

## Review of Compliance

### Physician Office Compliance Programs

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The challenge to establishing an effective compliance program for a physician office is developing a program which is sufficiently comprehensive to cover the potential areas of fraud and abuse to which the physician is vulnerable, while, at the same time, recognizing that the program must be practical – outside major clinics or groups, a typical physician practice cannot afford to invest \$100,000 or more in the establishment and operation of a compliance program. Admittedly, “comprehensive but practical” is a difficult balance to achieve. Nevertheless, because of the enforcement environment today, it is important for physicians to consider areas where they may be vulnerable, and take the necessary steps to address them.

#### Scope and Content of Compliance Review

It is critical for the physician practice to identify the particular areas of concern which should be the focus of the compliance review, and for the attorney to articulate clearly what areas of law will be addressed by the review. Generally, in light of the focus of current enforcement activities, the compliance audit addresses fraud and abuse concerns, including application of the federal anti-kickback and Stark laws, state anti-kickback and self-referral limitations, as well as fee split and corporate practice of medicine issues, plus general billing issues.

The mechanism for a physician compliance review is a “legal audit” of the practice’s structure and procedures. The audit is designed to examine the internal procedures and records in connection with the following activities:

- a. billing procedures;
- b. contacts with outside suppliers, and consultants;
- c. admission procedures and treatment protocols;
- d. record retention practices;
- e. leases or other contracts with potential referral sources;
- f. recruitment and retention mechanisms;
- g. advertising practices;
- h. methods for securing informed patient consent; and
- i. procedures relating to waiver of co-payment and deductible.

In addition, all corporate/partnership agreements are reviewed and the structure and operation of the practice is developed in detail.

A compliance review generally is conducted in four stages. First, the attorney will undertake an initial review of the most relevant documents, including all corporate and partnership practice materials, contracts with consultants, employment agreements, advertising materials, procedures for billing, any procedure manuals, and, perhaps most importantly, any audits, evaluations or reviews performed by an insurer, Medicare carrier, Medicaid agency, or similar agency during the past five years, as well as any correspondence from these entities relating to disputed claims.

Following the review of the documents an on-site review is conducted and key personnel are interviewed. In addition, there is often a “walk through” where the path of a patient is followed throughout the process, beginning with registration, through the visit and discharge. Then, following the on-site review, there is an exit conference where any immediate concerns which require immediate corrective action are identified. Finally, after all of the data has been assimilated, a report is issued to the physician identifying those areas of weakness which should be addressed to assure compliance in the future. In addition, to the extent that any issue has been identified which requires contacting appropriate agencies or insurers, recommendations will be made accordingly.

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### **Implementing a Compliance Program**

While the legal audit is a helpful tool which can be of great value to the practice, a complete compliance program requires more – employee training, a hotline, and establishment of a corporate code of ethics are all elements of a complete compliance program, just as they are for major hospitals and national corporations. Obviously, the scope of a physician practice compliance program will not be as great or as broad as that described in the general introduction, but each of the key elements of a compliance program should be established for physician practices as well.

Physicians should recognize that a compliance program is designed not only to protect them in the case of an enforcement action, but also to prevent, or at least minimize,

the risk of enforcement actions being taken. As noted previously, there is a significant opportunity to reduce the risk of a qui tam relator filing a complaint against a physician if that individual has been afforded a means to address his or her concerns to the physician directly. While many physician investigations have been triggered by qui tam complaints, we believe an effective compliance program will significantly reduce the likelihood of success by the relator in qui tam litigation.

### **Conclusion**

Physicians should not overlook the many benefits from developing a compliance program for their practice. Certainly, the enforcement authorities have not overlooked physicians as potential targets for enforcement actions.