



March 31, 2016

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Federal Government Sets Clock For Return of Medicare Overpayments: Be Late At Your Own Peril

In February, the Centers for Medicare and Medicaid Services issued final regulations on the reporting and returning of Medicare Part A and Part B overpayments.

The federal False Claims Act renders illegal the making of fraudulent claims for payment to the United States government. Penalties are three times the amount of the improper payment plus up to \$11,000 per claim.

The law also prohibits a "reverse false claim." Essentially, it makes it a false claim to conceal or to knowingly and improperly avoid or decrease an obligation to pay or transmit money or property to the federal government.

Due to a provision in the Affordable Care Act, overpaid Medicare (as well as Medicaid) claims must be paid back to the United States government within 60 days of the "date on which the overpayment was identified." There is no requirement of a specific intent to defraud.

In other words, the failure to repay Medicare claims within 60 days of the "date on which the overpayment was identified" makes each of those claims a "reverse false claim" subject to the False Claims Act's draconian penalties. But, the Affordable Care Act did not define what constitutes "identification." Thus, it was impossible to know exactly what triggers the start of the 60-day clock for repayment.

Fortunately for providers, the new, final regulations, which are effective on March 14, 2016, provide clarity.

The final rule states that "a person has identified an overpayment when the person has or should have, through the exercise of reasonable diligence, determined that the person has received an overpayment and quantified the amount of the overpayment."

In other words, although there is a requirement of reasonable diligence, "identification" doesn't occur (and, therefore, the 60-day time clock does not begin to run) until the provider both determines that it received an overpayment and quantifies the overpayment.

Note also that the reasonable diligence requirement means that you cannot ignore evidence that there may have been an overpayment. It still behooves all providers to have an active billing compliance program to check for potential overpayments and to then follow up quickly and diligently in the event that there's even a suspicion of an actual overpayment.

Note that the new regulations apply only to Medicare Part A and Part B overpayments, not to other parts of Medicare and not to Medicaid. In those other areas there is no guidance and, accordingly, additional danger that a billing mistake can be recast as a reverse false claim.

The new regs made other important changes to the rules governing the return of overpayments. I'll address them in detail in a planned webinar. In the meantime, let me know if you have any questions about the regulations as they pertain to you or your group.

Upcoming Webinars Announced

Stay tuned for two upcoming webinars with Mark Weiss:

"Understanding The OIG Advisory Opinion Process"

"Is Your Medical Group A Business or A Club"



Wisdom. Applied. 86 - You're Dead. Now what? Succession and Medical Group Governance

Have you heard the one about the man who doesn't walk into a bar? Medical groups generally address governance from the aspect of current control. That's the issue of who's in charge. But there's another aspect of group governance.



NEW BOOK OFFER

The Impending Death of Hospitals



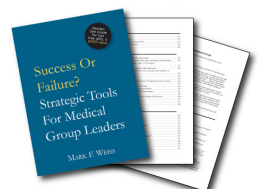
COMPLIMENTARY BOOK DOWNLOAD

Having fallen for the fallacy that there's profit in market share, hospitals have gorged on acquisitions and on employment and alignment of physicians. But it's becoming evident that physician employment leads to losses and that integrated care delivers neither better care nor lower costs. And now, technology is about to moot many of the reasons for a hospital's existence. How can your practice survive and even thrive in the post-hospital world?

The Impending Death of Hospitals is available for download below.

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Success Or Failure? Strategic Tools For Medical Group Leaders



COMPLIMENTARY BOOK DOWNLOAD

Today's medical groups must confront multiple challenges, including the impact of Obamacare. Increasing commoditization. More competition, not just from other physicians and medical professionals, but also from hospitals, investor-owned groups and also

All Things Personal

First impressions matter, and this is more than simply a social rule.

A few years ago, a new notebook computer that we had ordered arrived at the office. We have other computers, from Macs and other Apple products to a number of PCs that we use for various functions.

In ordering the new notebook computer, my office administrator evaluated what it would be used for and chose a Dell over a Mac because of the programs it must run. Because of our good experience with Mac products, especially their design and user interface, we knew there'd be a trade-off but here's the point about first impressions:

As I began to open the lid of the new Dell notebook for the first time "just an inch or two open" I could see that the stickers placed on the lower right hand of the computer's face were put on crooked. What do you think my immediate impression was of the Dell? Yes, that it's sloppily and cheaply made. My overall impression was focused through the initial lens.

What first impressions are you and your group giving to patients, referring physicians and hospital administrators?

What can your group do to construct, manage and exploit the power of first impressions?

Have you tied the creation of first impressions together with the provisions of your partnership/shareholders agreement, employment agreements and subcontracts, and the group's compensation plan? Why not? Get started now!

Recently Published Blog Posts

Thursday, March 31

[Risky Behavior And Healthcare Businesses](#)

Wednesday, March 30

[Have The Tables Turned On Your Practice?](#)

Tuesday, March 29

[The Power of the Thank You Note](#)

Monday, March 28

[How To Structure Healthcare Deals Without Becoming A Healthcare Criminal](#)

Thursday, March 24

[Is Your Medical Group Being Governed Or Governed?](#)

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Whenever you're ready, here are 4 ways I can help you and your business:

1. Download a copy of *The Success Prescription* Book.

My book *The Success Prescription* provides you with a framework for thinking about your success. Download a copy of the e-book [here](#).

2. Be a guest on "Wisdom. Applied. Podcast."

Although most of my podcasts involve me addressing an important point for your success, I'm always looking for guests who'd like to be interviewed about their personal and professional achievements and the lessons learned. [Email](#) me if you're interested in participating.

3. Book me to speak to your group or organization.

I've spoken at dozens of medical group events, healthcare organization events, large corporate events, university-sponsored events, and private, invitation-only events on topics such as The Impending Death of Hospitals, the strategic use of OIG Advisory Opinions, medical group governance, and succeeding at negotiations. For more information about a custom presentation for you, [email](#) my Santa Barbara office staff.

4. If You're Not Yet a Client, Engage Me to Represent You.

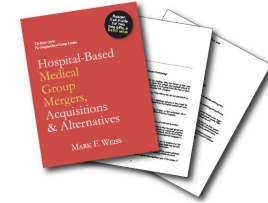
If You're Not Yet a Client, Engage Me to Represent You. If you're not yet a client, and you're interested in increasing your profit and managing your risk of loss, [email](#) me directly. I'll contact you to set up a call or meeting.

disruptive ventures. Yet at the same time, the future of healthcare offers medical groups tremendous opportunity.

This small book is a collection of essays, of thoughts as tools for your success. Read. Think. Succeed. Repeat.

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Hospital-Based Medical Group Mergers, Acquisitions & Alternatives



COMPLIMENTARY BOOK DOWNLOAD

Some days, it seems as if everyone, from anesthesia or vascular surgery practices, is talking about selling their larger group, to private equity investors, or to a hospital.

The reality is that some practices can be sold, some can sold, and some have nothing to sell.

The reality also is that there are a number of strategic a practice sale.

A perfect storm of factors is accelerating the market for based medical group mergers and acquisitions.

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Directions: Clarity For Medical Group Leaders



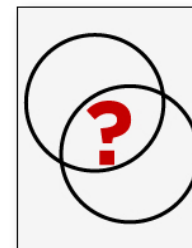
COMPLIMENTARY BOOK DOWNLOAD

The healthcare market is changing rapidly, bringing new problems.

How can you find a solution, how can you engage in the development of strategy, and how can you plan your, group's, future without tools to help clarify your think

Directions is a collection of thoughts as thinking tools, to instruct, inform, and even more so, cause you to give instruct and inform yourself.

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Recent Interviews and Published Articles

Mark's article **Impending Death of Hospitals: Will Your Anesthesia Practice Survive?** was published in the winter 2016 volume of *Communique*. Read or download [here](#).

Mark was quoted in the article **Practice Patterns Change While Outcomes Remain Steady Among Older Anesthesiologists**, published in the December 2015 issue of *Anesthesiology News*. Read or download [here](#).

Mark's article **Anesthesia Group Mergers, Acquisitions and (Importantly) Alternatives** was published in the summer 2015 volume of *Communique*. Read or download [here](#).