



## PRACTICE STRATEGIES

### MEDICARE AND MEDICAID COMPLIANCE: **How to Stay Out of Trouble**

In today's unforgiving regulatory climate, practices need a plan for complying with the byzantine regulations of the federal healthcare system.

Today, over 1 billion claims are submitted annually under the Medicare program alone, and the federal government is aggressively monitoring these claims for fraud and abuse. The Office of Inspector General (OIG) has opened new offices across the country, and the U.S. Department of Justice has assigned more FBI agents to ferret out fraud. Likewise, medical necessity recovery audit contractor audits are in full swing and aiming to make significant recoveries.

#### **Cover Yourself**

The government requires some providers to develop a compliance plan. While most practices are not required to develop a formal compliance plan, it does make sense to implement at least some basic internal controls to avoid running afoul of the rules. At its most basic, a solid compliance program should include these components:

1. A legal review of contracts and operating procedures.
2. Education and training for employees
3. Monitoring and auditing mechanisms.

#### **Conduct a Legal Review**

Start by conducting a legal review of your contractual relationships and operating procedures. Here, you're looking for compliance with the Stark and anti-kickback laws, as well as any relevant state laws.

Of course, the scope of your review will depend upon the nature of your practice. If you run a well-managed practice and follow extremely conservative coding and billing practices, a limited review may be sufficient. But if you see a number of Medicare/Medicaid patients, a more extensive legal review may be in order especially if you have contractual

relationships with other providers or ancillary centers.

- **Review** – Have an attorney review written policies and procedures as well as contracts with vendors and potential patient referral relationships. As an added benefit, assistance from a lawyer can trigger attorney-client privilege, which can provide some legal protection in case you are investigated. By contrast, evidence you uncover yourself generally isn't protected by privilege.
- **Sample** – Establish a realistic picture of your compliance profile by pulling a random sample of claims for review. Here, you'll want to ensure that supporting documentation is present, and that it supports medical necessity and the services billed. This is a job that can be delegated to staff, or you can bring in consultants with experience in coding and documentation.
- **Document** – There may be certain areas that you decide not to fully address for a variety of reasons (e.g., lack of staff or resources). Once you establish that there is no evidence of non-compliance in these areas, prepare a written statement documenting which areas you aren't addressing and why.

#### **Educate and Train**

Your legal audit should reveal where you need to focus your compliance efforts. Once you know your risk areas, you'll want to provide ongoing training for your physicians, mid-level providers and support staff.

- **Train** - Using online presentations, offsite seminars and printed materials, tailor training to the specific needs of your team. For example, discuss examples of noncompliant behavior with your billing staff, such as how upcoding for E&M services or failure to refund overpayments violates the compliance plan. And make sure providers receive training on their responsibility to provide appropriate medical record documentation of the care provided. Consider utilizing interviews and questionnaires to assess

## MEDICARE AND MEDICAID COMPLIANCE: How to Stay Out of Trouble, cont'd.

how well your staff is progressing with the training.

- **Communicate** – The best compliance plan in the world won't be effective (or defensible in the case of an investigation) if your practice's compliance policies and procedures are not communicated clearly. Of course, document your plan in your employee handbook. But also consider using newsletters, email and monthly meetings to provide ongoing awareness of your policies or procedures. And be sure to include independent contractors whose services are billed under the practice's provider number.
- **Document** – Likewise, if you're investigated for noncompliance, you'll need to be able to provide documentation of which employees/providers have actually attended the training sessions (something as simple as a dated sign-in sheet may suffice). And, create a binder of the actual training materials that were used.

### Monitor and Audit

The final key component of an effective plan is establishing mechanisms for ongoing monitoring and auditing of your compliance efforts.

- **Check** - Consider conducting background checks for providers and office staff who will be involved in compliance-sensitive activities. Investigators will want to know that you've at least checked to see if anyone has been convicted of healthcare crimes or excluded from federal healthcare programs. The OIG's database of sanctioned providers is available

## What the Feds Are Targeting

As you develop a solid compliance plan, do so with an eye toward these areas that the federal government has indicated are a high priority for enforcement:

- Violations of the federal Stark II law (or similar state laws), which prohibits physicians from making referrals for Medicare- or Medicaid-covered designated health services to any entity in which the physician or an immediate family member has a financial interest.
- Violations of federal and state anti-kickback laws, which prohibit giving or receiving anything of value in return for referring patients for items or services that are paid for by federally funded healthcare programs.
- Billing for unnecessary services.
- Upcoding, especially for E&M services.
- Duplicate billing.
- Noncompliance with the "incident to" rule, which relates to the level of supervision required for services by midlevel providers incident to a physician's care.
- Improper certification of medical necessity for durable medical equipment.
- Illegitimate arrangements with billing services.
- Resubmission of unpaid claims.
- Violations of the prohibition against reassignment of physician billing numbers.
- Use of existing physician billing numbers for new doctors waiting to receive their own numbers.
- Failure to refund overpayments.

Source: OIG Work Plan

online at <http://www.exclusions.oig.hhs.gov/>

- **Report** – Set up a system for employees to report suspicious conduct and potential wrongdoing. Establish a confidential hotline or set up a post office box for reporting possible misconduct. The message to send is that the practice is serious about uncovering noncompliance and won't penalize staff for reporting their suspicions.
- **Enforce** – Finally, give your compliance programs some teeth. Develop appropriate penalties for noncompliance — everything from formal reprimands to termination. Of course, tailor the disciplinary action to the situation. A provider who consistently fails to appropriately document patient encounters could be penalized with reductions in his or her annual bonus, for example.

### Be Prepared to Come Clean

Note that there is always the possibility that your compliance efforts will uncover an honest mistake. In the case of overbilling, you'll need to be prepared to correct it. Failure to return an overpayment can take what otherwise might be considered a one-time mistake into the realm of outright fraud and open you to prosecution. Here, you may want to seek legal counsel before reporting your findings.

*Protecting against Medicare/Medicaid non-compliance starts with solid systems — areas our experienced consultants are well versed in. Contact us today at 314.862.2070 to learn more.*

**DATA MINING:****There's Gold in Your Practice Data**

With the move to robust practice management software and Electronic Medical Records (EMR), practices now have access to a treasure trove of data that can drive real improvements in performance and clinical quality.

Consider these examples of how savvy providers are mining their data to better manage their practice:

- **No-shows** – Data mining does not have to be complex. It may be something as simple as using an Excel spreadsheet to identify common trends. If, for example, your data uncovers that no-shows spike for appointments booked 28 days prior, you can begin looking into why this is happening and adjust accordingly.
- **Billed charges** – The same goes for analyzing your most commonly billed procedures, reimbursement rates, payer mix and productivity. Looking at this data can reveal important information, such as your most important payer-mix codes, as well as unearthing problems, such as frequent denials from a payer on certain procedures.
- **Cost of care** – Combining practice management and clinical data, you can determine the cost of care and, more important, the cost of quality care, for different patient demographics. In this era of accountable care, you will be ahead of the game if you can show a payer or potential care-model partner (e.g., Accountable Care Organization) that you provide quality care at a competitive cost.
- **Revenue opportunities** – Mining your EMR data, you can see how many patients are receiving preventive care and then follow up with those who could benefit from flu shots, mammograms, screenings and the like. Likewise, reviewing your Medicare population, you might discover eligible patients who have not yet taken advantage of the Initial Preventive Physical exam and the Annual Wellness Visit (AWV).

**Data Mining in History**

Data mining in the healthcare field is actually nothing new. Analyzing maps and early bar graphs, British physician John Snow was able to trace a deadly cholera outbreak to a public water pump in 1850s England.

Snow plotted the cholera victims' addresses on a map to show the pattern of the disease, and also used statistics to illustrate the connection between the quality of the water source and cholera cases. As a result of his groundbreaking use of data mining techniques, Snow is regarded as the father of modern epidemiology.

- **Quality reporting** – The data in your EMR and practice management system can be extracted into reports that meet key healthcare reform initiatives, such as Meaningful Use, UDS Reporting, Clinical Quality Measures and Patient-Centered Medical Home.

**Who's Going to Do It?**

As patient records are increasingly digitized, huge amounts of data are being amassed at the practice level. The challenge is how to manage and analyze it all. Options include:

- **Outside providers** – Companies such as Microsoft, SAS Institute Inc., IBM and Oracle all have data-mining technologies that can help practices detect patterns and improve care.
- **IT consultant** – A contractor specializing in business analytics can help translate the results of data mining into actionable business information. The right consultant can develop customizable reports and at-a-glance dashboards to help you put all of that data into productive use.
- **CPA/practice advisor** – Your accounting firm may be able to provide valuable guidance on not only extracting data but analyzing it in meaningful ways.
- **PMS/EMR vendor** – If you haven't already, ask your EMR and practice management software vendor to show you how to aggregate operational, clinical and/or financial information in a single report, as well as perform data mining in real time from your live database. Increasingly, vendors are building in ad-hoc data mining tools that allow users to extract valuable data without any knowledge of database language or structure.
- **A staffer** – If you have an IT savvy staffer, consider investing in some training (online or offsite) and keep your efforts in-house.

**Privacy Issues**

In general, federal law prohibits medical providers from disclosing certain health information without patient consent, but there is an exemption for activities that fall under "quality improvement," according to the U.S. Department of Health and Human Services. You can also protect yourself by ensuring that you obtain a Business Associate Agreement if your business associates, claims processors or third-party billers, for example, will have access to private patient data.

*Like gold in a mine, the information in your EMR and practice management software is a valuable asset. Contact Mueller Prost at 314.862.2070 for guidance on leveraging it.*

## Reflect and Renew with a Productive Retreat

Far from being just a “touchy feely” event, a staff retreat can be a critically important time in the life of your practice. Consider these essential elements for a productive retreat:

- **Set the stage**  
Avoid a retreat in your office, which can feel like just another staff meeting. Better: a casual lunch at someone’s home, or even a half-day (or longer) session at a local conference center, historic property or hotel. For example, you could close the office at 2 p.m., head offsite and work until 8 p.m. — providing dinner and paying for the extra hours.
- **Set the tone**  
Define your expectations (active participation in team-building exercises, involvement in discussions, etc.) and encourage participants to challenge and question the ideas presented.
- **Itemize**  
Develop a clear agenda, assigning set times to agenda items. However, build in some flexibility to explore ideas that arise or address issues that come to light during your discussions.
- **Assign**  
To get buy-in from all participants, assign some pre-retreat homework. Select some staffers to evaluate a problem area or new opportunity. Have others prepare retreat materials or lead a session for at least one agenda item.
- **Bring in your advisors**  
Consider inviting key advisors to the retreat: your attorney, CPA, banker, insurance agent, retirement plan administrator, etc. Or, schedule a separate time with these outside advisors to gather ideas for improving your practice
- **Follow up.**  
Don’t let the momentum of a productive retreat die. Summarize your discussions, review your decisions and assign responsibility for follow-up and implementation. Finally, reinforce the idea that focusing on quality and efficiency in your practice is not a once-a-year special event. It’s everyone’s job, every day.

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