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News Briefs

Two Health Systems, Many AI Use Cases: Navigating the Auditing Benefits, Risks and Limits

Reviewing contracts used to take hours of painstaking work for Amanda Smith, senior director of internal audit at WellSpan Health in Pennsylvania. For example, she would pore over business associate agreements (BAAs) to check whether or not they had required language and identify any variations.

"It's something that's a core component of an audit but not the best way to use my brain," she said.

AI has given her a leg up. An AI tool now reviews BAAs and other contracts for certain information, such as dates of execution compared to dates of payment. The reviews aren't entirely entrusted to AI, however. "I will open the document and look myself and confirm it's there," Smith noted.

Contract reviews and audit planning are the kind of AI use cases that may be a force multiplier. "There are a lot of different use cases, but I found it most helpful in evaluating policy against process and attribute testing to evaluate information on contracts," Smith said. But AI has its limits in some areas, such as conflict of interest (COI) disclosure dispositions, at least for now.

Ensuring Data Is Used Securely

WellSpan employees have an enterprise license for Microsoft Copilot. "When users access Copilot through their network credentials, interactions occur within the protections and boundaries of the enterprise environment," Smith noted. "Similar enterprise-grade licensing and security models are available through other AI platforms as well. That distinction is important because many of the concerns organizations have about AI are less about the technology itself and more about ensuring that data is being used

in a secure, approved, and appropriately governed environment."

Smith emphasized that "organizational or sensitive data loaded into an AI platform should comply with the organization's acceptable use policies and data governance expectations."

Prompting 'What-ifs' on Walk-Throughs

AI has been valuable with internal audits in various ways. For example, it's useful in the audit planning phase by helping identify the objectives and scope of the audit as well as key risks and controls to mitigate them, Smith said.

The internal auditors also use AI to help develop questions for a "walk-through," which is their method for understanding a process end to end. "AI can create visuals and process maps when you subsequently upload the narrative/flow you've documented, but at the front of this process we typically start out with a series of questions to understand inputs and outputs within a process," Smith explained.

A lot of the questions are intuitive—e.g., "I have an invoice that needs to be paid. What is the first step in getting it paid?"—and are followed by a walk-through of each step in the process with the process owner to identify controls and control gaps. "Where AI can be helpful is prompting what-if or outlier scenarios," Smith said. "We might build our list of generic questions and then prompt the chat to flag" all the possible unusual scenarios "that could arise and present risk and ensure we're asking those questions too."

This is an example of how WellSpan still drives "what we do," while "leveraging AI to point out some of the road signs we might miss if we're going too fast."

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Standardizing AI Use in Audits

To set parameters for the use of AI in audits, Smith developed a prompt library in early 2026 (see box, pages 4-5).¹ “Things are very repeatable in how we do our work,” she noted. “It’s a great use case for developing a process.”

Smith also uses AI as a “capacity tracker.” For example, she asks Copilot to determine which team members have the time for a project based on their schedules. “I can say, ‘this team member has 40% available capacity based on our model. I want to give them this additional work,’” she explained. “That has been a productive use case that is super low risk because it’s not impacting a decision or work product, so it’s not scary.”

Holding People Accountable for Their Projects

The AI tool also helps schedule projects. Smith gives Copilot specific information—for example, an audit should consume 300 hours and follow certain steps—and asks it to schedule the audit and cite the output that should be expected each week.

“It helps me as a leader come up with more clear measurements to hold my team accountable and help my team members hold themselves accountable,” she said. “It has become a command station” instead of the previous method of tracking progress in one-on-one check-in sheets.

All this doesn’t mean internal auditors are relinquishing their expertise to AI. For example, although AI is a boon to their research, “we still need to be the procurers and

vettors of information,” Smith said. But she appreciates that AI synthesizes far more information, including white papers from trustworthy sources and conversations on community message boards, that can help inform decisions—as long as there are safeguards.

“I may not be able to analyze and succinctly summarize 20 pieces of content,” Smith noted. “I can feed all that content in and say, ‘I only want you to use that content and put guardrails around it.’ That’s where AI can help me and come up with the best path forward.”

AI Has Its Limits

Like a human, AI makes mistakes, and auditors should double-check its work. For example, when Smith was contemplating a wage and hour audit, she asked Copilot for examples of high-dollar settlements over wage and hour issues during the past five years. The AI tool spit out information about a large health system’s \$9 million settlement.

She tried to find the settlement but “it was completely fabricated” even though “it sounded so real.” The experience drove home the point that sometimes AI invents things to please the user, a risk known as sycophancy.

The AI tool also was a disappointment in COI disclosure reviews. The internal audit department is responsible for overseeing COI disclosures—about 4,000 a year. Smith was hoping to use AI to help disposition the disclosures (e.g., decide which disclosures require a management plan), but “it ended up taking an incredibly conservative approach to the point it was identifying everything as a conflict that requires management.”

What went wrong? Copilot wasn’t in alignment with WellSpan’s policy “to the extent it took us more time to analyze Copilot’s position than if we do it ourselves, at least today,” Smith said. “It required rework of 100%, which isn’t the goal.”

Contract Reviews: ‘A Snapshot’ of Attributes

Returning to contract oversight, Smith finds AI an efficiency booster. For example, the internal audit team loads construction contracts into Copilot to zoom in on certain provisions. “Instead of having to page through a 100-page construction contract, we use it to identify where within the contract specific language exists.”

Copilot provides “a snapshot” of attributes (i.e., the elements being tested). They might include whether the contract was fully executed, whether it was signed by a person who had the appropriate level of authority, and whether the check was issued to the contractor before or after execution of the contract.

There’s always a human in the loop. “We get great output from Copilot, but we still manipulate that,” Smith

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noted. She eyeballs whether the AI's answers make sense and what could be missing.

How AI is deployed will continue to evolve. Auditors should stay open and flexible to AI's opportunities while being aware it's constantly changing, "and I don't want to miss out. I want to show WellSpan, which is focused on innovation, that this is the way I can align with the strategic expectations of the organization."

At Another Health System, AI Assists With Coding

In another part of Pennsylvania, an unrelated health system is also deploying AI in various ways. Penn Medicine uses ambient AI listening to document encounters with the patient's consent and more recently implemented the same AI tool's coding assistance functionality.

"At this point, we have that in our ambulatory clinics and office environments," with plans to expand to inpatient and emergency department settings, said Karen Smith, vice president and billing compliance officer at Penn Medicine (no relation to Amanda Smith).

Before the health system went live with the coding functionality, Karen Smith sought feedback from other health systems that already used it. She wanted "the skinny from other compliance folks" and asked the vendor for names.

After hearing positive feedback about the AI and the vendor's engagement in compliance around its use, and for other reasons, Smith felt comfortable with the health system moving ahead. Penn Medicine has now deployed the AI functionality for some evaluation and management codes and ICD-10 diagnosis codes.

AWVs: Not Ready for Prime Time

There was a hitch: When Penn Medicine's compliance team evaluated the AI's functionality for Medicare annual wellness visits (AWVs), "we identified an important limitation," Smith said. The reason: a disconnect between ambient listening and documentation requirements.

To bill for AWVs, Medicare requires providers to develop or update a personalized prevention plan with a long to-do list. While AWV templates are built into Epic, the AI tool's functionality didn't prompt providers to address everything on the list, Smith said. As a result, the AI vendor didn't deploy AWV code suggestions.

"The tool can help with the coding, but coding is only one piece of determining whether a service can be billed," Smith said. "It doesn't currently evaluate requirements around teaching physician rules, split/shared services or incident-to billing, so providers still need to ensure the documentation supports the applicable billing requirements."

'Real Opportunity' Will Be Diagnosis Coding

Even with precautions, humans remain responsible for documentation and coding. Providers are expected to review the transcript of the patient encounter for accuracy, edit the documentation if necessary and affirmatively select or change the suggested code (e.g., CPT 99214 to 99213), she said. "At the end of the day, it's important that any tool still puts the provider in the driver's seat to validate, confirm and select any codes."

Because physician coding education has traditionally focused more on CPT procedure coding than ICD-10 diagnosis coding, Smith sees diagnosis coding as "the real opportunity for these tools." With thousands of ICD-10 codes, including diagnoses that can affect hierarchical condition categories and risk adjustment, "selecting the most accurate code can be challenging," she noted. "Used appropriately, these tools can help providers translate their clinical documentation into more accurate diagnosis coding."

AI tools also let providers know they should validate a diagnosis that may not be adequately supported in the medical record, Smith said. For example, the AI tool may flag a diagnosis code for chronic obstructive pulmonary disease, prompting the provider to review the record and clarify documentation to support accurate diagnosis coding before they finalize the chart.

In addition to evaluating functionality, the compliance team reviews samples of the charts and codes for accuracy. "It's important to know what's going on from a functionality or implementation perspective" (e.g., going live with the AI tool for new provider groups or sites of service). The point is to sample the wares before they're put on the shelf.

"That's our goal across all we do," Smith noted.

Compliance shares monitoring results with internal IT staff and the vendor so everybody is on the same page about areas for improvement. "Things are moving at such a fast pace, and compliance doesn't want to be an obstacle." It helps to have clinical IT leaders "who value compliance and pull us in and make sure vendors work with us," Smith said. "Tone at the top is still important. Otherwise, we are just doing things in a vacuum."

Contact Amanda Smith at asmith89@wellspan.org and Karen Smith at karen.smith5@penndmedicine.upenn.edu. ✧

Endnotes

- 1 Nina Youngstrom, "Prompt Library for AI Use in Audits, Other Activities," *Report on Medicare Compliance* 35, no. 38 (October 26, 2026).

Prompt Library for AI Use in Audits, Other Activities

This prompt library was developed at WellSpan Health in Pennsylvania to help guide audits and other activities, said Amanda Smith, senior director of internal audit (see story, p. 1).¹ “Any organizational or sensitive data loaded into an AI platform should comply with the organization’s acceptable use policies and data governance expectations,” she said. Contact Smith at asmith89@wellspan.org.

GenAI Prompt Library | Consolidated Master Inventory

Prompt Name	Audit Phase	Primary Capability	Secondary Capability	Risk Domain(s)	Intended User(s)	Prompt Text
Audit Scope	Planning	Analysis	Structuring	Operational, IT, Compliance, Regulatory	Auditor, Audit Lead	You are an Internal Auditor with 20 years of experience who works for a (Insert information on your organization - Size, Geography, Services, etc.) healthcare organization. You are beginning an audit on the company's (insert audit title). Our existing risk statement or preliminary scope for the audit is (Insert here if you have it). Suggest potential scope items that would be important to consider, along with supporting key risks for each scope item.
Annual Planning	Planning	Analysis	Research, Synthesis	Operational, Regulatory, IT, Enterprise	Audit Leader, Audit Manager	You are an experienced healthcare internal auditor preparing the 2026 annual audit plan. Identify the top 10 operational, regulatory, and IT risks relevant to healthcare organizations. My organization is [Insert Organizational information here - Services, Size, Geography, etc.]. For each risk, provide a brief description of the risk, relevant sources or industry frameworks, key internal controls, and suggested audit objectives. Ensure the output reflects current regulatory trends, healthcare operations, cybersecurity concerns, and patient safety priorities.
Continuous Monitoring	Planning	Design	Analysis	Operational, IT, Compliance, Financial	Audit Leader, Data Analyst	Generate a list of audit areas that would benefit from continuous monitoring in a healthcare environment that includes (insert applicable care settings). Our system uses [Insert Key Systems] and [Insert Data Analytics Systems]. For each area, identify the risk, potential controls, and audit steps. Consider GenAI items like SOPs or policies that may provide additional context.
Vocabulary	Planning	Research	Knowledge Enablement	Operational, IT, Compliance, Regulatory	Auditor	You are an Internal Auditor with 20 years of experience working for a [Insert information on your healthcare system] healthcare organization. Please provide a list of vocabulary terms that would be beneficial when conducting an audit on (insert audit title).
Laws and Regulations	Planning	Research	Analysis	Regulatory, Compliance	Auditor, Audit Lead	You are an Internal Auditor with 20 years of experience working for a [Insert information on your organization] healthcare organization. You are beginning an audit on the company's (insert current audit). Research applicable federal and state laws for (insert states). Provide summary information including requirements, effective dates, penalties, enforcement agencies, and direct links.
Emerging Regulations	Planning	Research	Horizon Scanning	Regulatory, Compliance	Audit Leader, Audit Manager	You are an Internal Auditor with 20 years of experience working for a [Insert information on your organization] healthcare organization. You are beginning an audit on the company's (insert current audit). Research new and pending regulations that may impact the audit, including summaries and enforcement details.
Metrics / KPIs	Planning	Research	Benchmarking	Operational, Financial, Quality	Auditor, Audit Lead	You are an Internal Auditor with 20 years of experience working for a [Insert information on your organization] healthcare organization. Provide benchmarking data or KPIs for (insert audit area) across the healthcare industry and references to relevant organizations.
Audit Kick-off Email / Memo	Planning	Communication	Writing	All	Audit Lead, Audit Manager	Our internal audit team is kicking off a [Insert Audit Name] audit. The scope includes [Insert]. Draft two versions of an audit kick-off memo, one for senior executives and one for auditees, using attached templates and any supporting documentation.
Risks	Planning	Analysis	Risk Identification	Operational, IT, Compliance, Regulatory, Financial	Auditor, Audit Lead	You are an Internal Auditor with 20 years of experience working for a [Insert information on your organization] healthcare organization. List and categorize all potential risks associated with (insert audit title) and sort them by risk rating.
Controls	Planning	Analysis	Control Design	Operational, IT, Compliance	Auditor, Audit Lead	You are an Internal Auditor with 20 years of experience working for a [Insert information on your organization] healthcare organization. Provide a list of expected internal controls for (insert audit area) based on the defined scope.

Prompt Name	Audit Phase	Primary Capability	Secondary Capability	Risk Domain(s)	Intended User(s)	Prompt Text
Audit Program	Planning	Structuring	Analysis	All	Audit Lead	You are an Internal Auditor with over 20 years of experience at a [Insert information on your organization] healthcare organization. Create a sample audit program for (insert audit title).
Process Interviews / Walkthrough Questions	Planning	Communication	Analysis	Operational	Auditor	Provide 15 to 20 initial interview questions for (insert audit title). Then provide additional questions based on scope items not previously covered.
Process Narrative	Planning	Writing	Synthesis	Operational, Compliance	Auditor, Audit Lead	You are an internal auditor with 20 years of experience writing a detailed process narrative for (insert audit). Use attached notes and scope to describe background, processes, controls, and identify missing information or follow-up questions.
Process Narrative Gaps	Planning	Analysis	Critical Review	Operational, Compliance	Auditor, Audit Lead	Review the process narrative for (insert audit title). Identify gaps, inefficiencies, missing controls, risks, and develop follow-up questions.
Information Requests	Planning	Communication	Structuring	All	Auditor	Provide a general list of information requests needed to understand or analyze (insert process being audited).
Locate Anomalies Using Data Analytics	Fieldwork	Analysis	Explanation	Operational, Financial, Fraud	Data Analyst, Auditor	Analyze the provided dataset for anomalies, outliers, or duplicates. Explain detection methods and reasoning for each identified anomaly.
Regulation to Policy Comparison	Fieldwork	Analysis	Research, Writing	Compliance, Regulatory	Audit Lead	Compare a government regulation to organizational policy using a structured compliance table, identifying gaps, compliance status, and remediation steps with citations.
Testing Template Generator	Fieldwork	Structuring	Writing	Operational, Compliance	Auditor	Create an Excel-based testing template using the provided audit objective, risk, controls, and applicable regulations.
Red Flags	Fieldwork	Analysis	Risk Identification	Fraud, Financial, Compliance	Auditor	Provide a list of red flags to look for when testing a specific audit area or control.
Suggest Analytics	Fieldwork	Analysis	Design	Fraud, Financial, Operational	Data Analyst	Suggest Excel-based analytics to identify fraud, waste, or abuse using the provided data fields.
Review Code	Fieldwork	Technical Review	Optimization	IT, Data	Data Analyst	Review R code, diagnose errors, and suggest corrections and optimization strategies.
Create Training Data	Fieldwork	Data Generation	Modeling Support	IT, Data	Data Analyst	Generate synthetic training data in CSV format to support model development based on the provided requirements.
Troubleshooting Markdown Files	Fieldwork	Technical Support	Output Control	IT	Data Analyst	Provide line-by-line text output to avoid Markdown formatting errors in R reports.
Package Research	Fieldwork	Research	Tool Selection	IT, Data	Data Analyst	Suggest relevant R packages or research appropriate for the described testing need.
Audit Report – Drafting	Reporting	Writing	Structuring	All	Audit Lead, Audit Manager	Use provided audit findings to create formal report language including finding details, impact, severity, and recommendations using a Word template.
Audit Report – Recommendations	Reporting	Analysis	Writing	All	Audit Lead, Audit Manager	Based on condition, cause, criteria, and effect, provide clear and actionable recommendations aligned with healthcare operations.
MAP Due	Follow-Up	Communication	Writing, Tracking	All	Auditor, Audit Lead	Draft a follow-up email to MAP owners requesting status, barriers, revised timelines, and evidence of completion for due action plans.
General Excel Help	Cross-Cutting	Problem Solving	Technical Guidance	Operational, Financial, Data	Auditor, Data Analyst	Generate an Excel formula based on provided dataset structure, source columns, desired output, and Excel version.
Manager Review (Agent Concept)	Reporting	Review	Quality Assurance, Writing	All	Audit Manager, Audit Leader	Act as an internal audit manager to review reports for IIA and AHIA compliance, clarity, alignment, formatting retention, and provide suggested edits and clarifying questions.

Endnotes

- 1 Nina Youngstrom, “Two Health Systems, Many AI Use Cases: Navigating the Auditing Benefits, Risks and Limits,” *Report on Medicare Compliance* 35, no. 38 (October 26, 2026).

Have feedback? Please contact Scott Moe at scott.moe@hcca-info.org with any questions or comments.

Have a story idea? Please contact Nina Youngstrom at nina.youngstrom@hcca-info.org.

Hospital Enters ‘Tentative’ DPA With DOJ Over Billing for Surgeries

Chesapeake Regional Medical Center (CRMC) in Virginia has reached a “tentative” deferred prosecution agreement (DPA) with the Department of Justice (DOJ) in connection with medically unnecessary surgeries performed by obstetrician/gynecologist Javaid Perwaiz.¹

The announcement came about a year and a half after CRMC was charged criminally with billing Medicare, Medicaid, TRICARE and other payers for Perwaiz’s surgeries.² Perwaiz is serving a 59-year prison term for his 2021 conviction on 52 counts of healthcare fraud and other charges arising from his performance of irreversible hysterectomies, improper sterilizations and other medically unnecessary procedures.

Because the DPA is “in lieu of a plea,” the criminal charges will disappear if CRMC abides by the terms of the DPA, said attorney Melissa Jampol, with Epstein Becker & Green. The charges are healthcare fraud and conspiracy to defraud the United States.

Hospital Would Pay \$6.4M, Hire Monitor

The tentative DPA requires the hospital to pay \$6.4 million in restitution to Medicare, Medicaid and other payers, admit to certain facts and hire an independent monitor to “make compliance and other changes,” DOJ said. The hospital also must set up a \$12.8 million fund for “patients who had medical records showing they had procedures performed by Perwaiz at CRMC.”

But the fate of the DPA still hangs in the balance. Before it’s finalized, DOJ is “allowing an opportunity for the victims to weigh in,” Jampol said. DOJ held two webinars and has an email box for comments from Perwaiz’s victims. Their comments and other factors could change or tank the DPA.

Meanwhile, CRMC lost a motion to dismiss the indictment in federal district court and has appealed to the U.S. Court of Appeals for the Fourth Circuit, Jampol said. If the DPA is finalized, the appeal would be moot.

A DPA also would “ensure that none of the victims will have to testify at trial,” Jampol noted. “It gives finality to this case that has been going on for a really long time.”

There Were Red Flags About Perwaiz

According to the indictment, CRMC allegedly accommodated Perwaiz, an independent physician, because his surgeries yielded \$18.5 million for the hospital between 2010 and 2019.

About 38 of the 52 counts he was convicted of pertain to billing for services provided at CRMC, including unnecessary hysterectomies, elective inductions before 39 weeks of gestation without medical justification and sterilizing Medicaid patients without their signing consent

forms 30 days in advance. The hospital allegedly made exceptions for Perwaiz, such as allowing him to bill inpatient-only procedures as outpatients and forego the use of electronic medical records.

There were always red flags. When Perwaiz applied for CRMC privileges in 1983, the then-CEO of the hospital (until 2005) was informed by Maryview Hospital that it had terminated Perwaiz’s privileges for performing unnecessary surgeries, including hysterectomies on about 12 patients, the indictment alleged. CRMC granted Perwaiz privileges anyway, but there was more bad news to come. The Virginia Board of Medicine censured Perwaiz for his “lack of documentation and for having a sexual relationship with a patient” while at Maryview, according to the indictment.

About a decade later, Perwaiz pleaded guilty to two felony counts of tax fraud. CRMC’s then-CEO “submitted a letter of support for Perwaiz’s 1996 sentencing, calling Perwaiz his ‘personal friend,’” the indictment alleges. Perwaiz was sentenced to four months of home confinement.

Staff Allegedly ‘Became Alarmed’

The indictment also drills down into Perwaiz’s abuses and the hospital’s alleged tolerance of them. In one case, CRMC staff allegedly “became alarmed” after finding out one of Perwaiz’s pregnant patients was scheduled for procedures, including sterilization, and that the patient hadn’t spoken with Perwaiz about the surgery. “Perwaiz later advised the CRMC nurse that the patient had an ectopic pregnancy, but he failed to provide updated records and documentation justifying the surgery prior to operating on the patient, despite the nurse’s request,” the indictment alleged. “CRMC failed to conduct contemporaneous risk reporting or peer review for this incident.”

In November 2014, a patient informed CRMC that Perwaiz had performed a hysterectomy because of a supposedly pre-cancerous lesion, but she found out the lesion was still there during a post-op emergency room visit. “Her complaint was forwarded to the CMO [chief medical officer] and other employees; however, no action was taken,” the indictment alleged.

CRMC didn’t respond to requests for comment. In a statement at the time of indictment, CRMC called the allegations “unfounded.”

Contact Jampol at mjampol@ebglaw.com. ✧

Endnotes

- 1 United States v. Chesapeake Regional Medical Center, No. 2:25-cr-1 (E.D. Va. 2025), <https://bit.ly/4zRS1tm>.
- 2 Indictment, United States v. Chesapeake Regional Medical Center, No. 2:25-cr-1 (E.D. Va. 2025), <https://bit.ly/4zHwd3k>.

DOJ: Self-Disclose Criminal Matters to DOJ, Not OIG; FCA Pilot Debuts

In an Oct. 15 policy, the Department of Justice (DOJ) reshuffled the deck of voluntary self-disclosures by health care organizations.¹

From now on, organizations should self-disclose potential criminal matters related to federal healthcare programs to DOJ, not the HHS Office of Inspector General (OIG)—although the organizations will still reap the benefits of OIG’s Health Care Fraud Self-Disclosure Protocol (SDP), according to the policy, which was released in tandem with OIG’s updated SDP.²

The benefits usually include a penalty of 1.5 times the single damages—far less than the double damages typical in False Claims Act (FCA) settlements—and escape from a corporate integrity agreement.

While the new policy clarifies where to report potential criminal misconduct, it doesn’t necessarily make it easier to decide whether to self-disclose, attorneys say.

A self-disclosure to DOJ as potentially criminal is “a significant, serious decision to make,” said attorney Matt Krueger, with Foley & Lardner LLP. To fall under DOJ’s corporate enforcement policy (CEP), which rewards self-disclosures of criminal conduct, companies are required to do an internal investigation, disclose all facts and cooperate with DOJ.³

DOJ, HHS Unveil FCA Self-Disclosure Pilot

Separately, DOJ and HHS on Oct. 22 unveiled the Healthcare False Claims Act Self-Disclosure Pilot Program.⁴ It sweetens the pot for healthcare companies that self-disclose FCA violations. If self-disclosing companies meet certain conditions, such as turning over documents that show the nature, terms and operation of FCA violations and repaying the government with a 1.25–1.6 multiplier, they will get a release from FCA liability and certain HHS administrative authorities.

“The multiplier applied will vary based on factors such as the timeliness of the self-disclosure, the duration and scope of the misconduct, the involvement of senior leadership, the financial benefit to the disclosing company and whether the disclosing company has successor liability for the misconduct but promptly remediated,” DOJ said.

No CEP Benefits for Disclosures to OIG SDP

In the policy on criminal matters, Colin McDonald, assistant attorney general in charge of the new National Fraud Enforcement Division, explains that only one disclosure to DOJ’s Health Care Fraud Section is necessary to benefit from the CEP and SDP. But disclosing only to the SDP “generally does not qualify as a voluntary self-disclosure to the Fraud Division.”

“The exclamation point is making sure providers understand that” they should bring disclosures of criminal conduct to DOJ, said Lisa Re, former assistant IG for legal affairs. “It’s not barring anyone from going to OIG, but there’s not a corresponding benefit” in the event of criminal conduct, said Re, with Arnold & Porter.

The takeaway for compliance programs is they must be designed to detect and address potential wrongdoing fast enough to give the company the chance to beat a path to DOJ’s door before a whistleblower, Krueger said. If DOJ hears from the whistleblower first, it gives the company 120 days to self-disclose before it sacrifices the CEP’s benefits.

‘A Smaller Part of That Bigger Project’

DOJ in March updated the CEP, applying it to the entire department. Companies that self-disclose a criminal violation to any part of DOJ or its 93 U.S. attorneys’ offices will blunt the pain of a prosecution.

For example, DOJ will decline to prosecute companies that voluntarily self-disclose wrongdoing if they meet certain conditions, such as fully cooperating with the government’s investigation. That’s a more ironclad guarantee than the “presumption” of declination in the 2022 version of the CEP. DOJ is also offering incentives for “near miss” voluntary self-disclosures or companies that have aggravating factors. They probably will still face a criminal resolution in the form of a non-prosecution agreement, but there are sweeteners, such as a steep reduction in fines.

“The overall CEP changes we have seen in the past 18 months have been sincere and meaningful efforts to simplify the process and make clearer what the potential benefits are,” said Krueger, a former U.S. attorney. “They’re trying to encourage voluntary self-disclosure.”

CMS Transmittals and *Federal Register* Regulations, Oct. 16-22, 2026

Transmittals

Pub. 100-04, Medicare Claims Processing

- January 2027 Annual Rural Emergency Hospital (REH) Monthly Facility Payment Amount, Trans. 14,017 (Oct. 22, 2026)
- Quarterly Update for the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP) – January 2027, Trans. 14,019 (Oct. 22, 2026)

Pub. 100-07, State Operations Provider Certification

- Revisions to State Operations Manual (SOM), Chapter 5, Trans. 250 (Oct. 16, 2026)

Federal Register

Proposed Rule

- Medicare Program; Implementation of Sections 6219, 6220, and 6224 of the Consolidated Appropriations Act, 2026, 91 Fed. Reg. 66,408 (Oct. 20, 2026)

He views the newest policy as “a smaller part of that bigger project.”

‘Most Cases Aren’t Criminal Conduct’

But OIG’s door is still open. The SDP may be a better place to go to report 40 different activities prohibited under the Civil Monetary Penalty Law (CMPL), such as upcoding and employing excluded people.

“Most cases aren’t criminal conduct,” Re said. “There’s a lot of different conduct that falls squarely within OIG’s CMP authorities. I think people will continue to disclose to OIG.”

There won’t always be evidence that requires a criminal disclosure to DOJ, Re said. “It’s a case-by-case analysis.”

She sees close calls with potential violations of the Anti-Kickback Statute, which are both a crime and violation of the CMPL.

“That makes it harder to determine whether you want to go to DOJ or OIG,” Re noted. “It would depend on the facts” and the strength of the evidence showing intent to pay for referrals.

But without CEP rewards, such as declination of prosecution, companies will think twice about the SDP, Krueger said. “This still leaves a lot of very tricky judgment calls for companies about whether to disclose and to what agency.”

Contact Krueger at mkrueger@foley.com and Re at lisa.re@arnoldporter.com. ♦

Endnotes

- 1 U.S. Department of Justice, National Fraud Enforcement Division, and U.S. Department of Health and Human Services Office of Inspector General, “National Fraud Enforcement Division and HHS-OIG Policy on Coordination of Voluntary Self-Disclosure in Health Care Fraud Matters,” policy memorandum, October 15, 2026, <https://bit.ly/3UhSh5F>.
- 2 U.S. Department of Health and Human Services, Office of Inspector General, “HHS-OIG Health Care Fraud Self-Disclosure Protocol,” updated October 15, 2026m <https://bit.ly/4kaKKju>.
- 3 U.S. Department of Justice, *Corporate Enforcement and Voluntary Self-Disclosure Policy*, March 10, 2026, <https://bit.ly/4umSSQy>.
- 4 U.S. Department of Justice, Office Of Public Affairs, “Justice Department’s Civil Division and the Department of Health & Human Services Announce Anti-Fraud Healthcare Self-Disclosure Pilot Program,” news release, October 22, 2026, <https://bit.ly/4iA1m30>.

NEWS BRIEFS

◆ **CMS said Oct. 22 it’s “exercising enforcement discretion” through March 31, 2027, with respect to a new requirement for inpatient rehabilitation facilities (IRFs) that took effect Oct. 1, according to MLN Connects.¹** The 2027 IRF prospective payment system rule requires IRFs to hold the first interdisciplinary team (IDT) meeting within four days of the patient’s admission instead of seven. Now there’s a grace period. “For IRF admissions during this period, Medicare Administrative Contractors shouldn’t deny or non-affirm a claim based solely on the timing of the initial IDT meeting if an IDT meeting occurs at least once per week throughout the duration of the patient’s stay,” CMS said.

◆ **Former New Hampshire physician Steven Powell was sentenced to a year in federal prison for his health care fraud conviction in connection with a scheme to defraud Medicare by prescribing durable medical equipment (DME) without seeing, talking to, or otherwise examining patients, the U.S. Attorney’s Office for the District of New Hampshire said Oct. 13.²** Powell, a licensed psychiatrist, signed hundreds of medically unnecessary orders for DME, such as knee, wrist, back and shoulder braces, the U.S. attorney’s office said. The orders allowed DME suppliers to submit about 1,400 fraudulent claims to Medicare, which paid \$761,202.

◆ **Missouri surgeon Jason Montone and John Balzer, a Kansas distributor for SpineFrontier Inc., have been sentenced in connection with conspiring to pay and receive kickbacks to induce the use of spinal implants sold by SpineFrontier, the U.S. Attorney’s Office for the District of Massachusetts said Oct. 22.³** Montone was sentenced to one year of supervised release and ordered to forfeit \$379,000. Montone’s SpineFrontier distributor, John Balzer, also was sentenced to a year of supervised release and ordered to pay forfeiture of \$947,500.

Endnotes

- 1 Centers for Medicare & Medicaid Services, “Inpatient Rehabilitation Facility Initial Interdisciplinary Team Meeting Requirement: Enforcement Discretion,” in “MLN Connects Newsletter for October 22, 2026,” October 22, 2026, <https://go.cms.gov/4z5i7cl>.
- 2 U.S. Department of Justice, U.S. Attorney’s Office for the District of New Hampshire, “Former New Hampshire Doctor Sentenced to Year in Prison for Role in \$1.9 Million Medicare Fraud Scheme,” news release, October 13, 2026, <https://bit.ly/47wTdWT>.
- 3 U.S. Department of Justice, U.S. Attorney’s Office for the District of Massachusetts, “Missouri Surgeon and Kansas Medical Device Distributor Sentenced for Conspiring to Pay and Receive Kickbacks to Induce Use of Spinal Implants and Obstructing a Federal Investigation,” news release, October 22, 2026, <https://bit.ly/4zfQBsz>.