

Part B Insider (Multispecialty) Coding Alert

Compliance: Focus on Your Compliance Plan Now Or Pay Later

Enhanced fraud-fighting atmosphere makes your plan more important than ever.

If the feds show up on your doorstep or auditors take a magnifying glass to your claims, would they find you're following the rules? Showing authorities that you're complying with rules and regulations is just one important function of a compliance plan for your organization. "It's absolutely time -- past time -- to work on a compliance plan," urges attorney **Liz Pearson** with Pearson & Bernard in Edgewood, Ky. "Either update the one in place or start one."

"Fraud and abuse enforcement has been trending up for a while now," points out attorney **Robert Markette Jr.** with Gilliland & Markette in Indianapolis. That makes it paramount to generate or update your compliance plan. The feds have been going after health care fraud and abuse with renewed vigor under the Obama Administration. The HEAT Task Force, a joint project of the DOJ and OIG, is racking up fraud indictments in seven cities. Various federal officials have testified before Congress about out-of-control fraud in the Medicare program (see related story, back cover).

Auditors ranging from RACs to Zone Program Integrity Contractors (ZPICs) to Medicaid Integrity Contractors (MICs) have ramped up oversight efforts.

And the health care reform law passed this year contains a number of new fraud-fighting provisions. Those include a directive for CMS to require compliance plans of as-yet-unspecified providers under Medicare conditions of participation.

Bottom line: "If a provider does not currently have a compliance program, now is the time to develop one," concludes attorney **Julie Mitchell** with Copeland Cook Taylor & Bush in Ridgeland, Miss. And "it is absolutely a good time for providers to update existing compliance plans."

It's important to update your current plan because regulations and laws governing compliance change frequently, Mitchell notes.

Providers "should definitely dust off the compliance plans," advises attorney **Ross Lanzafame** with Harter Secrest & Emery in Rochester, N.Y. "In fact, the plans should NOT have any dust on them. Agencies need to implement their plans on an ongoing basis."

Police Yourself With An Up-To-Date Plan

Currently, providers face no penalty for not having a compliance plan, Pearson notes.

But you shouldn't wait for the compliance plan requirement to take effect before formulating and implementing one, urges attorney **Deborah Randall** with Deborah Randall Consulting in Chevy Chase, Md. The benefits of a compliance plan far outweigh the work in creating and maintaining one.

First and foremost: A compliance plan includes self-audits and those catch fraud and abuse occurring in your organization, Markette notes.

Then you can fix the problem before the government steps in with harsh penalties. Providers that don't have plans in the first place are also more likely to violate applicable prohibitions, cautions Washington, D.C.-based health care attorney **Elizabeth Hogue**. Having a plan is also a mitigating factor when it comes to handing down penalties, Pearson says. "If you have a problem and the OIG, FBI, Medicaid Fraud Control Unit or other group shows up to investigate and you do not have a compliance program, you likely have an even bigger problem," Markette warns.

Compliance plans "are the insurance policy for a good discussion basis should your organization be under any kind of

review," Randall reminds providers. "I absolutely use the existence of a robust compliance plan in my clients' situations to help negotiate less difficult outcomes when there are billing errors or rogue employee crises," she says.

"Compliance plans are a provider's way of showing, through documentation, that the organization is in compliance with the laws governing federal and state health care programs," Mitchell explains. "Without a compliance plan, providers risk being unable to present documentation of their commitment to compliance when the government visits." Compliance plans also foster an anti-fraud tone for your company. They "set an atmosphere of zero tolerance for shenanigans that create issues of fraud and abuse," Pearson tells Eli. Such problems that could land you in trouble include "late or incomplete documentation, no call/no show incidents, falsified documentation, etc.," she says.