

# Client *Urgent* Briefing

Urgent Legal News • June, 2000

## New OIG Guidance on Physician Groups *Time to Reevaluate Your Compliance Program*

by Amy L. Woodhall

A new draft of compliance guidance for physician groups recently issued by the U.S. Department of Health and Human Services Office of Inspector General (OIG) makes now a good time to ensure that your group has comprehensive and working policies for addressing issues of fraud, abuse, and regulatory violations. The OIG guidance is directed to physicians, optometrists, chiropractors, podiatrists and dentists, as well as psychologists, PTs, OTs and speech language pathologists who practice independently. The final guidance is expected this Summer.

While the OIG does not set binding standards for such compliance plans, it would certainly benefit your practice to create policies and procedures patterned after those illustrated in the guidance. Through proper implementation you could potentially reduce exposure to civil damages and penalties, criminal sanctions and administrative remedies -- all of which would ultimately give you a better chance of defending yourself in court. The OIG's view of internal audits and disclosure of overpayments is not without controversy; therefore, physicians should seek expert advice when designing a plan and addressing these sensitive areas.

What's interesting about this OIG guidance is that it increasingly takes into account differences in the size, scope and complexity of a physician practice, and suggests practical approaches for tailoring compliance guidance to the unique needs of the medical practice.

### Review of Risk Areas

The draft guidance lists "risk" areas of concern relative to billing and coding, medical necessity, record keeping and documentation, kickbacks, inducements, self-referrals and other referral relationships. In addition to the submission of false claims, the OIG is particularly concerned about arrangements made with hospitals, hospices, nursing facilities, home health agencies, DME suppliers and vendors. For a more complete list of examples in each risk area, please see the following table, keeping in mind that while this list is not exhaustive or all-encompassing, it is a good starting point for an internal review of possible vulnerabilities facing your practice.

### Components of a Compliance Program


There are 7 major points that should be included in any effective compliance program -- regardless of the size or structure of your practice:

1. Adopt and distribute written standards of conduct and policies and procedures, addressing specific areas of potential fraud and abuse.
2. Designate "compliance contacts" (e.g., office manager, primary biller, consultant) to develop, operate, and monitor each aspect of the compliance program. The compliance contacts should be sufficiently independent in order to avoid conflicts of interest.

3. Conduct effective training and education programs for all employees.
4. Develop an open-door policy and effective lines of communication (such as an anonymous drop box and a compliance bulletin board), ensuring that all employees (a) understand the proper procedure for reporting compliance problems and (b) are protected from any form of retaliation.
5. Periodically conduct self-audits, with the assistance of a medically trained person. The audit process should monitor compliance, identify problem areas, and help reduce problems that have been identified.
6. Enforce standards through well-publicized disciplinary guidelines and directives.
7. Respond promptly to detected offenses and immediately take corrective action for any

violation of the compliance program or significant failure to comply with the law.

### How We Can Help

Walter & Haverfield has worked with a number of health care providers in developing and implementing compliance plans to help prevent fraud and abuse. Since the regulation of medical practices is subject to numerous Federal and State statutes, rules, regulations and carrier manual instructions, it's a good idea to reevaluate your current compliance policies and procedures, or develop new ones by conducting an assessment of risk areas. We would be happy to assist you in this effort. *Please call Amy Woodhall, Bob Crump, or Michael Jordan at 216-781-1212 with your questions or comments* 

## Major Risk Areas for Physicians in OIG Draft Compliance Guidance

Risk Area	Example:
Coding and Billing	Services not rendered or provided as claimed Upcoding, unbundling, and use of coding modifiers Misuse of provider numbers Teaching physician billings
Reasonable and necessary services	Advanced Beneficiary Notices Documentation of medical necessity and appropriateness Noncovered screening services
Referral Relationships	Joint ventures with suppliers Medical director and consulting contracts Office and equipment leases with parties having referral relationships Gainsharing Arrangements Self-referrals Gifts and gratuities of more than nominal value Professional courtesy and waivers of copays & deductibles
Documentation	Diagnosis links to CPT codes DME and Home Health certifications of medical necessity Medicare secondary payor Site of service
Record Retention	Compliance, business and medical records required for Medicare participation and that demonstrate compliance program effectiveness

© 2000 Walter & Haverfield P.L.L. All rights reserved.

The information in this newsletter is a summary of often complex legal issues and may not cover all the "fine points" related to a specific situation or court jurisdiction. Accordingly, it is not intended to be legal advice, which should always be obtained in consultation with an attorney.

CHANGE OF ADDRESS?

Write *Client Briefing*, W&H, 1300 Terminal Tower, 50 Public Square, Cleveland, OH 44113-2253



Walter & Haverfield P.L.L.

Attorneys at Law / Foreign Legal Consultants / International Law Agents  
1300 Terminal Tower Cleveland, Ohio 44113-2253 216/781-1212 Fax 216/575-0911