

Eli's Rehab Report

Compliance: Avoid These 2 Major Snares in Healthcare Reform

Know what ACOs are and why they're a threat to you.

The Patient Protection and Affordable Care Act (PPACA) brings both good and bad tidings. On the bright side, both rehabilitative and habilitative therapy will be covered in the essential benefits package. On the downside, PPACA takes a heavy hit at your livelihood both directly and indirectly.

1. Fraud Control Gets Ruthless

Get all your compliance ducks in a row because PPACA makes no room for fraudsters -- or even innocent mistakes. For example, penalties for kickback violations will increase. "A claim that includes items or services resulting from a [kickback] violation ... constitutes a false or fraudulent claim," the law says. "A person need not have actual knowledge of this section or specific intent to commit a violation of this section."

Secondly, PPACA opens a free-for-all for qui tam lawsuits. As of March 23, the reform legislation "lifted the bar for qui tam relators to use public documents to bring a whistleblower lawsuit under the qui tam provisions in the False Claims Act," reports attorney **Neville Bilimoria**, with Duane Morris LLP in Chicago. Previously, the whistleblower had to be the original source of the information about the provider.

The law requires also screening of providers, including a licensure check and possibly even a criminal background check, fingerprinting, unscheduled and unannounced site visits (including pre-enrollment ones), database checks, and others.

Double-hit: Providers will have to pay for their own screenings, to the tune of \$500 for institutions and \$200 for individuals, the law says. Those rates will be adjusted upward for inflation going forward. This provision takes effect in September.

2. ACOs Leave Therapists Out of the Loop

In the fine print of PPACA, check out the section on Accountable Care Organizations (ACOs). "ACOs would be accountable for all the care that the patient may need from admission to discharge and beyond," says **Ken Maily, PT**, with Maily & Inglett Consulting in Wayne, N.J. And in simple terms, the law wants to direct reimbursement toward ACOs instead of hospitals and physicians.

Major problem: In defining who would be part of these ACOs, PPACA names hospitals, physicians and non-physician practitioners, among others, but does not name PTs, OTs, and SLPs, Maily points out. Therapists are considered neither physicians nor non-physician practitioners (NPPs) under the Social Security Act, he explains. The term, "physician" includes medical doctors, osteopaths, podiatrists, optometrists, etc., and the term "NPP" includes physician assistants, nurse practitioners, etc.

Pursuing this language issue "has never been a priority and it may cost us," Maily says. Why? If ACOs became a prevailing way for government to reimburse care, "there's serious doubt as to whether therapists would get any of that money," Maily surmises.

Best advice: "As quickly as possible, push to establish yourselves in the profession as independent professionals in the law," Maily stresses. "Unless this law is overturned by court ruling, the number-one priority before a fee schedule and therapy cap fix, in my opinion, is to obtain physician status under Medicare."

