

LEGAL MATTERS

INTERNAL AUDITS AND COMPLIANCE PLANS: ARE THESE SOMETHING YOU SHOULD DO?

by Bruce A. Smith, Esq.

Over the past several years, federal and state agencies have beefed-up their enforcement capabilities and have aggressively pursued fraud and false claims actions against hospitals, nursing homes and home care agencies. Now, their attention has turned to physicians. As a result, more and more physician practices are taking preventive measures to ensure they won't be in hot water if the regulators show up at their door unannounced.

An internal audit provides a current picture of the health care provider's business—measuring how it provides, bills for, documents and accounts for the goods and services it furnishes against the legal requirements that govern that business. It also furnishes a benchmark against which future compliance efforts can be measured. The internal audit is designed to reveal any weaknesses or vulnerabilities in the provider's structure or processes that could lead to violations. The audit is usually coordinated by outside legal counsel with expertise in health law, with the assistance of consultants in coding and accounting, as appropriate. Like the compliance program itself, the audit must be structured with the size and complexity of the health care entity in mind.

An internal audit involves a review of billing procedures and responsibilities, with particular emphasis on CPT coding and billing and documenting reimbursable expenses. The auditor also will review the process of referrals, both outgoing and incoming, with particular emphasis on Stark I and II rules and the anti-kickback laws. All leases, employment contracts, joint

venture agreements and supplier arrangements are examined. How the audit leads to a formal compliance plan depends on the results of the audit and the group's assessment of its vulnerability.



The Office of Inspector General ("OIG") is providing "guidance" to segments of the health care industry about what the OIG believes ought to be in an effective compliance program. The OIG has issued such prescriptions for clinical laboratories, hospitals, home health agencies and third-party medical billing companies. In the near future, the OIG is expected to issue guidance for physician practices.

An effective compliance plan should (1) be in writing, (2) establish a compliance committee, (3) set forth a code of conduct, (4) establish retribution-free reporting

mechanisms by which employees may anonymously report misconduct to the compliance officer, (5) establish a regular training program for new employees and periodic retraining of existing employees and, as applicable, independent contractors in the provisions of the code of conduct, as well, the processes for obtaining advice and reporting misconduct, (6) establish a system for internal monitoring and regular compliance audits to ensure adherence to the policies and procedures established to avoid compliance failures and (7) establish a system for corrective actions and remedial efforts in the event of compliance failures, including the regular review of the code of conduct and the compliance program itself so that these elements change as the law changes or system problems are identified and corrected to avoid future lapses.

An internal audit and compliance plan can pay for itself. For every bill that was put in at an overpayment, you'll likely find one that's an underpayment. Likewise, a better trained staff may yield administrative and clinical benefits to the practice. Despite the benefits of an internal audit, there is a Catch-22: when you start looking for compliance problems, you'll usually find them. Consequently, before undertaking an internal audit, a practice must commit to correcting problems—both prospectively and, if necessary, retrospectively—which the audit identifies.

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