

MD/DC Practices Targeted by Federal Investigators

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The new Health Insurance Portability Accountability Act (HIPAA) has poured billions of dollars into prosecuting health care fraud. All insurance health care plans—not just federal plans—fall under the new law. Every chiropractic doctor should be concerned because many so-called “common” practices are now the subject of fraud investigations, especially multidisciplinary (MD/DC) practices.

Q. Why are federal investigators targeting MD/DC clinics?

A. MD/DC practices are easy targets for federal investigators because many of these clinics have not taken the necessary steps to ensure that they have complied with the vast number of health care laws. Many earlier clinics, for instance, brought in MDs who never saw patients, issued “suspect” standing orders for chiropractic care, and were merely designed to avoid limited chiropractic coverage.

Q. What are the typical “red flags” over the MD/DC clinics that investigators are targeting today?

A. One target of investigators is a doctor’s failure to indicate anywhere on the HCFA 1500 that a chiropractor is performing services. Although there is some controversy over this issue among attorneys, fraud investigators are seeking prosecutions regarding this so-called “concealment.”

Another target is the improper use of coding, such as billing for E&M services that are not substantiated through documentation. There are numerous examples of this type of activity that investigators consider fraudulent.

The list of potential pitfalls is extensive even if the MD/DC office was set up for the “right” reasons. It includes potential violations on both the DC and MD sides of the practice in areas such as Medicare and Medicaid billing; workers’ compensation; personal injury; health insurance; and especially a clinic’s billing companies. Proper documentation today is a critical fraud avoidance strategy.

Q. Why will my MD/DC practice be reviewed more closely than other clinics?

A. The new federal HIPAA law makes it easier for federal law enforcement officials armed with documentation from insurance companies to investigate and prosecute these clinics.

HIPAA defines health care fraud as “any misrepresentation that deals with any health care plan.” The law covers all types of insurance coverage—not just federal programs. It covers billings for PI, workers’ compensation, health benefit plans, state plans—all third-party billings. So providers cannot escape the federal law by staying away from federal programs.

Significantly, providers can be found guilty of violating fraud laws if the doctor “should have known” that illegal activities were taking place within the clinic. Actual intent to defraud, or having knowledge of the fraudulent activities is not required. Providers can fall victim of federal fraud law if they are found to “recklessly disregard” illegal activities.

Q. How should an MD/DC practice attempt to protect itself?

A. Every MD/DC practice should talk to an attorney about developing a compliance plan. Although this admonition applies to every DC practice, it is critical for the MD/DC practice.

Q. What is a compliance plan?

A. Federal law recommends that every healthcare provider have a compliance plan in place. In its simplest form, an effective compliance plan is a system used to catch and correct mistakes, monitor errors and train staff. If you have such a program in force and are investigated under federal law, the enforcement officers can readily see that you are putting forth your best efforts to avoid unlawful activity. Your good-faith actions will “mitigate” against enforcement action or penalties. This has enormous ramifications to the doctor when investigations and prosecutions are being considered against the practice.

Q. Why are compliance plans especially important for the MD/DC clinic?

A. Third-party payers believe that MD/DC practices are set up for one purpose—to circumvent the rules on payment criteria. They base their perception on much of the advertising contained in chiropractic journals to demonstrate that an MD/DC clinic's only purpose is to circumvent limits on chiropractic care. For that reason, these clinics are a target of law enforcement officers. If you are part of an MD/DC clinic, you may be reviewed.

Q. Do compliance programs “guarantee” that my clinic will avoid legal troubles?

A. No, there are no guarantees. You could still be subject to prosecution for unlawful activity. But if you have an effective compliance program in place before an investigation occurs, it is highly unlikely that you will be targeted for prosecution. Federal law also provides that an effective compliance program will drastically reduce penalties if a prosecution does occur. There is no question that it is a major benefit in the face of an investigation.

You should never set up a compliance program simply to cover up illegal activities, expecting the plan to stop law enforcement officers. Telling the Justice Department, “See, I have a compliance program; I should be left alone,” is not a strategy you should consider.

You should implement a compliance program in good faith and allow the compliance process to do its job and protect your practice.

Q. How does a compliance program work?

A. A compliance plan develops policies for an office that are designed to identify legal and regulatory issues, correct identified deficiencies and provides for a mechanism to prevent further problems. The program quickly identifies problems and remedies them.

Properly implemented, the plan provides for program oversight; due care in delegating authority; employee training; monitoring; auditing; reporting; and corrective action.

Q. Other than the benefits outlined here, are there other benefits of a compliance program?

A. To the average doctor, implementation of a compliance program seems like more government intrusion. But those who have developed effective programs have reported many additional direct benefits.

Chiropractic offices use properly implemented compliance plans as a “communications tool.” They have notified third-party payers, attorneys, and government agencies that they are in “compliance.”

These offices have also seen an increase in staff morale, since the office “practices what it preaches” as a highly ethical practice. Staff members receive more training and are developed to their fullest potential in this type of “ethical” environment.

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I will truly miss my dear friend and mentor Rob Sherman who passed on July 11, 2008