

Compliance Programs

A Critical Safeguard for Physician Groups

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Practicing medicine has become increasingly difficult for many physicians, thanks to an ever-expanding web of healthcare rules and regulations. From complex coding requirements to strict patient referral rules, physicians are scrambling to avoid entanglement in a broad net of federal, state and commercial payor requirements.

The stakes are high. Federal law enforcement efforts have become more aggressive as the volume of rules has increased. Highly publicized cases involving fraud – along with soaring healthcare costs – have fueled suspicions from both regulators and the public about the intentions and integrity of many provider organizations.

For those organizations found to have intentionally violated the law, the penalties can be catastrophic. Large fines, exclusion from participation in state and federal insurance programs and even prison time all are potential remedies for mistakes the government deems to be fraudulent in nature.

Comprehensive Compliance Programs

To protect themselves in this unforgiving environment, a growing number of physician groups are creating comprehensive compliance programs. These programs help ensure an organizational commitment to compliance while offering a systematic means for monitoring, understanding and complying with specific rules and regulations.

Compliance programs have the added benefit of mitigating fines and penalties if a violation is found by a regulatory agency. When a violation is identified, regulators generally are more willing to give the offending organization the benefit of the doubt if a compliance program already is in place and operational.

Moreover, by helping ensure the submission of clean and timely claims, a well-designed compliance program can speed payment and reduce billing errors and denials. In today's climate of flat or falling reimbursements, optimizing revenues arguably is just as critical for physicians as reducing regulatory exposure.

Many physician groups that rely on an outsourced vendor for their billing services erroneously believe the vendor's compliance plan fully protects and indemnifies the practice against regulatory problems. Although the vendor's program may serve as an important safeguard, in the eyes of regulators, it is no substitute for a plan that is designed and managed by the group.

Making the Commitment

It is important to remember that creating a viable compliance program requires a commitment of both time and resources, whether the initiative is developed internally or with the help of an outside expert.

This commitment must be sustained once the program is completed to ensure effective implementation and genuine buy-in throughout the organization. A plan that looks perfect on paper but gathers dust on a shelf is hardly worth the effort required to create it. In fact, it can be counter-productive. Federal investigators take a dim view of inactive compliance programs, since regulators may logically assume that the plan was created for show only. In addition, they will hold an organization accountable to its own standards, even if those standards are not operational and even if they exceed the government's requirements.

OIG Compliance Guidelines

A useful place to begin when developing a compliance program is with the guidance published by the Department of Health and Human Services' Office of Inspector General (OIG). The OIG is responsible for enforcing laws and regulations involving all HHS divisions, including the Center for Medicare and Medicaid

Services (CMS). OIG enforcement efforts are conducted through audits, investigations and inspections.

As part of its mission, the OIG publishes guidelines for establishing voluntary compliance programs for different kinds of healthcare organizations. These guidelines offer a framework for creating a program that incorporates elements the OIG deems essential. In late 2000, for example, the OIG published OIG Compliance Program for Individual and Small Group Practices.

Although some compliance specifics will differ depending on the physician's specialty and the organization's areas of highest risk, the guidelines offer an ideal introduction to the overall subject and detailed suggestions for creating an effective program. The model compliance programs can be found at www.oig.hhs.gov/fraud/complianceguidance.html.

Essential Program Elements

Designating a Leader

One of the first steps in creating a viable compliance program is to designate an individual who will have primary responsibility for overseeing the creation, implementation and operation of the initiative. This person may be a physician with an interest in compliance or perhaps an office manager. Whoever is selected, the person should be trustworthy, respected and have enough authority to ensure proper implementation and execution of the program.

Those who should not be considered for compliance leadership are individuals who are intimately involved in the financial aspects of the practice. While these persons may have the necessary skills, the perception of a conflict inevitably will arise if the same individual or department is responsible for both reimbursements and regulatory compliance.

That said, it is important that the billing manager or chief financial officer play a central role in developing the compliance program, since they

are frequently most familiar with regulations affecting coding, billing and reimbursement.

Identifying the Risks

With leadership in place, the next task is to identify and prioritize risks facing the organization. For physician groups, areas of highest risk typically include coding and billing, reasonable and necessary services, documentation and improper inducements, kickbacks and self-referrals.

One of the best ways to define risk is to become familiar with the current activities, plans and policies of the HHS OIG. Each fall, the OIG publishes a document called the Work Plan. The Work Plan provides a detailed roadmap of the areas and topics the OIG will be focusing its enforcement efforts on in the coming fiscal year. The document is



organized by type of healthcare service and offers a wealth of information about the specific kinds of regulatory scrutiny provider organizations can expect. A careful reading of the Work Plan will give compliance directors invaluable insight regarding aspects of their practice that may attract scrutiny in the months ahead. The Work Plan can be found at <http://oig.hhs.gov/publications.html>.

Another way to evaluate for potential risks and staying abreast of industry activities that may potentially affect your practice is to read advisory opinions published by the government as well as updates published by CMS and your Medicare Carrier on their respective Web sites. Commercial



payors will also frequently publish potential issues on their Web sites. Advisory opinions published by the HHS OIG can be found at www.oig.hhs.gov/fraud/advisoryopinions.html.

Policies and procedures

Policies and procedures are the heart of any compliance program. Generally speaking, policies need to be constructed around specific risk areas. Clearly defining appropriate procedures and protocols for those aspects of the business subject to regulatory authority is critical to successful compliance. Compliance directors can utilize the OIG Work Plan, Model Compliance Guidelines and the appropriate CMS regulations to craft specific rules regarding employee or physician performance and expectations.

Some examples of policies that should be defined include:

- Privacy and confidentiality
- Record retention
- Practice standards
- Coding and billing processes
- Documentation
- Standards of contact
- Financial policies

- Discount arrangement
- Credit balances

Training and Education

Creating training and educational initiatives for individuals within the organization – including physicians, billing managers, coders and office managers – is next. Training should be developed along two tracks: Comprehensive training that includes general regulatory guidance for new and existing employees, and specialized training for unique job positions and roles within the organization.

An example of a comprehensive training topic would be educating physicians and staff about the appropriate use of the Advanced Beneficiary Notice (ABN), a Medicare document used to inform patients that a particular service may not be paid for by Medicare and as a result may be the patient's financial responsibility. An example of a position-specific training topic would be educating coders about the correct use of Modifier 25, a coding designation used to ensure that a particular office visit is considered as "a significantly separate service" from other procedures performed on the same patient the same day and therefore can be billed separately.

After initial training is completed, mandatory refresher courses for both general and position-specific training should be offered at least once a year.

Monitoring and Auditing

Tracking or monitoring the efficacy of a compliance program is accomplished through regular assessments of work products and processes. For example, a supervisor in the billing area could pull 10 bills each week to ensure that all data fields were properly completed, the diagnoses were appropriately linked and the information entered matched the charge document completed by the physician. From this process, areas of deficiency will be readily apparent. These deficiencies, in turn, can become the focus of a more formal and comprehensive audit process.

Audits provide valuable snapshots of overall compliance performance. It is frequently worthwhile to conduct a preliminary or baseline audit before the compliance program is initiated to gain additional insight into specific risk areas and vulnerabilities. Like compliance programs themselves, audits need to reflect the organization's highest-risk activities.

Enforcement and Discipline

Compliance directors should also formulate clear policies that outline specific consequences for employees who fail to meet or adhere to defined standards or procedures.

Disciplinary programs should be progressive in nature and be linked to appropriate remedies, ranging from additional training and education to transfer, suspension and termination.

For example, if the baseline audit reveals that a specific provider is making significant and/or repetitive documentation errors, then that provider should be informed of the problem and his or her performance should be included as part of a follow-up audit. If necessary, re-training should be provided. If the problem persists, additional training should be mandated, along with a requirement that the provider reimburse the group for the cost of audits and in-service. A letter of reprimand may also be appropriate. Continued difficulties could result in suspension or termination.

Mitigation and Prevention

The success of any compliance program ultimately depends on the extent to which the organization is committed to actively identifying and resolving regulatory problems. One way to build this commitment is to create channels of communication that allow employees, business partners and others to easily convey regulatory concerns to the appropriate individual or department without fear of penalty or retaliation. Anonymous hotlines are useful tools in this regard.

Organizations that take complaints seriously, thoroughly investigate questionable actions and promptly act to mitigate violations once they are identified will create a culture of heightened compliance awareness throughout the organization.

An Ounce of Prevention

In today's healthcare environment, regulatory mistakes can enormously damage an organization's finances and reputation. It is therefore critical that physicians establish, execute and sustain compliance programs that effectively address high-risk regulatory areas. These programs will mitigate compliance risk and also help build good will with regulators. In addition, they can help streamline revenue cycle operations and improve cash flow. ■

This article is the first in a series of three articles by Bredemeyer on compliance and physician practices.

About the author:

Bess Ann Bredemeyer, BSN, RN, CHC, CPC joined McKesson in 2005 and is Director of Compliance Services, responsible for consulting services related to physician coding and compliance practices. She has more than 22 years of healthcare experience and was previously the Compliance and Privacy Officer for a large academic health science center. Bredemeyer has also worked with healthcare defense attorneys and physician state licensing boards providing coding, compliance, billing and privacy consulting services. She has guest lectured at physician forums and residency programs, and she has taught graduate classes including health law and physician practice management. Bredemeyer received her Bachelor of Science degree in nursing and chemistry from Texas Christian University in Fort Worth, Texas. She is a certified professional coder (CPC) and member of the American Academy of Professional Coders (AAPC) where she has held several senior positions including local chapter president. She is an active member of the Health Care Compliance Association and is certified in healthcare compliance (CHC).

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