

# What You Need to Know About Increased Audits by DOL and IRS

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**H**eightened scrutiny on medical practices is not limited to audits by third party payors. Recently, there seems to be an increase in New York State Department of Labor and IRS audits of medical practices as well; both of which conduct large scale audits regularly. An audit of your medical practice by the Department of Labor or the IRS may be in response to a complaint by an employee, competitor or a patient, or a random audit in an effort to encourage compliance and/or collect fines.

The Department of Labor and the IRS have been granted broad authority to regulate employer/employee relations; where there is “reasonable cause to believe that the required accounting standards are not being maintained or that the books do not accurately reflect the financial condition” and transactions of the employer, an authorized agent may examine the books and records of the employer, subpoena witnesses and documents, and make such other investigation as is necessary to determine the facts relative thereto. See 12 NYCRR 550-3.2. So, what might the Department of Labor or the IRS be looking for?

## **New York State**

Should the Department of Labor knock on your door, the representative is likely checking that you are complying with New York State’s documentation requirements for your employees, which includes: maintaining, for at least 6 years, payroll records, including each employee’s: (1) name and address; (2) social security number; (3) wage rate; (4) the number of hours worked daily and weekly, including the time of arrival and departure of each employee working a split shift or spread of hours exceeding 10; (5) when a piece-rate method of payment is used, the number of units produced daily and weekly; (6) the amount of gross wages; (7) deductions from gross wages (8) allowances, if any, claimed as part of the minimum wage; (9) net wages

paid; and (10) student classification.

Additionally, every employer in New York must maintain, for at least five years, detailed and accurate books and records of account which shall include, without limitation:

- bank statements;
- gross disbursements (the amount and date of each disbursement, the name of the recipient of each disbursement, and the purpose of each disbursement);
- cancelled checks;
- collective bargaining agreements;
- payroll sheets; and
- petty cash vouchers. See 12 NYCRR 550-3.2.

## **Federal**

An IRS audit is trickier, as it is often more difficult to discern what the IRS representative is looking for. The three biggest risk areas are:

1. Employee vs. Independent Contractor classification  
Many factors come into play when determining the correct worker classification such as control, hours, experience, licensure and flexibility to name a few. More often than not, the IRS will rule an employee status is appropriate, so for those who have independent contractors, please review if appropriate and document as much as possible.
2. Officer Compensation vs. Profit Distributions  
This conversation only applies to S-Corporations and how a business owner needs to determine if the officer is receiving fair and reasonable compensation for his/her services. Far too often, business owners don’t take enough salary and avoid paying payroll taxes on that income. To determine a fair salary,

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### Increased Audits (cont'd)

consider what you would pay to have an associate fill your clinical role and use that pay scale.

### 3. Expense Reimbursement and Benefits

The IRS has discussed increasing their focus on non-taxable reimbursements of business expenses to consider if these costs are reasonable and customary business expenses. Please be sure to retain the appropriate backup such as receipts and stated business purpose in order to defend these positions under scrutiny.

### Conclusion

Neglecting your medical practice's records is a common oversight, and one that could potentially be very costly. Should you be audited, failing to comply with record retention requirements may open you up to criminal penalties, including the charge of a misdemeanor or felony, and/or potential fines ranging from \$500-\$20,000. Found liability for failure to comply with basic record keeping requirements is absolutely avoidable, and if you think you are not in compliance, there are simple steps you should take immediately to prevent

falling prey to an audit. First and foremost, review your records and the above listed requirements. Secondly, contact your healthcare accountant to review your books. Lastly, if you are audited, be sure to contact your healthcare attorney for counsel. Remember, you should always confirm that the professionals you are working with specialize in healthcare, meaning, that they regularly work with other medical practices and have familiarity with the additional liability and regulatory constraints regularly placed on doctors.

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## HIPAA, HITECH And You...Be Prepared

The Health Information Technology for Economic and Clinical Health (HITECH) Act, passed as part of the federal stimulus plan, includes several significant changes to HIPAA that will impact medical practices. Among these changes are new disclosure requirements for electronic health records, new breach notification for unauthorized disclosures of public health information and an expansion of the definition of "business associate" that subjects such entities to the same penalties that apply to covered entities.

In response, NYSOS is pleased to offer ophthalmologists an opportunity to learn more about the impact of new regulations on their practice and has arranged for a half-day program on December 1, 2010, 9:00 am - 12:30 pm, at the Law Offices of Kern Augustine Conroy & Schoppmann in Garden City, NY. The seminar, being presented by leading health care attorney Michael Schoppmann, is designed to provide physicians and office managers with the information, tools and resources necessary to fulfill their obligations under HIPAA and defend against legal and regulatory challenges.

Don't miss out on what is sure to be a stimulating and valuable program. Members may register at the discount rate of \$59, by contacting the NYSOS office at (518) 439-2020. **Seating is limited at this location and will be available on a first come-first serve basis.**