Dynamic Chiropractic

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New Headaches for MD/DC Practices

By now, just about everyone knows there has been increased government scrutiny of the insurance billing practices of MD/DC clinics in the last few years. Most of these investigations have focused on two basic violations: billing for unnecessary testing and services, which can now be a federal criminal violation under the health insurance portability act; and billing services under an MD's name and provider number without complying with the applicable "incident to" rules. Many of these investigations have led to criminal prosecutions and plea agreements or convictions. There is every indication that these prosecutions will continue.

However, I have been seeing another problem area for this business model: investigations and prosecutions for improper or illegal dispensing of controlled substances. Several such criminal investigations are currently pending around the country. So far, one investigation involving a clinic owned by a chiropractic consultant has resulted in the indictment of the physician. In addition to criminal investigations, there are also a number of civil investigations and federal civil actions under the Drug Abuse Prevention and Control Act, which carries a $25,000 maximum fine per illegal prescription.

These criminal narcotics investigations have some similarities with standard MD/DC insurance fraud cases. Both usually involve multiple undercover operations - agents posing as patients - and both tend to work up the chain of command. Investigators start with the employees and try to work their way up to the clinic owner. Also, because these investigations may lead to a felony plea or conviction, the licensing implications are as drastic as in insurance fraud cases.

Of course, many of the MD/DC clinics have corporate separation between the medical and chiropractic sides. However, the legal distinctness may not insulate the chiropractor if the bulk of the medical corporation's profits are transferred to the DC by way of an intermediary management corporation.

Another factor in the calculation of potential criminal liability is how much oversight and control the chiropractor has over the medical doctor. The good news is that a DC does not have the legal authority to oversee or overrule an MD's prescribing practices. On the other hand, many physicians in MD/DC clinics are part-time, hourly paid employees who, in reality, exercise little control over patient care. Once the investigators reach this conclusion, it may be difficult for the chiropractic clinic owner to avoid some form of culpability.

What's really going on here, and how much does the average MD/DC clinic owner have to worry? Let's start with some background in pain medicine.

Pain management is a very big business, in part because historically, primary care physicians have undertreated severe pain. This has led to the development of pain management clinics and pain management as a medical specialty. Unfortunately, the other reason pain management is so big and profitable is that there are a huge number of narcotic addicts who are being supplied by prescription mills. Traditionally, the federal and state governments have put a great deal of time and money into rooting out these operations.

Given the negative view some have of chiropractic in general, and MD/DC clinics in particular, it is not surprising that the model is starting to receive some scrutiny from narcotic-related agencies. Another contributing factor is that most of the physicians in MD/DC clinics do not have advanced pain-management training. This means there are often unsophisticated, cookie-cutter prescribing practices that draw regulatory attention.

Lack of pain management training also may cause the physician to be unable to detect narcotic abusers. It is especially difficult to detect abusers if the practitioner is practicing what may be called "good faith" pain management, which is the prescribing of narcotic medications without either objective testing or adequate documentation of prior injury. (There are good and valid reasons for this, but that's another story.) The result is that MD/DC clinics are starting to receive the same attention the low-end, cash-practice, pain management-dispensing clinics have received for some time. The good news is that in response to these problems, many states have passed pain management guidelines or safe harbors, compliance with which should protect against criminal, civil and licensing actions by all regulatory and criminal investigatory agencies. For example, in Texas, the law is called the Intractable Pain Treatment Act.

While the laws may differ, all involve most of the following mandates:

1. adequate and documented evaluation of the patient;
2. a written treatment plan;
3. documented informed consent;
4. periodic review;
5. consultation with other appropriate health care practitioners;
6. accurate and complete medical records; and
7. compliance with state and federal controlled-substance laws and regulations.

Of course, as with many things, the devil is in the details, but a good-faith attempt to comply with these guidelines should keep practitioners and clinic owners out of trouble.

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