

Chapter One

WHY IMPLEMENT A COMPLIANCE PROGRAM IN YOUR OFFICE?

The Office of Inspector General (OIG) released guidance for compliance programs for individual and small group physician practices on September 26, 2000. Prior to that time, the OIG has released numerous model compliance guidance programs for hospitals, laboratories, third party billing companies, hospice, DME, etc. All of the documents have provided the healthcare community with a framework to appropriately provide and bill for healthcare services. The September 2000 OIG compliance guidance for physician offices closely follows the requirements of the model hospital compliance program, which was released several years ago. The OIG guidance for physician offices strongly encourages every physician office to implement an *effective* compliance program. In the future, this guidance will establish the “standard of care” for physician offices. Since an effective compliance program is a strong mitigating factor in determining penalties/fines if a problem is discovered, a compliance program is strongly recommended.

There are a growing number of laws and regulations that govern healthcare providers. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Balanced Budget Act of 1997 (BBA) specifically deal with fraud and abuse in the health care arena. For purposes of governmental interpretation, “fraud” is defined as a deliberate act intended to obtain improper payment. “Abuse” is a repeated act that may not be deliberate but results in improper payments. The OIG states that innocent errors or even negligence will not result in criminal or civil penalties. However, penalties will be imposed if the offense is committed with actual knowledge of the falsity of the claim, reckless disregard, or deliberate ignorance of the falsity of the claim. The OIG makes it clear that physicians and their staff have a duty to make reasonably sure that claims filed are accurate. Thus, if a practice is not continually updating its knowledge and investigating its claims submission and documentation, the practice may be subject to penalties if the claims they submitted are improper or unsupported.

Non-compliance can be costly. Not only will the practice have to expend a great deal of time and money to defend itself in an investigation, but if it is determined that the practice improperly submitted some of its claims the penalties are high. In addition to repayment of double or triple damages, mandatory fines are set at \$5,000 to \$11,000 per false claim filed. If the practice has improperly submitted claims for a certain test for many of its patients, the penalties are assessed every time a claim was sent in. Thus, the penalties can amount to more than the practice could afford to pay for misunderstanding one type of code. A compliance plan’s purpose is to continually monitor the practice for these types of potential problems and correct them. Every practice will make some errors; however, the mistakes must be isolated and corrected when detected. It should be remembered that in recent surveys the government has determined that 10% of the nation’s trillion dollar healthcare budget is fraudulent. The government is determined to get this money back.

This compliance manual is intended to assist your office in implementing a compliance program that will meet the standards set out in the OIG Guidance. The manual is only intended as guide and will not in and of itself meet the government requirements. An *effective* compliance program is a living program that must be implemented every day. The manual must be customized to meet the needs of your office and your specialty. Every office has different compliance issues and knowledgeable personnel must customize and implement a compliance plan to fit your organization's individual needs. The manual is designed to provide examples of the various requirements and does not represent a formal legal or accounting opinion.

Every healthcare provider that implements a compliance program should have a compliance manual, with easily accessible copies of the manual at each of the healthcare provider's locations. The physician office's compliance manual contains instructions for how its compliance program will operate. It is a combination of policies and procedures that answer the who, what, why, when and how the compliance program works. It not only documents your compliance plan but also provides guidance to employees who have questions about how to report or respond to problems, how the organization deals with certain issues and documents when compliance activities take place. The compliance manual is a day-to-day working document that, through its development and constant updating, ensures buy-in from the organization. An off-the-shelf manual which is not customized to the organization will be of little value in ensuring compliance in the organization. Your compliance program and manual must be followed and enforced. The OIG will look unfavorably on any organization that doesn't "walk its talk."

In order to implement an *effective* compliance program, you must have "buy-in" from senior management and your physicians. No physician or senior manager can avoid being involved in compliance. Assuming that the staff will implement the compliance plan is a mistake. Ultimately, the physicians and senior management will be responsible for the compliance of the office and they cannot shift the responsibility to others. By implementing an *effective* compliance program, however, your organization will not only meet the guidelines set out by the government but improve its business practices which will assist the organization everyday. A compliance program requires that the organization review regularly its billing practices, employee and office policies and patient care to determine if there can be any improvement in services or conduct. All of this review will assist the organization in providing excellent healthcare in the 21st Century. Your office may consider drafting a letter to the office's patients, staff, referring physicians and vendors stating its implementation of a compliance program and its commitment to compliance, although such a letter is not required. The letter should be placed in the office's compliance manual. **A sample letter is included in this manual.**

A compliance program for a physician's office should include these seven elements:

- A. Internal monitoring and auditing focusing on high risk billing and coding issues through performance of periodic audits
- B. Compliance and Practice Standards
- C. Designation of a Compliance Officer
- D. Comprehensive training and education
- E. Thorough investigation and appropriate response to detected violations and possible disclosure to the Federal government.
- F. Development of accessible lines of communication such as:
 - Discussion at staff meetings
 - Development and maintenance of a resource binder
 - Placement of an anonymous drop box for conveying issues
 - Establishment of a compliance bulletin board
- G. Enforcement of disciplinary standards

Each of these items are described in more detail in this manual.

Further, the OIG Guidance details some of the current physician high risk areas:

- A. Waiver of co-payments or deductibles
- B. Kickbacks, bribes, rebates
- C. Billing for services not rendered
- D. Failure to use proper coding modifiers
- E. Billing for physician services rendered by a non-physician
- F. Lack of documentation for medical necessity
- G. Misrepresentation of diagnosis to justify services
- H. Completing CMN for patients not personally or professionally known by the physician
- I. Billing Medicare/Medicaid for investigational services without proper authorization
- J. Billing for non-covered services as if covered

By detailing these risk areas in its guidance, the OIG is alerting physicians that all organizations should investigate these areas, establish and implement a policy on how to address each issue. Additionally, each year the OIG distributes its Work Plan for the coming year. **See Tab 13 Office of Inspector General's Work Plan for Fiscal Year 2001 & 2002 included in this manual.** Every healthcare provider should review the yearly OIG Work Plans to determine if the OIG will be focusing on areas in the coming year that relate to the healthcare provider's specialty. A review of those areas should be made and policies should be implemented to ensure ongoing compliance.

This manual will also provide your office with training tools on how to deal with a government investigation or inquiry. Your organization should have a policy on how to respond to investigations and assert its legal rights and all staff should be trained on the policy. Many mistakes can be avoided by being prepared for investigation or inquiry.

Each compliance program must be built on a solid foundation. The practice must start with great employees who trust the organization. Without trust, your compliance foundation will crumble. Additionally, teamwork and information are essential. With teamwork and a cooperative environment, your compliance program will work and your practice will be better for it.

Each section of the manual addresses a different requirement in your organization's compliance program. Sample policies and procedures are included to provide you with examples in each area. There are also some additional forms provided for areas of concern that arise in most practices, *i.e.* **See Tab 9** Advance Beneficiary Notice, Medicare Secondary Payer Survey, Financial Hardship forms. Lastly, various governmental publications have been included as additional resources. Every office should review the OIG Compliance Guidance for Physician Practice, **Tab 12**, to determine if, for its specialty, it is in compliance.

So let's get started....