



## Compliance Expertise

SHOULD AN INDEPENDENT EXPERT REVIEW YOUR COMPLIANCE PROGRAM?

By Lynne Kottman, CHBME, and Mark E. Owen, CCP

When we began to implement our compliance program at Alamo Physicians' Services, we realized that there were many areas where we felt we did not have internal expertise within our organization. At the same time, we were not big enough to hire a full time staff compliance officer. So we began the process of finding and using the services of an outside expert. We identified several areas we felt were our highest priorities. Because we perform the coding for all of our clients, coding audits were high on the list. Next came performing our billing risk assessment. The third area was an overall evaluation of the effectiveness of our compliance plan.

The OIG agrees that the use of independent experts such as consultants can be a good thing. But both the OIG and we agree that risks may exist when using consultants. In a special advisory bulletin published in 2001, the OIG said:

*Providers use the legitimate services of consultants, such as accountants, attorneys, business advisors, and reimbursement specialists, for many bona fide reasons, including, for example, improving the efficiency and effectiveness of the providers' operations (including its coding and billing systems), enhancing the accuracy of the providers' claims, conserving resources through outsourcing, and ensuring compliance with applicable laws, regulations, and rules. Responsible consultants play an integral role in developing and maintaining practices that enhance a client's business objectives, as well as in improving the overall integrity of the healthcare system.*

The independent review of a billing company's coding and billing policies, an overall business risk assessment, and periodic review of one's actual coding of

charts and billing of claims can be very illuminating. However, it is important to note that in blind coding studies, it has been shown that even experts may vary one level of evaluation and management service up to eighteen percent of the time. Coding and reimbursement experts have occasionally been found to recommend billing policies that later could not adequately be defended in payor audits. The point is that no one is infallible, so it is important to select a consultant carefully and even more important to recognize that a company is not relieved

**Select a consultant carefully...a company is not relieved of responsibility or liability by following the advice of a paid consultant.**

of responsibility or liability merely by following the advice of a paid consultant. The OIG also said:

*We believe that most consultants, like most providers, are honest and that the vast majority of relationships between providers and consultants are legitimate business activities. Unfortunately, a small minority of unscrupulous consultants engages in improper practices or encourages abuse of the Medicare and Medicaid programs. Depending on the circumstances, these practices may expose both the consultants and their clients to potential legal liability. Hiring a consultant does not relieve a provider*

*of responsibility for ensuring the integrity of its dealings with the Federal health care programs.*

### Tips on Choosing a Consultant

It is very important that you choose your consultant wisely. Get references from people you respect in the medical billing business. Perform a background check on the principals of the consulting firm. Google the consulting company and look for telltale signs of disaster, prior failed audits, bankruptcy, or unfavorable articles about its business dealings. Get references and check the company's clients' reputations in the business. Are these companies you respect? Contact the Better Business Bureau and the State Division of Corporations and find out if any complaints have been filed against the firm. Finally, check with the local Medicare carrier's director of program integrity: if the carrier knows the consultant, that could be bad; if he does not know the consultant, that could be good. When it comes to the consultant's fee, this is not an instance where less is more. Do not pick a consultant based solely on price.

All kinds of consultants say all kinds of things, so be sure that the consultant you select has experience in the specialty or specialties you bill for, and whenever possible try to engage a consultant that has experience with your carrier. Avoid the consultant who advocates billing techniques that promise unbelievable results. If it sounds too good to be true, then it probably is too good to be true. Also, avoid the consultant that plays down the need for compliance audits and compliance policies. To quote the OIG:

*Some consultants may make absolute or blanket statements that a client should not undertake certain compliance efforts (such as retro-*

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*spective billing reviews) or cooperate with payor audits, regardless of the client's circumstances. As reflected in the OIG's compliance guidances, the OIG believes that voluntary compliance efforts, such as internal auditing and self-review, are important tools for doing business with the Federal healthcare programs. Left undetected, and therefore, unchecked and uncorrected, improper billing or other conduct may exacerbate fraud and abuse problems for a provider in the future.*

Be wary of consultants who offer to work on a contingency fee. A consultant offering to work for a percentage of the amount your collections increase based on the consultant's advice could encourage behavior that is abusive or fraudulent. Ask your consultants (and their employees) to agree to your company's standards of conduct and include such language in your contracts—and be wary of consultants who refuse to be bound by them. It is generally not prudent to engage folks in high-risk positions, such as coders and compliance consultants, with incentive compensation arrangements. If one feels strongly that such incentives are needed to maintain focus and dedication to management, then build in controls to detect if such individuals may be 'gaming' the system.

### **What to Look for in a Coding Review**

When engaging a coding consultant to review your company's coding, be sure the expert has experience with payor audits in your specialty. It is particularly helpful if the consultant has experience with private payors and not just governmental payors. Most of all, it is always best to pick consultants who have successfully argued their clients' coding policies, particularly if the clients were using the consultants recommended policies!

An independent expert review of your coding should be done in a blind study,

and you should not give the consultant your code choices before she reviews your charts. Determine if you merely want the consultant to provide code choices or if you want the reasoning behind each code selection (including modifiers). Code selection rationale should include citations of the applicable coding guidelines from industry standard sources and documentation may be critiqued indicating any apparent under or over documentation. When obtaining documentation opinions, it can be more valuable if the expert is a physician or non-physician provider with expertise in the same specialty as being reviewed. Critiquing medical necessity or other aspects of clinical documentation is very subjective and should be based on large study samples trended over extended periods of time.

Blind coding studies conducted on random samples of statistically significant size providing a confidence factor of at least a ninety-five will often yield indications of at least one or more potential coding issues. Once a coding discrepancy between the expert(s) and one's coders is discovered, it is important to follow up with a focused study of the coding issue. Suppose the random sample study reveals that Sally codes all abdominal pain cases at a level five and the expert coded the same charts at a level four. You may want to select an additional sample of Sally's abdominal pain cases and audit the coding. If after review you are comfortable with Sally's coding of these additional charts then determine if you believe that the initial discrepancies were Sally's errors or if you disagree with the expert. If you disagree with the expert, then document your coding policy supporting how you code such cases (you might use the Marshfield Clinic E/M Audit Tool) and consider contacting your independent coding consultant to discuss each chart discrepancy.

Your notes resolving such discrepancies should be maintained in a compliance file along with the results

of each coding review. Coding review results should be trended over time to establish your coders' progress. If you determine that the discrepancies in the review were Sally's coding errors, it is important to refund any overpayments and to determine the extent of the errors. In cases where the error rates are high over an extended period of time, it is advisable to disclose the nature of the problem that led to the errors. In matters of self disclosure, the use of an attorney is always advisable.

### **Billing Risks**

Beyond coding there are billing risks that a compliance program should periodically review and you should consider an outside independent review of this process as well.

High-risk billing areas that should be monitored periodically include, but are not limited to:

- Addenda to Medical Charts
- Annual Changes to CPT
- Annual Changes to ICD
- Annual OIG Work Plan Issues
- Automated Computer Applicants
- Background Checks
- Billing for Locums
- Billing for Residents
- Billing NPP's
- Collection Letters
- Default Values in Computers
- Discounts
- Documentation Training
- Dunning Messages
- Duplicate Billing
- Employee Incentives
- EOB Denial Review/Appeals
- HIPAA Requirements
- HMO Laws and Contracts
- Inappropriate Balance Billing
- Insurance Laws, Regs, and Rules
- Lock Box Procedures
- Making Timely Refunds
- Medicaid Guidelines
- Medicare Guidelines
- Modifier Application
- OIG Compliance Guidance

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## CONTEMPLATING COMPLIANCE

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- Payer Enrollment Process
- Payer Specific Coding Policies
- Quarterly Changes to CCI
- Routine Waiver of Copays
- Verify Credit Balances Timely
- Workers' Compensation Rules

There are many ways to go about conducting the billing risk assessment. We recommend that billing management, along with the compliance officer, should establish the benchmarks and criteria that will be used to assess billing compliance. This is another instance where a consultant may be useful.

It is typical to use a process similar to the coding Q/A process, whereby statistically valid samples of each risk issue listed above will be periodically reviewed by internal experts, with a subset of these samples reviewed by an outside expert as well. For example, you might review a random sample of EOBs as well as a sample of targeted EOBs based on known high-risk variables. Knowing that misapplied modifiers can lead to overpayments, you might target use of modifier-25 during a periodic review.

You might review personnel files of a few newer employees to verify background checks. You also could run reports to ascertain if denials for duplicate claims are being received and if so, investigate the cause. The OIG recommends that every third party billing entity have in place a reasonable risk assessment (Q/A process) in order to maintain an effective compliance program and to mitigate errors and wrongdoing in the business of medical coding and billing.

It is also advisable to use independent experts to evaluate the effectiveness of your compliance program. The OIG has indicated that they have witnessed situations where a billing operation has developed tunnel vision while operating in a vacuum. This can be the case particularly where the billing company has developed proprietary billing and coding software within its own opera-

tions. This might happen when, over many years, a company relies on the same expertise to develop systems that are never audited by independent experts. As we increasingly find ways to automate coding and billing processes to reduce labor costs, fewer people scrutinize the coding and billing methods we use. When the biller or coder can no longer see how codes are determined because they are the result of complex algorithms developed by management and implemented by computer programmers, it becomes increasingly important to allow independent experts to test these algorithms for accuracy and compliance.

Finally, while we advocate the use of independent experts to provide an overview that may allow us to see the forest from the trees, we stress the reality that much of what we do is subjective and there can be more than one right answer. Just because your expert may disagree with you does not necessarily make one of you wrong. When you disagree with an expert you have hired to review your policies and procedures, you should determine the best position for your company and document your defense of that position as part of your compliance review process. Before hiring a consultant it is advisable to seek legal advice. In many cases, the information you are asking your consultant to review is confidential, proprietary, and sensitive. Your attorney can advise you on the best way to protect such sensitive information from unwarranted disclosure before you engage your consultant. ▲

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