

## *Corporate Compliance*

Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania

Before an audience of senior health care professionals and trustees, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, reported at the Health Policy Institute's March 14, 2003, Governance Briefing the federal government's effort to combat health care fraud in our region. Ms. Buchanan stated that of the almost \$2 trillion spent each year on health care, as much as 10% is fraudulent.

Ms. Buchanan is the first woman in Pennsylvania's history to be Presidentially appointed as United States Attorney. She discussed the importance of corporate compliance for all health care businesses, regardless of their size, and suggested answering these questions to determine compliance:

- *Does the health care provider have a compliance plan in place?*
- *Is the provider adhering to the compliance plan?*
- *What relationship exists between the compliance plan and the conduct at issue?*
- *What other steps, if any, has the provider taken to comply with billing rules?*
- *Has the provider previously, on its own, identified the wrongful conduct currently under examination and taken steps to remedy the problem?*
- *Did the provider report the wrongful conduct to a government agency?*

Ms. Buchanan emphasized each false billing is considered a false claim. However, proof of specific intent to defraud is not required in order to prove a civil False Claim Act case in the US; proof by a preponderance of evidence that the health care provider "knowingly" presented false claims to the United States agency involved is accepted. *The False Claims Act*, 31 U.S.C. Sections 3729-3733, dating to the American Civil War, imposes penalties up to three times the amount of the false claim, ranging from \$5,500 to \$11,000.

Ms. Buchanan cited specific means used to differentiate "knowingly" from a mere mistake in submitting a false claim: 1) having actual knowledge of the false information; 2) acting in deliberate ignorance of the truth or falsity of the information; 3) acting in reckless disregard of the truth or falsity of the information. The U.S. Attorney office determines whether the elements of "knowledge" and "falsity" can be established in a given case before the decision to prosecute is taken by also asking, "Is the pervasiveness or magnitude of the false claims sufficient to support an inference that they resulted from deliberate ignorance or intentional or reckless conduct rather than mere mistakes?"

Ms. Buchanan cited some examples of corporate compliance programs and corporate integrity agreements for health care providers, including how a proper system to check false billing can protect them from prosecution. Regulating government agencies recommend implementing a review system or plan to detect and prevent employee misconduct in the form of submitting a false claim.

Health care providers are advised to educate their employees about corporate compliance programs to avoid the risk of being prosecuted due to the conduct of uninformed employees. The "open letter to health care providers" from the Office of Inspector General, HHS on March 9, 2000, states "...the best evidence that a provider's compliance program is operating effectively occurs when the provider, through its compliance program, identifies problematic conduct, takes appropriate steps to remedy the conduct and prevent it from recurring, and makes a full and timely disclosure of the misconduct to appropriate authorities."

A separate task force for the Western District of Pennsylvania including HHS/DIG, FBI, IRS and other federal and state agencies ensures compliance with health care statutes. The U.S. Attorney office understands that mistakes do happen in practice and they do not attempt to prosecute each case of false claim, but instead look at the provider's history and initiative, stated Ms. Buchanan.

A stimulating Q & A session concluded the briefing. More information about corporate compliance issues can be obtained at [www.oig.hhs.gov](http://www.oig.hhs.gov). In addition, Ms. Buchanan urged anyone with health care fraud concerns to contact her office.

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