

Part B Insider (Multispecialty) Coding Alert

FEDERAL INVESTIGATIONS: 9 Tips for Tackling an Investigation

If you find the feds at your door one false step can bring dire consequences.

Now that you know what NOT to do if you find your practice under investigation (see article What Not To DO), check out these 12 things TO do to help ensure a smooth investigation:

Cooperate. First and foremost, physicians under investigation should cooperate with the government, says consultant **Jim Collins** with **CompliantMD** in Matthews, NC. Trying to stand in the way or being difficult to deal with will only make the situation worse for yourself.

"If [you are] served with a subpoena or search warrant, cooperation is mandatory," adds attorney **Robert Wanerman** with **Reed Smith** in Washington. If you don't comply, they can slap you with fines and criminal liability on top of whatever else they originally came looking for, he warns.

Don't blow off inquiries not backed by a warrant or subpoena. Although such visits or telephone calls are more informal than an agent with documents in hand, they "should be taken seriously as well," Wanerman notes.

Designate a go-to person. You should appoint one person to respond to requests for information throughout the investigation, Wanerman instructs. "That person can serve as a liaison with counsel and prevent improper disclosures of information."

Be open with employees. Make sure your employees know what's afoot and tell them they aren't required to speak with investigators, Wanerman counsels. However, under no circumstance should you tell an employee that he's not allowed to do so or threaten to punish him if he does.

Ideally, you should have your attorney explain to employees the investigation and what it entails, says attorney **Bill Sarraille** with **Arent Fox Kintner Plotkin & Kahn** in Washington.

It is always up to an employee as to whether they speak voluntarily with the government. "Employees can be informed appropriately of their right not to speak to the government if they choose, or to have counsel for the employer or the employee's own counsel present, or to specify the time and the place of any interview," Sarraille says.

Stick close to the agents. Your go-to person should always ask for an investigator's identification and identify the agent in charge.

And although your coordinator should be cooperative and courteous, she should accompany the agents while they're on the premises, Wanerman advises. You don't want them wandering around freely.

Know what you're up against. "Investigations can be conducted using several different tools, and it is important to know the difference," Wanerman says. If a search warrant or subpoena is the investigators' tool of choice, call in a health care attorney immediately.

"In some cases, counsel may be able to narrow the scope of the subpoena or warrant, or to suggest alternate ways to comply while minimizing the disruption to the practice," he points out.

Keep documents organized. "Any documents prepared for the practice by counsel should be stored separately from other documents," Wanerman insists. Otherwise, things could get mixed up, and you could end up accidentally waiving attorney-client privilege. That means documents that normally could have been shielded from the government could

become fair game.

Review documents before sending, if possible. "If the investigators do not have a search warrant and do not intend to seize documents immediately, the responsive documents should be identified and reviewed by counsel before they are produced," according to Wanerman.

Conduct an internal investigation. Your compliance program should "include a mechanism for conducting internal investigations," Wanerman reminds physicians.

Pay attention to what's going on. Investigators often won't come right out and tell you what they're looking for, but if providers pay attention to what investigators' requests have in common, they can sometimes figure it out for themselves, Collins notes.

As we know all too well, the government is often wrong, and if you know what they think you did incorrectly, you might be able to prove to them early on that their suspicions are off base, Collins reminds physicians.

