

THIS YEAR'S RESOLUTION: ADOPTING AND IMPLEMENTING A CORPORATE COMPLIANCE PROGRAM THAT WORKS (PART I: ADDRESSING WHY YOUR PHYSICIAN PRACTICE NEEDS A FORMAL COMPLIANCE PROGRAM)

In September, the Office of Inspector General issued its final guidance for individual and small group physician practice compliance programs: A 7 factor, process-oriented approach to assist physicians in the development of a suitable compliance program. The language of the final guidance clearly suggests that an effective compliance program is an *active* part of a practice's operation, not just a checklist to be reviewed at a annual meetings and then put back on the shelf with collections of seldom used policies.

WHAT DOES A COMPLIANCE PROGRAM MEAN TO THE PRACTICE?

Many physicians believe compliance programs are only required for groups that run loosely supervised offices or who have had billing and coding audits in the past – but nothing could be further from the truth. An *effective* compliance program can mitigate criminal penalties under the U.S. Sentencing Guidelines and may be weighed by the DOJ in deciding whether to initiate or decline prosecution for voluntary disclosure. Whistleblower actions have risen by 525% in the past ten years and the federal government has tripled appropriations for fraud and abuse efforts (\$47 million to \$114 million in 2003). An *effective* compliance program may also mitigate exposure to whistleblowers by improving medical record documentation, improving employee competency and opening lines of communication and leadership within the practice.

WHAT ARE THE CHALLENGES TO THE PRACTICE LEADERSHIP?

For the practice without a formal compliance program, adopting and implementing a program requires a real paradigm shift within the practice – a shift actively supported by the leadership.

In assessing its current program or questioning whether or not it really needs a formal compliance program, practice leadership should ask itself the follow questions:

1. Who is the practice's corporate compliance officer? How often does he/she report to the board of directors?
2. Has the practice conducted a baseline medical records audit to determine where it stands with respect to its billing and coding procedures? What action did the practice take with respect to the findings of that audit?
3. Does the practice have written policies and procedures with respect to billing and coding? Do they provide flexibility sufficient to meet the demands of the OIG while maintaining managerial control over individual incidents?
4. How well trained are the employees with respect to billing and coding issues?

WHAT IS THE NEXT STEP?

If a practice cannot document positive answers to each of these questions, the New Year is the time to commit to adopting an effective corporate compliance program. If a practice has adopted a plan but failed to implement it, the New Year is a good time to turn initial adoption into the habit of implementation. In our next alert, we will examine the process of adoption and implementation, why some practices are eager to adopt, but slow to implement, and how this affects what the quality of their compliance program.

R. Michael Barry is an associate, at the [Atlanta](#) office of Epstein Becker & Green, P.C. The office reflects EBG's national focus on business transactions, regulatory advice and corporate litigation with particular emphasis on health care and employment law. He can be reached at rmbarry@ebglaw.com.

Please contact us if you would like additional information regarding these or other [Health Law](#) issues.