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Newsletter, November 2011 Regulatory Compliance for a Medical Practice

In this article, I give you a quick overview of the major regulatory compliance areas for physicians and medical practices, namely:

- Referral Laws -- Anti-Kickback and Stark Self-Referrals
- Billing Medicare and Other Payers
- HIPAA
- Supervision of Staff

The regulatory schemes covering medical practices are unbelievably complex, so this article only gives a bird's eye view. For an outline of legal issues related to a medical corporation, read "Legal Compliance Checklist for a Medical Corporation" on my website. You should also read the related set of articles that you'll find linked in that article.

Without further adieu,

The Referral Laws: Anti-Kickback and Stark Self-Referral

Both the US and California have their own versions of the anti-kickback and Stark self-referral laws. To sum them up: Don't make or take referrals for money.

- Under the anti-kickback laws, a physician may not knowingly offer or pay, or even receive, anything of value for a referral of medical work.
- Under the Stark self-referral laws, a physician may not refer a patient to a provider with which the physician (or a family member) has a financial relationship.

Violation of these laws is punishable by fines, exclusion from participation in Medicare and Medi-Cal (see next), loss of license to practice, and even imprisonment.

Billing Fraud and Exclusion from Medicare and Medi-Cal

You must be very careful when billing for services, because you do not want to inadvertently commit health care fraud. It is very easy for medical practices to become sloppy in their billings as they try to

maximize reimbursement, for example, using a physician's provider number to cover the work of a non-physician.

The federal Office of Inspector General (OIG) can exclude anyone who has engaged in billing abuse from participation in Medicare. Exclusion is very serious because you cannot get reimbursement from Medicare for your medical work. The California Department of Health Services has its own exclusion (suspension) provisions regarding Medi-Cal.

The OIG prohibits payment even to an innocent health care provider (e.g. a hospital) who employs an excluded individual. A provider can itself be excluded if it submits claims for payment connected with an excluded person. Hence a medical practice must be sure that all of its employees and contractors are not excluded. Both OIG and California maintain online lists of excluded health care providers.

HIPAA

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires "covered entities" to protect electronic health information from unauthorized access, alteration, deletion, and transmission. Covered entities include medical practices.

HIPAA is extensive and I'm sure you've had about all you can stand of it already. One thing to keep in mind about HIPAA is that, when working with third-party contractors who handle patient data, a health care practice must obtain contractual assurances of their HIPAA compliance. Make sure your contracts with third parties have language to this effect.

Supervision of Staff

California has a multitude of regulations on your supervision of staff, including medical assistants, nurse practitioners and more. The California Medical Board's website has many publications that address these regulations. Make sure that you read up on the supervision required for each type of personnel in your office.

That's it for this little outline. It's a wonder to me that any physician group can stay in compliance with all of these regulations, but ignorance of the law is no excuse. Don't go it alone. Call me if you want to talk more.

Groucho Marx:

- I've had a perfectly wonderful evening. But this wasn't it.
- Those are my principles, and if you don't like them... well, I have others.
- Go, and never darken my towels again.
- Well, all the jokes can't be good. You've got to expect that once in a while.

John Singer Sargent

