

Part B Insider (Multispecialty) Coding Alert

ENROLLMENT: Read The Fine Print Before Your Doctor Signs New 855I

You could be enrolling in a world of hurt

If your practice's compliance plan isn't up to snuff, your doctor could be signing up for a Medicare witch hunt.

The new CMS 855I enrollment for physicians includes some new statements that could get you into trouble down the line. In particular, on page 24, your doctor must attest that:

- He or she understands that Medicare claims must comply with all laws and regulations, including (but not limited to) the anti-kickback law and the Stark self-referral law.

- Neither your doctor, nor any -managing employee- is currently sanctioned, suspended, disbarred or excluded from Medicare or other government health programs.

Warning: Both of these things are already required by law. But by signing an attestation to them, your doctor could be piling on the legal jeopardy, warns consultant **Jean Acevedo** with **Acevedo Consulting** in Delray Beach, FL.

Don't sleep on this: If your compliance program doesn't already address these areas, you should make changes right away, says Acevedo.

You should be checking the databases at both the **HHS Office of Inspector General** (OIG) and the **General Services Administration** to make sure Medicare hasn't excluded anyone in your office, Acevedo urges. Don't just look at your doctors, look into all employees. That certified nursing assistant who was so eager to come to work as your new medical assistant could be taking the pay cut for a reason, she warns.

Anyone excluded from Medicare shouldn't be working in your office, cautions **Diane Signoracci**, a health care attorney with **Bricker & Eckler** in Columbus, OH. According to the OIG, excluded individuals can't be doing work that's in any way related to patient care. -Basically you can't hire them for any purpose.-

You've always had to comply with the Stark and anti-kickback laws, but you never had to attest to compliance before, says Acevedo. Medicare is -taking away a physician's ability to say, -I didn't realize I had to pay attention this.-- If your doctor attests to compliance but doesn't put in place an effective compliance program, then the penalties could be much worse.

Managers may be treating this as just another form for doctors to sign, Acevedo worries. -Nobody's really paying attention.- The new form even includes a page outlining all the sanctions and penalties, including fines that the doctor could face for non-compliance.

The new form doesn't change the laws, but it does put them more in the physician's face, says attorney **Bruce Johnson** with **Faegre & Benson in** Denver, CO.

Further jeopardy: Also, the feds may be repeating a strategy they've used in the past with institutional providers: - bootstrapping- the Stark and anti-kickback laws to the False Claims Act (FCA), says Johnson. Because the doctor signed a document that promised to abide by the first two laws, failure to comply may also violate the FCA, Johnson warns.

-The government's been getting some traction by trying to combine the three in different settings,- says Johnson. With False Claims, the government can impose different sanctions than under the other laws. Also, qui tam -whistleblowers- can bring suits under the FCA.



Doctors don't usually face sanctions under the Stark law because the law focuses on entities that receive doctor referrals, such as hospitals, notes Signoracci. But if your office provides services or equipment under the -in-office ancillary services exception,- then you should be careful about any payments your doctors make to other referring doctors.