

Do you bill? Implement a compliance plan.

by Bradley M. Pinsky

If you administer a for-profit or not-for-profit ambulance company or a municipal ambulance that bills for ambulance services, the government wants you to seriously consider implementing a voluntary compliance program. Indeed, this is a great idea. The federal government has been and will continue to be relentless in its pursuit of individuals and corporations that are collecting undue Medicare payments illegally or even erroneously. The government has even suggested that corporations that use a third party billing service should implement such a program, as should the billing service.

Anyone doubting that the government will pursue even not-for-profit ambulance companies should remind themselves of all of the effort the government just spent on the issue of hospital restocking. Indeed, that issue revolves around the possible offering by a hospital of an illegal incentive (free supplies) to cause the ambulance to bring its patients to that hospital. This is just one of many activities for which the government will prosecute companies and individuals. It is but one illegal activity that a compliance program would detect before the government.

What is a compliance program?

A compliance program is a series of approximately nine policies that are designed to detect and prevent fraudulent and abusive billing practices as well as other illegal practices not related to billing. It is also designed to detect on-going errors made by the company. The government has made it clear that entities that implement a voluntary compliance program will receive favorable treatment if the company is alleged to have over-billed Medicare.

In order to understand the importance of a compliance program, you have to understand the risks you face when billing Medicare or merely accepting federal funds. If an individual or a corporation is found to have intentionally or knowingly over-billed Medicare for services rendered, the penalties can include a \$10,000.00 fine per offense (ie: per error), disbarment from the Medicare program, and even jail time. Since penalties also include tripling each fine, the fines can quickly add up to hundreds of thousands of dollars. Needless to say, a corporation should expect to incur severe penalties if it intentionally over-bills Medicare.

However, the cause for real concern is that a corporation can incur these severe penalties if the government (or a jury) finds that the corporation knew or "should have known" that it was making repeated mistakes which resulted in overpayments when billing or causing bills to be issued. Indeed, if a third party billing company is making these mistakes on the corporations behalf, you may also be subject to penalties for failing to recognize them.

Again, however, its not just billing that can get a corporation in trouble. There are numerous other illegal practices, such as soft billing and waiving co-payments that can be the cause of harsh penalties.

Guilty if the corporation "should have known"

The government will prove that the corporation "should have known" about the over-payments or other illegal practices by showing that the corporation created an atmosphere

which was conducive to over-billing or the other illegal practices. How do you know if your corporation is conducive to over-billing or illegal practices? Answer these questions:

- 1) Does the corporation instruct its employees to report any intentional or unintentional billing errors or suspected illegal activities?
- 2) Does the corporation teach its employees to report intentional or unintentional billing errors or other illegal activities?
- 3) Does the corporation provide employees with an anonymous method to report errors, billing fraud or other illegal activities?
- 4) Does the corporation audit its billings (or those of a third party service) to screen for mistakes?
- 5) Has the corporation had an independent attorney review its contracts with third parties to ensure compliance with federal and state laws?
- 6) Does the corporation investigate allegations of errors or fraud brought by non-employees?
- 7) Does the corporation punish its employees for not reporting errors or illegal activities or reward employees for reporting them?
- 8) Does the corporation have a high level employee in charge of each of these functions who reports to the board of directors?

If the corporation cannot answer "yes" to each of these questions, then in the government's eyes, the corporation has permitted an atmosphere conducive to over-billing.

What is the benefit of a compliance program?

The government believes that if a corporation creates an atmosphere that encourages employees to be looking for illegal activities or even simple mistakes, the corporation is not one that would "intentionally or knowingly" have conducted that activity. Therefore, if the government cannot prove that the corporation "intentionally or knowingly" engaged in illegal conduct, the corporation will be free from the severe fines and penalties that could otherwise be imposed.

Again, however, one of the government's most popular charges is that the company "should have known" that it was engaging in illegal activity or over-billing. The government will prove this by showing that the illegal conduct or over-billing was occurring continuously for a long time. Thus, the government will be able to conclude that the corporation should have detected this on-going problem, but never looked for it. If a company simply closes its eyes to potential over-billing or illegal conduct, or never even audits itself to look for errors, the government may attempt to impose severe penalties for permitting these "mistakes".

Therefore, a compliance program is designed to prove to the government that the corporation created an atmosphere in which employees were educated and encouraged to relate potentially illegal or mistaken over-billing.

How do we create a compliance program?

A compliance program does not have to be complicated, despite many consultants' attempts to make it so. In fact, most of the work involves creating one or two page policies which address the eight factors stated above.

Scicchitano, Frateschi and Pinsky is well equipped to assist your corporation in designing and implementing a compliance program that will be satisfactory to the government. The firm has been creating compliance programs since they were first introduced for other health care professionals several years ago. Moreover, we possess a detailed knowledge of the operation of ambulance companies, since we not only represent a multitude of ambulance companies, but the head of the Fire Protection and EMS Provider Practice was the director of an ambulance company for many years.

The government has warned that companies should not use their own attorneys to implement the compliance program, since the government wants the company to conduct an independent audit of itself as part of the implementation process. A lawyer who has drafted many of the contracts or provided advice regarding the operations is not independent or unbiased.

Some consultants or attorneys offer "off the shelf" compliance programs. The government has warned that there is no one size fits all compliance program. If such a program is purchased by a corporation, and does not truly become part of the corporation's operations, the government will view this insincere attempt to prevent fraud as part of the attempt to conduct fraudulent activities.

Conclusion

The government has set its sights on ambulance companies and municipal ambulances that bill Medicare. Even companies that do not think that they are doing anything illegal can be found guilty of various illegal activities simply by not looking for them or trying to prevent them. The government has promised that a true compliance program will offer a company better protection from prosecution. Is it worth taking the risk of not having a compliance program in place?