

Part B Insider (Multispecialty) Coding Alert

Insurance: Should Coders And Managers Obtain Personal Liability Insurance?

It depends on your employment status and your employer's coverage

You can't get behind the wheel of a car without insurance, but many coders and managers operate without any personal insurance protecting them from liability. Should you be in the market for some personal coverage?

"Yes," say some experts. It's not enough to hide behind your physician any longer, they warn. "The way the cases are going, ... the government is looking beyond the physicians, particularly in egregious cases," warns attorney **Wayne Miller** with the **Compliance Law Group** in Los Angeles. "They really do have the capability to delist or exclude non-doctors from working for Medicare-covered doctors." So even if you're not forced to pay up, you could be put out of work. Insurance can protect you against this fate.

But not all attorneys agree with Miller. "Absolutely not," says attorney **David Glaser** with **Fredrickson & Byron** in Minneapolis. "Who's going to sue you? Your employer? It seems unlikely, because they have a duty to train you and under most state laws they have a duty to indemnify you if they believe you are acting in good faith."

If you make a mistake due to negligence, your employer can't sue you. "You have to be doing something intentionally wrong in most states." Of course, if you're facing criminal charges, "that's a whole other ball game," but that would require prosecutors to prove criminal intent on your part. Coders and managers generally don't have a lot of incentive to bilk Medicare, Glaser notes, because your payments aren't based on your office's Medicare reimbursement.

If you actually set out to break the law, insurance won't be much help in any case. "Any malpractice insurance you could buy excludes coverage for an intentional act," Glaser points out.

But many coders are contract employees and their contracts don't indemnify them, notes **Georgeann Edford** with **Coding Compliance Solutions** in Birmingham, MI. She believes prominent consultants have been sued based on coding advice they provided. "I have insurance on all of our people individually, and in addition we also carry it as a firm."

After all, Edford asks, if you're not in any danger of being sued, why do all the professional organizations offer insurance? She obtained her insurance through the **American Health Information Management Association**.

There's "no question it's an increasing trend" of coders, business managers or billers being named as defendants in fraud cases, says Miller. Perhaps a quarter to a third of recent cases have targeted managers or coders. "That number is only what was published" in recent settlements, which are often in the pipeline for years before they're announced, Miller notes, so they don't "reflect what's currently going on."

"The government recognizes more and more [that] the control of these issues is with the biller/coder, not with the doctor," Miller adds. "The government recognizes there are specialists who do this work, and it wants to hold them responsible."

Depending on how you're compensated, you're probably not under any direct incentive to miscode, but prosecutors could make an argument that you wanted to keep a particular physician's business. And you may feel pressured by the physician to climb out on a limb. Coders who take aggressive positions may "find themselves in trouble," says Miller.



Coders "need to be fully independent and strong in their position and not be coerced into doing something wrong," Miller concludes. Once the hammer comes down, "the doctor may forget that's what happened and may say the coder told me to do this."