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focus here on those types of agreements, but there are other situations that should also be mentioned briefly.

For those billing companies and practice management organizations which are Covered Entities in their own right, by virtue of being a healthcare clearinghouse or otherwise, there may be a wide range of relationships that will ne-

cessitate a Business Associate agreement. In addition to the services listed in the previous paragraph, the following are examples of functions and services that should be considered as well:

- document imaging/scanning
- document storage and retrieval
- software vendors/programmers
- auditors

- mailing services
- collection agencies (may be BAs of the client and/or the billing company)
- document destruction
- coding contractors
- independent or sub-contractors for a variety of internal functions
- call centers
- certain insurance carriers

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## Question of the Month

**Q.** With the recent Medicare cuts, some physicians are interested in eliminating new Medicare patients and only taking care of existing patients or they want to schedule fewer new Medicare patients. All of my physicians consider compliance issues as a top priority. What advice should I give them?

**A.** There have been an increasing number of stories published lately about providers closing out their Medicare practice, reducing the number of Medicare patients, etc. Most of the coverage has cited the recent payment cuts and the prospect of additional cuts in the next few years that add to the mounting 'hassle factor' of dealing with the Medicare program.

Simply put, in a free society, providers are in complete control of whether they accept any new patient(s), how many (or none) from any category, and whether they keep any, some, or selected existing patients. For example, for decades some practices have elected not to serve Medicaid patients, or to 'budget' a volume of Medicaid patients because of the pittance paid by those programs. Some specialists are even refusing to perform certain services (CPT-4 level) because of under-compensation.

### TWO ITEMS OF CAUTION:

**1.** Every state has laws governing 'abandonment.' That means that a patient has the right to expect ongoing care, particularly if he or she is under 'active treatment' UNLESS the provider gives them advance notice of the provider's termination of the relationship. This is particularly important for specialists.

The amount of notice required varies by state. Most states also require that the current provider make 'reasonable' efforts (not extraordinary efforts) to assist the patient in locating an alternate provider. Although many practices elect to accomplish this through attrition, it is legal to 'prune' the practice if it is done according to state law and as long as no patient's life is jeopardized.

**2.** Be mindful of EEOC laws. If a practice must make difficult financial decisions, it should be thoughtful about whether these decisions produce something that looks like (or is) 'red-lining' or 'profiling' of the ugly type. Certainly, if the practice (or you, on their behalf) has developed any financial analysis (it's not required) that supported the decision, that would be helpful.

Thought must also be given to how to handle physicians who take their turn "on call" for their hospital's Emergency Department and/or Trauma Center. They would have to take ANY new patient, but could inform the patient that the practice is limited and they will have to refer the patient after discharge.



**FINAL THOUGHTS:** Last year, the OIG made a big deal about a conference speaker (alleged to be a consultant) who told doctors to drop Medicaid and/or Medicare patient volumes to make their practices more profitable. The OIG inferred (but never said, because it would be untrue) that this was somehow improper. It isn't, never has been, and never will be.

Get a qualified healthcare lawyer to review any letters to be used to notify patients and don't be bashful about saying why this is happening.

Training your staff and the practices' staff will be important, since proper patient handling will matter.

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