



A Day in the Life of a Compliance Officer (for small physician practices)

Mina Sellami, MBA, PMP, JD – MedProv, LLC

Julia Konovalov – Medical Business Partners

September 29, 2016



Medical Business Partners

“Helping Doctors Prosper”

Agenda

- Government Regulations
- Scope of Physician Practice Compliance Program
- Why Develop a Compliance Plan?
- Elements of an Effective Compliance Plan
- Risk Areas for Physician Practices

Government Regulations



False Claims Act (FCA)

Per CMS and HHS:

- The FCA imposes civil liability on any person who knowingly submits, or causes the submission of, a false or fraudulent claim to the Federal government.
- Claims may be false if the service is not actually rendered to the patient, is provided but already covered under another claim, is miscoded, or is not supported by the medical record (if it's not documented, it never happened).
- You do not have to intend to defraud the Government to violate the False Claims Act. You can be punished if you act with **deliberate ignorance or reckless disregard** of the truth.
- Whistleblowers can receive up to 30% of any False Claims Act recovery!

Penalties:

- Civil penalties for violating the FCA can include fines of \$5,500–\$11,000 **per false claim** and **up to three times** the amount of damages sustained by the government as a result of the false claims.
- There is also a criminal FCA statute by which individuals or entities that submit false claims can face criminal penalties.

Anti-Kickback Statute

Per CMS and HHS:

- The Anti-Kickback Statute applies to both payers and recipients of kickbacks. Just asking for or offering a kickback could violate the law.
- The law prohibits obvious kickbacks, like cash for referrals, as well as more subtle kickbacks, like free rent, below fair market value rent, free clerical staff, or excessive compensation for medical directorships.

Penalties:

- Violations can result in prison sentences and fines and penalties of up to \$50,000 per kickback plus three times the amount of the remuneration.
- Additionally, physicians can be excluded from participation in the Federal health care programs for violating the Anti-Kickback Statute.

Stark Law (the Physician Self Referral Law)

Per CMS:

- Prohibits a physician from making referrals for certain designated health services (DHS) payable by Medicare to an entity with which he or she (or an immediate family member) has a financial relationship (ownership, investment, or compensation), unless an exception applies.
- Prohibits the entity from presenting or causing to be presented claims to Medicare (or billing another individual, entity, or third party payer) for those referred services.
- Establishes a number of specific exceptions and grants the Secretary the authority to create regulatory exceptions for financial relationships that do not pose a risk of program or patient abuse.

Penalties:

- Violations can include fines, repayment of claims, and potential exclusions from participation in all Federal health care programs.

Reference: CMS: Physician Self Referral

SCOPE OF PHYSICIAN COMPLIANCE PROGRAMS

- Promotes adherence to and better understanding of complex rules
- Covers Federal health care program claims
- Programs are strictly **VOLUNTARY**
- Recognizes staff and resource limitations of smaller physician groups

BENEFITS OF PRACTICE COMPLIANCE PROGRAMS

PATIENT CARE COMES FIRST!

- Patient care may be enhanced due to focus on better documentation
- Minimized billing mistakes can speed and optimize payment of claims
- Reduce chances of a HCFA/OIG audit of the practice

BENEFITS OF PRACTICE COMPLIANCE PROGRAMS

“PREVENTIVE MEDICINE” FOR YOUR PRACTICE

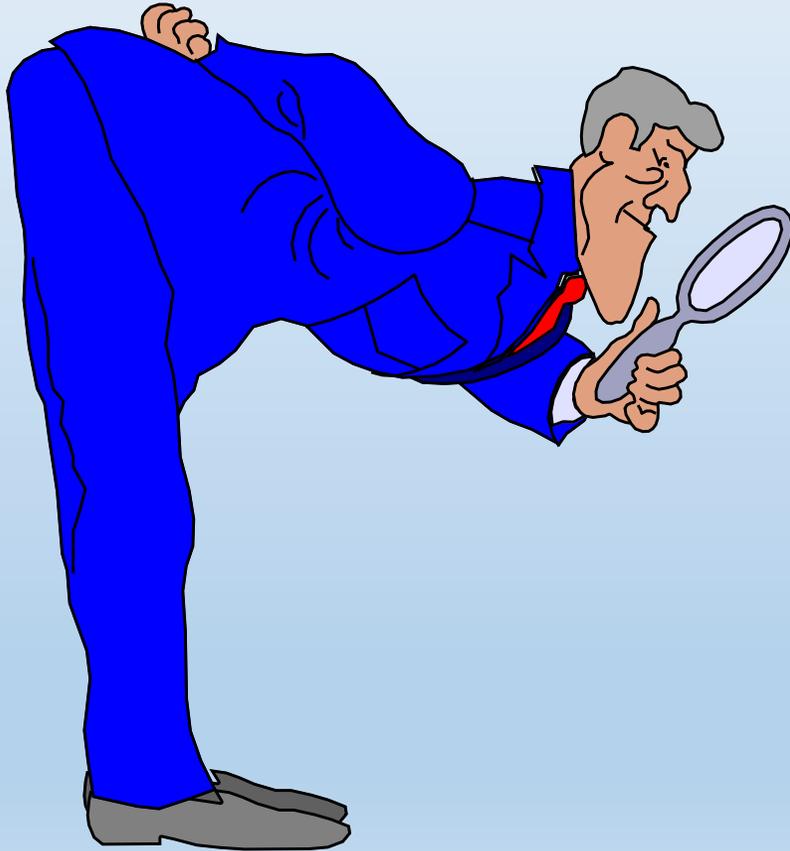
- Avoid conflicts with anti-kickback and self-referral issues
- Sends important message to staff
- Shows your patients that you are making good faith efforts in billing

Errors vs Fraud

- OIG believes most physicians are honest and provide high quality care
- Cannot be penalized for innocent errors or even negligence
- Fraud is reckless or intentional conduct



AUDITING AND MONITORING



MONITORING

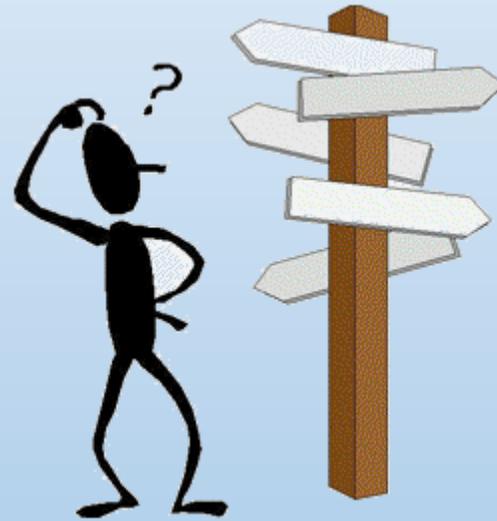
- Monitor coding patterns
- Review practice billing procedures
- Review claim submission process
- Review a sample of chart documentation

AUDITING AND MONITORING

AUDITING

- Conduct detailed review of 5-10 charts per physician for Medicare and Medicaid patients from notes to claim payment
- Look at coding, documentation, medical necessity and possible incentives
- Create a baseline for comparison after compliance program implementation

Medicare and Medicaid Regulations Remain Incredibly Complex



Why Develop a Compliance Plan?

- Federal Sentencing Guidelines
 - Must be an effective program to prevent and detect violations of the law.
- OIG Compliance Guidance
 - Individual and Small Group Physician Practices, 65 Fed. Reg. 59,434 (Oct. 5, 2000)

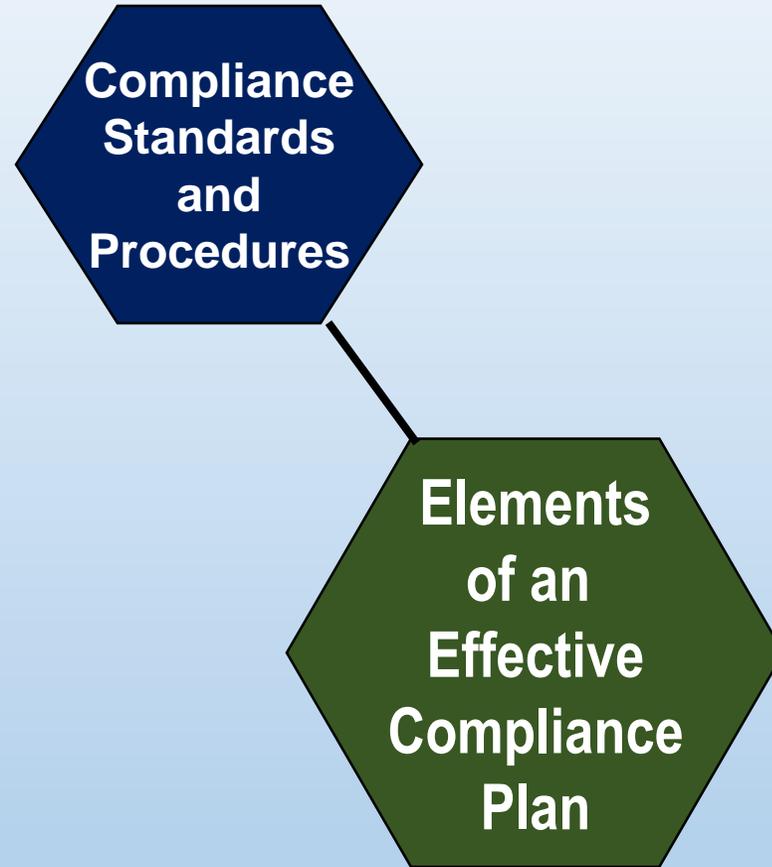
Why Develop a Compliance Plan?

- Health Care Reform
 - Compliance plans to become mandatory as a condition of participation in Medicare and Medicaid
 - . . . but only after CMS promulgates implementing regulations to establish the core elements for mandatory compliance programs

Elements of an Effective Compliance Plan

Elements
of an
Effective
Compliance
Plan





Compliance Standards and Procedures

- Establish compliance standards and procedures that are reasonably capable of reducing the prospect of erroneous claims and fraudulent activity, while identifying any aberrant billing practices.
- Effective compliance standards will identify the organization's risk areas and establish internal controls to contain those risks.



Oversight Responsibilities

- The organization must designate one or more high-level individuals to oversee compliance activities. Responsibilities may include oversight of all compliance activities or be limited to implementation of specific compliance functions.
- The organization must use due care not to put individuals who have demonstrated a propensity for violating the law into positions of substantial discretionary authority.



Education and Training

- The organization must communicate its standards and procedures to all employees, professional staff, and physicians in a meaningful and effective manner by implementing an effective training program that explains the requirements of the compliance program and applicable laws.
- Compliance training may involve in-person training sessions, newsletters, other written materials, and/or bulletin boards.



Monitoring and Auditing

- The organization must evaluate the effectiveness of its compliance program on an ongoing basis by monitoring compliance with its standards and procedures and by reviewing its standards and procedures to ensure they are current and complete.
- A review of pending claims not yet submitted can establish a benchmark that will be used in ongoing reviews to chart the success of the organization's compliance efforts. (Counsel often recommend this be conducted under attorney-client privilege).



Open Lines of Communication

- The organization must put in place an accessible system for reporting inappropriate activities and for communicating compliance questions and concerns.
- Standards and procedures must emphasize that failure to report erroneous or fraudulent conduct is a violation of the compliance program.
- Standards and procedures also must stress that no retaliation may be taken against individuals who in good faith report what reasonably appears to be misconduct or a violation of the compliance program.



Enforcement and Discipline

- The organization must enforce its compliance standards through consistent and appropriate disciplinary action.
- Disciplinary procedures should include, as appropriate, discipline of individuals who should have detected an offense but failed to do so.



Response and Prevention

- If a compliance violation is detected, the organization should take all reasonable steps to respond appropriately to the violation
 - Take corrective action to rectify any harm resulting from the current offense
 - Prevent similar offenses from occurring in the future.

Risk Areas for Physician Practices

- **OIG Compliance Guidance for Physicians**
 - **Accurate Coding & Billing**
 - Billing for non-covered services, unbundling, failure to properly use coding modifiers, upcoding
 - **Reasonable & Necessary Services**
 - Medical record & orders should support appropriateness of service
 - **Physician Documentation**
 - **Improper Inducements, Kickback and Self-Referrals**
 - Financial arrangements with referrals sources, joint ventures, leases, gifts/gratuities

Risk Areas for Physician Practices

- **OIG Work Plan**
 - Compliance with Medicare Assignment Rules
 - Physician-Owned Distributorships
 - “Incident-To” Services
 - Evaluation & Management Service Coding

PRACTICE STANDARDS AND PROCEDURES

- Coding and Billing
- Reasonable and Necessary Services
- Documentation in the medical record and on bills
- Inducements, Kickbacks and self-referrals
- Auditing and Monitoring tools



PAY PARTICULAR ATTENTION TO THE
FOLLOWING RISKS



CODING AND BILLING

- Claims for services not medically necessary
- Duplicate billing
- Billing for items or services not provided
- Billing for non-covered services as if covered
- Misuse of provider identification numbers
- Unbundling
- Failure to use coding modifiers
- Clustering
- Upcoding

THE “REASONABLE AND NECESSARY” DISCONNECT

- OIG says physicians may order any tests they believe are appropriate

BUT . . .

- Medicare only pays for services they define as “reasonable and necessary”

SO TO GET PAID . . .

- Become familiar with carriers’ LMRP (Local Medical Review Policies)
- Issue ABNs to patients when appropriate, or you will NOT be paid

PRACTICE COMPLIANCE OFFICER OR CONTACT

- Need NOT add staff
- Can divide various responsibilities
- Can outsource or co-op function with other practices
- Final responsibility rests with the physician!



DISCIPLINARY ACTION



- Actions must have fair consequences
- Review proper procedures and require additional or repeat education
- Do keep records of personnel actions

Focused Risk Areas for Physician Practices

OTHER RISK AREAS

REASONABLE & NECESSARY SERVICES

- LMRP
- ABNs
- Certifications for DME
and Home Health
- Billing for non-covered
services

PHYSICIAN RELATIONSHIPS WITH HOSPITALS

- EMTALA
- Teaching physicians
- Gain sharing
- Incentive arrangements
- Medical directorships

OTHER RISK AREAS

BILLING PRACTICES

- Third party billing services
- Non-participating physicians
- Professional Courtesy

MISCELLANEOUS IDENTIFIED RISK AREAS

- Rental of office space to parties to whom you refer
- Unlawful advertising
- HIPAA regulations

GUIDANCE ALSO INCLUDES

- Summary of Criminal Statutes
- Listing of Civil and Administrative Statutes
- OIG-HHS Contact Information
- Carrier Contact Information
 - NOVITAS Solutions – Part B
- Internet Resources for practices

Q & A





Mina Sellami, MBA, PMP, JD
Med-Prov, LLC

mina@med-prov.com

Phone (410) 604-1200

Fax (410) 604-1300



Medical Business Partners

“Helping Doctors Prosper”

Julia Konovalov

Client Relations Executive

Medical Business Partners

julia@medicalbusinesspartners.com

Phone (202) 390-3966

Fax (301) 542-0058