

Whom Do You Use for Compliance?

Presently, a question being asked by law enforcers is, "Why do chiropractors use convicted felons and other unscrupulous and dubious individuals for compliance advice?" In conversation with a federal prosecutor, I learned that many in the law enforcement community believe chiropractors are working with compliance consultants to hide illegal conduct under the guise of "compliance programs." It is not difficult to understand why law enforcers, who reasonably assume responsible health care professionals know who they are hiring, question the legitimacy of so-called "compliance programs," especially those involving convicted felons.

Further, it is not hard to see why this belief exists and will continue to flourish, with the number of apparent unsavory characters who have jumped into the health care compliance arena - as if it were a money train leading to quick bucks from unwitting chiropractors. Illustrative of the consequences arising from these so-called "compliance programs" are the following:

- Convicted felon, who is now out of business, provided chiropractors compliance certificates, complete with a government logo, for display in clinics to indicate they were in compliance. The felon also instructed and assisted chiropractors on back-billing for evaluation, management and other services he alleged should have been previously billed - and all this without having performed an actual audit of the health care records. Numerous chiropractors throughout the country have felt the prosecutorial pain of having worked with this felon. (9/19/06 press release, USDOJ Southern District of Ohio; and 1/31/06 *Columbus Post Dispatch*)
- Convicted felon, just a couple of years out of federal prison, claims to be an undisputed expert on chiropractic fraud. This purported "expertise" is attributable to dealings he had with the government during an investigation of his own practice. The "expert" entered a plea of guilty for what he termed "false" allegations of fraud. He purports to provide chiropractors with a comprehensive, voluntary compliance program that detects, corrects and prevents fraud, while at the same time encouraging clients to engage in delegation and billing practices, similar to those which resulted in his conviction. Ironically, the "expert" is permitted to provide seminars approved for "continuing chiropractic education" for chiropractors who attend his seminars. (4/12/02 press release, USDOJ Northern District of Texas)
- Consultant, just convicted of health care and mail fraud for activity in his practice, claims to have the nation's premier multidisciplinary program for chiropractors, including a step-by-step guide to setting up a compliance plan. He promotes a system that purportedly doubles current income with the current patient volume by simply integrating a physical therapist into the practice, and promises 10 times the cost of his program in increased insurance reimbursements every year for the life of the practice. (3/2/07 *Associated Press*)

These are just a few examples that are clearly not indicative of all consultants who work with chiropractors to provide compliance services. There are numerous credible compliance professionals throughout the country who have the knowledge, experience and expertise demanded by chiropractors for compliance services. In this Internet age, it often takes only a few strokes of a keyboard to learn an awful lot about a compliance consultant before one is hired.

For years, the government has recommended that all health care professionals implement health care compliance programs to identify and correct violations. For this self-policing, the government allows penalty mitigation for those with an "effective" compliance program in place at the time of the violation. An "effective" compliance program is determined based on the government's evaluation of all compliance program standards, as defined in the Federal Sentencing Guidelines (FSG) (www.uscourts.gov/orgguide.htm). These standards were created as part of the "Sentencing Reform Act of 1984" to provide uniformity and predictability in federal sentences by having the culpability for an offense determined by the steps taken to prevent and detect criminal conduct. The success and benefits of a (formal) health care compliance program are only realized through the efforts of the organization with regard to meeting or exceeding the FSG compliance standards:

- The organization must have established compliance standards and procedures to be followed by employees and other agents that are reasonably capable of reducing the prospect of criminal conduct.
- The organization must have assigned specific high-level individual(s) of the organization overall responsibility to oversee compliance with such standards and procedures.
- The organization must have used due care not to delegate substantial discretionary authority to individuals the organization either knew or should have known, through the exercise of due diligence, had a propensity to engage in illegal activities.
- The organization must have taken steps to communicate effectively its standards and procedures to all employees and agents; e.g., by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required.
- The organization must have taken reasonable steps to achieve compliance with its standards; e.g., by utilizing monitoring and auditing systems reasonably designed to detect criminal conduct by its employees and other agents, and by having in place and publicizing a reporting system whereby employees and other agents can report criminal conduct by others within the organization, without fear of retribution.
- The organization must have consistently enforced the standards through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals for the failure to detect an offense.
- The organization, after an offense has been detected, must have taken all reasonable steps to respond appropriately to the offense and to prevent further similar offenses, including any necessary modifications to its program to prevent and detect violations of law.

Additionally, the Department of Health and Human Services/Office of the Inspector General (OIG) has promulgated guidance for health care professionals on implementing voluntary compliance programs, including individual and small group practices (<http://oig.hhs.gov/authorities/docs/physician.pdf>). The OIG identifies seven components of an "effective" compliance program for individual and small group practices to promote adherence to federal health care program requirements similar to those found in the FSG. The OIG acknowledges that full implementation of all components may not be feasible for all physician practices and that some practices, after completing an initial assessment to identify practice vulnerabilities, might only adopt those components likely to provide an identifiable benefit.

There is no "one-size-fits-all" compliance program for health care professionals. Each health care organization possesses unique needs and risk areas. Compliance is serious business that should not be undertaken without first consulting an experienced health care attorney for necessary guidance and direction, particularly as it relates to the initial assessment or baseline practice audit. The foundation for implementing a successful compliance program is the initial audit, which should identify violations, provide recommendations for corrective action and offer direction on the mechanisms that should be

employed to prevent a recurrence of violations.

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