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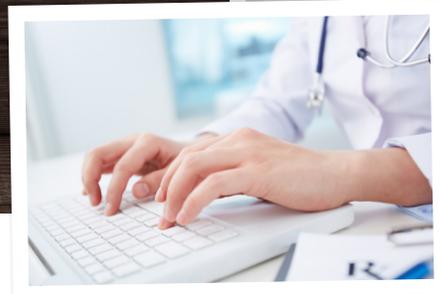
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MINIMIZING HEALTHCARE REGULATORY RISK

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Regardless of your role within the healthcare space, everyone can have an impact on how an organization minimizes regulatory risks. Healthcare executives need to understand the trending regulatory claims, the best way to partner with insurance associates, and how varying policies interface with the associated liabilities.

Given the fact that the regulatory landscape of healthcare is constantly changing, keeping up with the associated trending risks seems to be an unceasing process. While at certain times, regulatory violations can be intentional and severe, other times there are innocent mistakes such as coding errors via ICD-10, with its 140,000 procedure and diagnosis codes. To protect your organization, it's prudent to occasionally review some of the rising trends and other concerns.

Rising Concerns in Healthcare Regulation

FRAUD

The Department of Justice has recovered well over \$16.5 billion in Healthcare fraud between 2009 and 2015. These recoveries "restore valuable assets to federally funded programs such as Medicare, Medicaid, and TRICARE – the health care program for the military." One of the largest recoveries was from DaVita Healthcare, totaling \$450 million to "resolve allegations it knowingly

generated unnecessary waste in administering [...] drugs [...] to dialysis patients, and then billed the government for costs that could have been avoided."

STARK LAWS

There has been a significant increase in the number of Stark Law violations over the past several years. These laws prohibit inappropriate doctor-hospital financial relationships that could improperly influence the referral of patients. The Department of Justice has seen hundreds of millions of dollars come in as a result of these settlements.

QUI TAM (WHISTLEBLOWER)

Healthcare qui tam (whistleblower) claims under the False Claims Act have continued to increase year after year. From 1987 to 1992 there were a total of 62 claims, rising to 638 such claims in 2015 alone. In 2013, CMS introduced The Medicare Incentive Reward Program, which pays up to 10% of the recovered amount or \$1,000, whichever is less. There is an incentive for employees and non-employees to engage in whistle blowing.

OTHER CONCERNS

In addition to fraudulent patient care and billing concerns, there are several other regulatory factors that the healthcare arena faces. These include EMTALA,

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HIPAA, anti-trust violations, and investigations of publicly owned healthcare facilities performed by the Securities and Exchange Commission. Cyber related issues are also key drivers that present a very real danger to HIPAA and fiduciary regulations, with the top five 2015 healthcare breaches accounting for over 100 million compromised patient records. We have recently addressed how to best prepare for a cyber breach event in various articles. All of these regulatory concerns and many others affect the resiliency and integrity of a healthcare organization.

Is your Organization Prepared?

Your healthcare organization may not be as prepared as you might think for the heightened regulatory scrutiny the industry is facing. Due to the fact that all of these risks continue to grow, many insurance carriers are increasingly removing regulatory risk from their policies and replacing it with an option to purchase coverage as a standalone placement. Cyber insurance policies are one example of certain coverages that have evolved in the past few years into a standalone product considered "standard coverage" for the majority of healthcare entities.

Worse still, insurance carriers are becoming more aggressive in providing their clientele with stricter incentives to help reduce the odds of regulatory issues occurring. This is because the threats of these violations

are so significant, particularly in the healthcare and life sciences industries (these were, in fact, the two most internally investigated industries due to regulatory issues in 2015). One way carriers are "incentivizing" their clients is offering coinsurance, where your organization pays a certain portion of the payment made against a claim. Another method is to increase deductibles, meaning that while a Directors and Officers insurance policy might have had a \$5 million limit and \$50,000 deductible, now they are requiring a \$500,000 deductible.

Because some of these policy impairments are occurring at policy renewal time, insureds aren't necessarily always aware of what's covered and for how much. Being prepared in this evolving insurance marketplace and heightened regulatory arena requires that you work with a broker that focuses on the issues specific to healthcare, knows these nuances in coverage, and can help you develop a strategic risk management plan. Partnering with a well versed insurance expert will ensure that you understand the regulatory risks facing the healthcare industry and help you be prepared for those changes coming in the future.