

## **PHYSICIANS ARE REQUIRED TO WEAR TOO MANY HATS**

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With the avalanche of new regulations, the ever-tightening belt of third party payor reimbursement, the increased scrutiny by federal and state enforcement authorities and the increased emphasis on cost-containment and pay-for-performance measures, physicians find themselves having to play the role of business manager, accountant, financial advisor, attorney, billing consultant and, if time permits, practicing physician. Long past are the days when a physician could simply devote virtually all of his or her efforts seeing patients and providing high quality care.

In today's environment, as physicians, you must still focus on providing high quality care to your patients; however, you also need to delegate certain aspects of the business side of medicine to the right individuals in order to succeed. This may seem counter-intuitive to some in that in order to maintain control over your practice as a whole you must learn to let go of some of the pieces.

The most important first step to gaining or regaining control over your practice is to identify your key advisors and specialists. Selecting an experienced health care attorney and an accountant with numerous physicians and physician practices as clients is crucial as they can help navigate you through the often murky waters of the health care regulatory landscape. There are numerous legal and accounting aspects of starting, maintaining, expanding, merging and even closing a medical practice that require professional advisors to guide you so as to avoid the myriad of serious negative consequences that can result from non-compliance with the ever-changing rules of the game. Some of these consequences include, but are not limited to, overpayment demands by third party payors, de-participation or exclusion from third party payors, civil fines and even criminal sanctions. Experienced, qualified health care attorneys and accountants can mitigate your risks of facing such consequences.

Professional advisors can also assist in crucial administrative matters. For example, obtaining and maintaining the appropriate licenses (such as your medical license, controlled substance license, drug control license and DEA registration), obtaining the best financing for medical and office equipment and supplies, obtaining the appropriate insurance (e.g., professional liability, personal liability, property, workers' compensation, directors and officers liability policies and even the newer policies insuring against fines and defense costs for billing errors and omissions).

Some physicians find it helpful to consult with a business advisor as well to sit down with the other professional advisors and to help you develop a business plan based upon your desires and

needs. Such plans may include staffing determinations, changes in physical location, adding ancillaries such as imaging and laboratories, marketing, and developing affiliations with other health care providers, entities and organizations. Prior to implementing such plans it is a good idea to run them past your key advisors to assure legal compliance.

Another important step is to make sure that you have a good understanding of where your practice stands in terms of the billing of your professional services. Remember, as physicians, you are responsible for the use of your provider number. Whether you choose to do your own billing, to employ an in-house biller, to contract with an outside company, or to rely upon your employer, ultimately you are responsible for the claims submitted under your number.

Thus, if you choose to rely on others to do your billing, make sure that they have the requisite knowledge and experience in your specific field of practice. Being proactive, asking the right questions and researching your prospective biller prior to engagement is time well spent and can save you significant headaches in the future.

While the enforcement authorities **may** (and I emphasize may) find that you did not have the requisite intent for criminal prosecution because your biller made the errors and not you, you will still incur significant costs in both time and money defending the billings and very often you are subject to significant fines and penalties on top of returning monies to which you believed you were entitled and upon which you relied in the operation of your practice. As such, you need to be familiar with the billing rules as they pertain to your specific area of practice.

In order to do so, you should identify risk areas specific to your field of practice. These areas are often identified in your specialty publications and can be found in third party payor guidances, local medical review policies, OIG guidances, fraud alerts, and the annual OIG work plan. One such area that has been a significant focus of the enforcement authorities and third party payors is E & M (or Evaluation and Management) services. In 2009, Medicare spent nearly 1/5 of its Part B payments on E & M Services. As such, you are well advised to pay attention to your E & M coding and billing.

Moreover, you can discover your risk areas by conducting self-audits focusing on e.g., the 10 procedures you most often bill and/or the 10 procedures yielding the highest revenue for your practice, looking at published policies and guidelines for these procedures, meeting with other providers in your office and the billing staff and discussing the documentation and billing of these procedures.

When conducting such audits, there are a number of significant items to consider. For example: (1) whether the audit should be prospective as opposed to retrospective; (2) whether the audit should be conducted for general educational purposes or for specific reasons (e.g., to quantify a suspected error); (3) whether you should use external auditors or internal auditors; (4) the sample

size of the audit; (5) which documents to review; and (6) how often to perform the audit. Importantly, it is highly recommended that any self-audit be done at the direction of legal counsel—not only to help you decide the best manner in which to conduct the audit and to address the aforementioned items, but also to avoid providing a “road map” of any problems revealed by the audit to the enforcement authorities. Self-audits that are not directed by legal counsel are not protected by the attorney work product doctrine and/or attorney-client privilege and thus are discoverable by the enforcement authorities who can use the findings against you.