Building a better compliance program

Attorney recommends fraud and abuse best practices

By John Carruthers, staff writer

THE INCREASED FOCUS on fraud and abuse enforcement over recent months (see *Dermatology World*, April 2010, p. 6) has left some dermatology practices wondering about their current state of compliance and looking to ensure that stepped-up enforcement doesn't lead to headaches down the road.

Luckily, according to health care attorney Matthew Weber, J.D., of the Denver office of the law firm Holland & Hart, the recently amended U.S. Sentencing Guidelines provide a model for all size practices — from solo practitioners to larger multi-specialty groups. The key, Weber said, is to act decisively and proactively.

"This is a good time for practices to implement a compliance program to get out in front of the curve because the Patient Protection and Affordable Care Act has a provision authorizing the secretary of the Department of Health and Human Services to require various health care entities to have compliance programs," Weber said. "The requirement is likely to hit larger entities first, but I anticipate the secretary will, at some time, extend this requirement to smaller physician practices. So this is a good time to get that process started, before it becomes mandatory."

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>
> – Health care attorney Matthew Weber, J.D.

Eight Steps to Compliance

The recently amended U.S. Sentencing Guidelines set out a list of requirements for practitioners to comply with federal fraud and abuse standards. Using these is an excellent method to prevent audits, health care attorney Matthew Weber, J.D., of Holland & Hart law firm advises, and the steps can scale up or down for any size practice.

1. Put the basic program documentation into place first — a written compliance plan, practice policies and procedures, and a code of conduct.
2. Organize staff and assign responsibilities to those involved.
3. Implement fraud and abuse compliance training and follow up on an annual basis at the very least.
4. Analyze and facilitate easy internal and external communication, and be sure to facilitate appropriate reporting of possible compliance issues.
5. Communicate the program to employees, and emphasize both disciplinary policies for violations and a non-retaliation policy for those who may make a report.
6. Conduct a risk assessment with both real-time monitoring and auditing of past periods. Look for outliers that could signal a coding or billing problem.
7. Implement corrective action for compliance problems and use appropriate disciplinary measures when warranted.
8. Introduce an ongoing system of risk assessments to enhance the effectiveness of the program.

Following the guidelines

The nuts and bolts of any effective compliance program, according to Weber, lie with a plan created in lockstep with sentencing guidelines in mind (see sidebar). The essentials of the program requirements will be fulfilled in vastly different ways between differently-sized practices, but the intent behind each action remains the same: Practices must institute a vigorous program of self-monitoring and constantly work not only to keep up the program, but to make improvements.

"Generally, a good place to start is to build a basic compliance program incorporating the elements set out in the guidelines," Weber said. "There are eight components to an effective program — each of those is scalable depending upon the size of the practice."

The variations, Weber said, will ultimately be decided by the practitioner and the practice's size and resources.

"For instance, take the requirement of organizing the responsibilities and the people involved — that can mean employing a compliance officer in a larger organization, or simply assigning compliance duties to a staff member in a smaller practice," he said. "Another step is to implement training, and that again will vary depending upon the resources available to the practice, but all staff should receive some basic training at least annually."

Given the tight nature of the daily schedules of most physicians, Weber recommends beginning incrementally, and said that the most important first step to take is program documentation.

"I would recommend taking an incremental approach by first putting the key documents in place and allocating compliance responsibilities to staff. That can be done over a period of a few weeks if you use existing templates for your documentation," Weber said. "As an ongoing matter, compliance can be built into your daily operations. In fact the U.S. Sentencing Guidelines recognize that smaller practices' monitoring may partly consist simply of walking around the office and chatting with staff members to make sure they're mindful of compliance obligations."

In addition to the guidelines themselves, another resource for physicians may be the Health Care Compliance Association (HCCA). The Minnesota-based organization devotes its time solely to issues related to compliance issues and management.

"It's important for even the smallest practice to have a compliance program. At least the focus then is on doing things correctly the first time," Julene Brown, R.N., immediate past president of the HCCA, said. "They may, at times, have to put a few dollars forth to have a little bit of external review done, even once a year if possible to look at your claims. Many smaller practices wouldn't have the resources to do it internally. Having the compliance program in place to the best of your abilities, even if you're just a small solo practice with minimal staff, puts that foremost in your mind."

Other concerns

In addition to the government reporting requirements, the recent amendment of the Sentencing Guidelines bolstered the internal reporting requirements of the responsible parties in a practice.

"Now the guidelines basically require a direct report from the person charged with compliance responsibility to the governing board of an organization," Weber said. "In a smaller practice, this might mean that the staff member has direct access to the owner of the practice. But it highlights the need for the person with compliance responsibilities to have direct access to the highest levels of authority within the organization."

The return of overpayments is another pressing issue under the new laws. Most practices have experienced at least a couple of overpayments staying on the books during times of high traffic in the practice. Now, a physician's offices have no longer than 60 days to correct the error or face a number of consequences. This, Weber said, emphasizes the need for a proactive practice mindset rather than a reactive one.

"The health reform legislation also amended the False Claims Act to impose liability for retention of overpayments. In other words, if a practice identifies an overpayment and retains it improperly for more than 60 days after, they may be exposed to False Claims Act liability, which includes some of the stiffest penalties in the fraud and abuse arena," Weber said. "An effective compliance program can minimize this exposure by ensuring the type of monitoring that will identify these issues early on and address them in an appropriate fashion."

More information about building a better compliance program is available on the American Academy of Dermatology's website at www.aad.org/pm/compliance. •