

# Transitioning Your Practice to Transparency

By Jennifer Kirschenbaum, Esq., Anish Mashettiwar

With the huge increase in both monetary and regulatory audits, there is a high likelihood that in the near future an auditor may request for you to open your doors and/or books for review, which is why the time is now to transition your practice to transparency. The term transparency, as associated with your practice, is meant to imply clear and defined policies, operations and open disclosures. The purpose of this article is to highlight the greatest areas of exposure in your practice and the necessary steps to transition to transparency.

The two areas most likely to draw scrutiny in your practice are your financial relationships and billing practices. Pursuant to Federal and State regulations, certain financial relationships are required to be memorialized by contract, and billing procedures are required to be in place to ensure that proper documentation and claims submissions are performed by your practice. (Notably, both your practice's financial relationships and billing practices are affected by the new healthcare law, the Patient Protection and Affordable Care Act, which authorizes regulators to have greater access to a practice's proprietary information and requires every practice to comply with certain compliance standards for billing.) Below we will discuss scenarios that may sound familiar to some, but may require redress for compliance and to ensure transparency.

## 1. Financial Relationships

Looking at your practice from an objective business perspective provides a different vantage point than your standard day-to-day operation view. A medical practice is a business where services are rendered, billed to a third party payor (in most instances), money is received, and then paid out for salaries, overhead, etc. When a regulator approaches a practice to determine whether a practice's structure is correct or appropriate, that regulator will look to see how money comes into the practice and how money goes out of the practice, which is why you must be able to account for all billables, collections and payments.

Accounting for payments going out of the practice (transparency) is an area that most practices fail to address appropriately. The rule of thumb that we use when working with our clients to address practice payments is that all money paid out of account receivables should be papered; some relationships will be papered by way of invoices rendered by a supplier, kept on file by the practice and payments made, while other relationships require contracts be in place to ensure transparency. For instance, any time a practice hires an employee or independent contractor, or enters into a lease of space or equipment, or license of equipment, space or personnel, or contracts with an outside company for marketing or billing services, a contract is required.

Under Federal and State regulations, specific terms are required to be memorialized in your practice contracts, which is why it is imperative that you hire a healthcare attorney to paper any of your relationships. As the most highly regulated profession, doctors are required to enter into arrangements that are in writing, for a period of at least one year, and determined to be for fair market value, among other requirements. Failing to adhere to applicable requirements may result in potential civil, criminal, or licensure ramifications, which is why it is so important to proactively address your practice's financial arrangements to ensure transparency and compliance.

## 2. Billing Practices

While receiving requests for documentation for review by third-party payors is not new for doctors, the recent fishing expeditions headed by Medicare's Recovery Audit Contractors, and followed by basically all other third-party payors, is a frightening trend in recoupment efforts. Basing refund requests on lack of medical necessity, coding errors, overpayments and/or lack of benefits are some of the tricks currently being utilized by third-party payors in their recoupment efforts.

As you may be aware, if this were a David and Goliath story, the doctor would be David and the third-party payor, Goliath; which

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is why your best defense to an audit of your billing practices is to take proactive steps right now to limit any potential exposure by establishing transparent billing procedures. The first step, now required under the Patient Protection and Affordable Care Act, is establishing a compliance plan that adequately suites your practice. The required elements, as specified by the Office of Inspector General, include:

- (a) conducting internal monitoring and auditing;
- (b) implementing compliance and practice standards;
- (c) designating a compliance officer or contact;
- (d) conducting appropriate training and education;
- (e) responding appropriately to detected offenses and developing corrective action;
- (f) developing open lines of communication; and
- (g) enforcing disciplinary standards through well-publicized guidelines.

The second step, once you have your written compliance plan, is implementing the compliance plan into your practice, which requires integrating the general concepts into your day-to-day operations. Ideally, integrating an appropriate compliance plan will not only help reduce potential liability, it also should effectively maximize your reimbursement by establishing procedures to minimize billing errors and identifying proper coding procedures.

## Conclusion

Taking the time to review your practice structure and policies is not a task most providers rush to tackle. However, given the current regulatory environment, neglecting your practice's transparency may result in your practice being left at the mercy of the auditors or government regulators that will probably come knocking on your door. Contact Jennifer Kirschenbaum for a complimentary consultation about your practice structure and how you may

increase your practice transparency at (516) 747-6700 x. 308 or at [jennifer@kirschenbaumesq.com](mailto:jennifer@kirschenbaumesq.com).

To join our free healthcare newsletter email Jennifer Kirschenbaum at [jennifer@kirschenbaumesq.com](mailto:jennifer@kirschenbaumesq.com). Jennifer Kirschenbaum and Anish Mashettiwar are members of Kirschenbaum & Kirschenbaum, P.C.'s healthcare department and regularly represent healthcare providers in managed care audits, transactional and regulatory compliance matters, licensure proceedings and litigation. For additional information about Kirschenbaum & Kirschenbaum's general practice, visit: [www.kirschenbaumesq.com](http://www.kirschenbaumesq.com).



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