

## Compliance Programs: A Silk Purse or a Sow's Ear? Part 2 of 2

*Editor's note:* Part 1 of this article appeared in the Nov. 21 issue; read it online at [www.chiroweb.com/archives/24/24/07.html](http://www.chiroweb.com/archives/24/24/07.html).

### Investigations Growing

One unsettling aspect of our health care system is that allegations of insurance fraud often arise even when there is no actual intent to defraud. Most investigators will judge providers' intentions from their actions rather than from their thoughts. For example, the fact that a provider is not personally up to date on the latest rules and billing regulations may be seen as evidence of fraudulent intent. The same may be true of a provider's failure to continuously train coding personnel on the latest code changes and their applicability to the services the practice provides. Fraudulent intent may be found in the lack of any office program designed to determine the ongoing state of the practice's compliance with applicable rules and regulations. Similarly, fraudulent intent may be inferred from the failure to regularly evaluate the effectiveness of any such program. When an investigator finds the provider cares so little about compliance that he or she hasn't taken even the most rudimentary steps to ensure it, any error found often will lead to allegations of fraud.

To add to the likelihood of an investigation, it has been our experience that the vast majority of attacks in recent years originate with someone the provider knows. For example, more than 90 percent of all federal audits and investigations result from follow-ups on filed complaints. The federal government sponsors a whistleblower program that pays a significant percentage of any amounts recovered to those who direct the investigators. The government and most insurance companies maintain hotlines on which one can report a provider for any conduct that may lead to a recovery. In this climate, it may not be surprising that most investigations are initiated as a result of a report from a disgruntled employee, an unhappy patient or a competing practitioner. In general, the more people who have seen or know about a provider's files, the greater the risk of an investigation.

Given the economics associated with fraud investigations, their continued rise is almost assured. Health care fraud has been estimated to be an \$80 billion per year "industry," and neither the federal government nor the insurance companies are particularly gracious about losing that much money every year. Moreover, the federal government collects anywhere from \$7-\$11 for each dollar it spends on fraud enforcement. With that kind of return on investment, federal agencies' involvement in Medicare fraud investigations is bound to grow.

### Possible Solutions

Many providers, faced with an ever-increasing incidence of denied and reduced reimbursements, have come to believe the only way to survive in the system is to adopt very aggressive coding practices. There is certainly nothing wrong with this, and many industry consultants promote this practice widely. However, it is often overlooked that one can code with safety only as aggressively

as one knows and can apply the coding rules. Given the ambiguous nature of the codes, as well as the frequency with which they are revised, sending coding personnel to a workshop every other year is probably not enough to allow a provider to earn everything to which he or she is entitled and stay out of trouble.

Many providers have decided not to play the reimbursement game and have gone to an "all cash" operation. This is certainly one option, and it may work well with appropriate planning and the right kind of practice. However, it does not seem to work for everyone. Our advice to those who still play the reimbursement game is: Play it well - play it very well, indeed.

One solution to many of the problems noted above is a compliance plan written in conformity with the recommendations of the Office of the Inspector General. Once adopted and maintained by a provider, such a plan establishes a system of self-examination and correction that accomplishes three very important goals: (1) It substantially reduces the risk of noncompliance. (2) It reduces the likelihood of a successful prosecution for criminal fraud. (3) It undermines the "intent" requirement necessary to prove civil fraud. In short, it goes about as far as a mere plan can to ensure a provider will not spend time in jail. As a "side effect" of interest to most practitioners, a compliance plan also may, in some circumstances, increase the provider's income.

An effective compliance program involves, at a minimum, the following six-step process:

1. adoption of a written, customized compliance plan;
2. staff training as needed to implement the compliance plan;
3. appointment and training of a compliance officer (a part-time position, often held by a provider's existing office manager or a practitioner);
4. internal baseline audit of current compliance;
5. appropriate response to the audit results; and
6. regular, periodic evaluation to ensure all compliance procedures are working effectively.

### The Sow's Ear

A program that does not address each of these six steps will not give the provider the protection to which he or she is entitled. In fact, the typical "compliance plan" being sold today, which consists merely of a binder filled with compliance data and legal forms, actually may do more harm than good. The presence of the plan binder in the provider's office is clear evidence of knowledge of compliance issues and the need to address them. But if the plan is not implemented and if such implementation is not documented, its presence in the office merely demonstrates the extent to which the provider is willing to ignore compliance issues. A bright examiner could easily use this as evidence of fraudulent intent.

We have found the biggest problem with most "compliance plans" being sold today is that they ignore the need for implementation. The majority of the doctors surveyed for this article reported that they owned a compliance plan, but that their office had produced little or no evidence the plan was actually being implemented. Because such plans rarely are perceived as the source of revenue, they typically are relegated to the "back seat" of office priorities. As a result, their primary function is usually to document precisely what compliance practices have been ignored.

### The Silk Purse

Protection from fraud allegations cannot be achieved through the purchase of a thing, such as a "compliance plan" binder. To provide all the protection it can, a compliance plan should include a written implementation program designed to regularly and reliably produce hard evidence that steps are being taken each week to implement the plan. Such a program would include steps to

generate a written record that directly contradicts any allegation of fraud. As far as we are aware, such a written record would provide the best possible defense should an investigator ever consider making an allegation of fraud.

The cost of implementing a compliance plan usually represents no more than a few hours of a provider's average overhead expense. Also, that cost need not be paid all at the outset, but is typically spread out over a period of several months. More importantly, an implementation program may result in an increase in the provider's income within the first few months, as the internal audit enables the practice to recover reimbursements that were formerly being "left on the table." To the extent this occurs, it can help to offset the obligation to return any excess reimbursements received in the past. It is also the perfect complement to an aggressive coding policy, as it enables a provider to secure reimbursement for every dollar he or she is entitled to without "crossing the line" into questionable practices and potential liabilities.

On a personal note, those who are actively implementing their compliance plans report sleeping better at night, knowing they are well-prepared for any audit or investigation. That, in our book, is worth a great deal. If you would like to learn more about the cost and benefits of a true compliance program, including both the compliance plan and the implementation program, please contact us for more information.

DECEMBER 2006