG is “balancing the need for robust oversight with minimizing unnecessary burden on providers and program staff caring for communities.”

Providers should expect that OIG will have full access to all information and documents that they submit to the government or its contractors in relation to the COVID-19 response programs. OIG will likely analyze claims data and other requests for payment to identify potential fraud, waste and abuse. Further, providers should be cognizant of the fact that their acceptance of many types of COVID-19 relief funding is contingent on accepting HHS’s unilateral terms and conditions. In addition to its traditional approach to potential violations of the fraud and abuse laws, OIG might now also scrutinize provider-submitted data for potential violations of these terms and conditions from an enforcement perspective.

B. *High-Risk Areas and Continued Enforcement*

The Strategic Plan reminds providers that OIG will continue to pursue its enforcement activities notwithstanding the COVID-19 public health emergency. OIG’s first priority under the Strategic Plan is to protect people. In line with this principle, OIG commits to proactively audit and evaluate areas that it perceives as having a greater risk of patient harm, including nursing homes and child care programs. In addition, when detected, OIG will prioritize cases that endanger HHS beneficiaries and the public.

OIG will also focus on financial fraud, and, as stated above, will likely use data analytics to guide its approach. In addition to these targeted investigations, OIG will audit COVID-19 relief fund recipients to determine if they meet all program requirements regarding fund use and

reporting. Providers may also be impacted by OIG's audits of HHS's internal systems. On Friday, May 22, 2020, OIG added an audit of Provider Relief Fund distributions to its Work Plan. As stated by Principal Deputy Inspector General Grimm, this audit will help OIG "determine whether the \$50 billion distribution from the Provider Relief Fund was correctly calculated and distributed to eligible providers." Per the Strategic Plan, OIG may recommend that funds that were erroneously given to providers or misspent funds be recouped.

Providers are reminded that protection under HHS's various temporary regulatory waivers, such as fraud and abuse waivers and OIG's statements of enforcement discretion, as well as receipt of relief program funds, is contingent on meeting all of the applicable waiver or program requirements. Providers would be best served by proactively tracking waiver use and documenting their compliance with all program requirements.

PRACTICAL TAKEAWAYS

- OIG's use of data analytics and AI to shape its investigatory priorities places the onus on providers to ensure that the data that they submit to the government is accurate and compliant. Providers should ensure that leaders and operational personnel are familiar with the terms and conditions of any COVID-19 relief program or waiver relied upon by the provider, and, to the extent feasible, audit and monitor compliance with those terms and conditions.
- While the COVID-19 public health emergency is an unprecedented situation, OIG's Strategic Plan demonstrates its commitment, even in this environment, to protecting the health and safety of all Americans and the crucial federal health care programs. Providers should not assume that enforcement activities have slowed or stopped and documented compliance with regulatory requirements, including any COVID-19 based waiver, remains critical. The implementation of an effective compliance program also continues to be as important as ever before.
- The Strategic Plan indicates that the public health emergency may be seen as a proving ground for HHS's regulatory flexibilities. If given the opportunity in the future, providers should strongly consider submitting comments and providing input on whether to make any of these flexibilities permanent.

For more information on this topic, and for assistance in developing and implementing auditing and monitoring plans specific to the COVID-19 public health emergency, please contact:

- **Scott Taebel** at staebel@hallrender.com or (414) 721-0445;
- **Katherine Kuchan** at kkuchan@hallrender.com or (414) 721-0479;
- **James Junger** at jjunger@hallrender.com or (414) 721-0922;
- **Patrick Garcia** at pgarcia@hallrender.com or (445) 951-7043; or
- Your regular Hall Render attorney.

For more information on Hall Render's Compliance Counsel services, click [here](#).

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