



# The Healthcare Compliance Manager

It's one of the most important jobs in your practice.

BY LAWRENCE F. KOBAK, DPM, JD

**T**he Healthcare Compliance Manager used to be somebody casually designated by the podiatric physician in charge of the practice.

In the typical small podiatric practice, this title was delegated to somebody who also wore several other hats in the practice. To be fair, in smaller practices, the healthcare compliance manager is not dedicated to one task, but is a jack of all trades. This is due to the fiscal reality of the situation. However, more and more, it is becoming too risky for the practitioner to rely on someone to navigate the vast world of regulatory compliance with so much else to do. The Compliance Manager's job cannot be an afterthought.

Let's look at the breadth of topics that the Health Compliance Manager must attend to:

- 1) OSHA
- 2) HIPAA/HiTECH
- 3) Medical Waste Management
- 4) Making sure the emergency kit and Oxygen is up to date, with no medications or Oxygen past the use-by date.
- 5) Making sure all samples are not expired.

6) Making sure all safety equipment is appropriate and properly dated.

7) Overseeing that the patient bills are being appropriately coded by whoever oversees coding and billing.

8) Developing, and then overseeing the practice's compliance program.

9) Delegating responsibilities to other staff to ensure that compliance is being carried out by the entire staff.

10) Staff education about compliance and

11) So much more!

Healthcare Compliance Management can be a career path, in the appropriate setting. Midsize to larger podiatry practices should have a dedicated compliance manager. There are colleges with courses, certificates, and even master's degrees in this area. When considering who to hire for this

position, experience and knowledge are of the utmost importance.

Once the position is filled, it is essential that the manager has a team s/he is working with closely. This team will include an experienced health law attorney, an accountant with experience working with physicians, as well as a certified coder or coding firm. No

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one attorney is going to know it all when it comes to health law. Therefore, choose an experienced law firm with services that run the gamut of health law, from audit defense and litigation to contracts and corporate structure understanding. And it goes without saying that the coding service should have specific experience in *podiatric* coding.

Preparing an appropriate Compliance Plan is crucial. Off-the-rack plans usually prove inadequate or not relevant to the individual practice. When this occurs, the plan is usually ignored.

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When a Compliance Plan is used, this usually negates any kind of criminal intent upon government investigation. In and of itself, that is huge.

An effective compliance plan is always a work in progress. One must include those who oversee compliance, and the names of the people

ment of Pain is such an example. If your specialty organization has such guidelines, and you are a member, it is best to use them. In areas involving medicine and surgery, your own knowledge will be paramount above that of your Compliance Officer.

Many health law attorneys, over the years, saw too many practices with wonderful OSHA compliance

a percentage of any money they help the government recover. Sometimes, that adds up to a lot of money. There is a real incentive for employees to “report on” things about which they think they know more than they do. You just never know what is lurking out there. Disgruntled former employees are the most common source to report alleged violations of the False Claims Act. It is easy to say that you treat all your employees well, respectfully, and that nothing will happen to you. In truth, that is like saying that if you treat your patients right, nobody will sue you for malpractice. While personal honesty, respect, and care for your employees can go a long way in minimizing such potential issues, it does not and cannot eliminate them. Not all violations are intentional. Some of the nations’ finest health law attorneys cannot agree, all the time, on what constitutes False Claim Act violations.

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who are tasked with monitoring various considerations. Initial and periodic training and education in each of these areas, for your staff, are essential. It is recommended that when that training is provided, the staff sign off on it. Besides live lectures by your Compliance Manager, there are many helpful talks and reading materials available on various government websites such as the CDC and OSHA.

An excellent resource is the OIG website. Access a 31-page booklet entitled, “A Roadmap for New Physicians: Avoiding Medicare and Medicaid Fraud and Abuse.” Under its section on Compliance Programs for Physicians, it recommends internal monitoring and auditing. This may be accomplished by having podiatrists within your practice review each other’s records and billing on a regular basis, say 10 representative charts per month. Are the CPT requirements met to bill for a certain service provided? Do not forget to factor in any relevant LCDs or local determinations in that internal audit. If that process seems like it is too daunting, hire an internal auditing specialist. Their fees for smaller practices are generally not too high. Often, they will point out areas where you are not billing for services to which you are entitled. (they tend to pay for themselves in this regard). Also, prophylaxis in this area can save you tens of thousands of dollars in successful defenses against government and private insurance audits.

Another area involves the practice of enforcing disciplinary standards through well-publicized guidelines. The CDC Guideline for Treat-

manuals still in their original wrapper. The podiatrist thought that the OSHA requirements were met by physically having the manual. No, the OSHA requirements are met when the contents of the manual are physically opened and used!

#### **Who’s Responsible?**

It must be pointed out that, as good as your compliance manager may be, it is *you, the owner of the practice*, who is ultimately responsi-

#### **Training Is Key**

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ble for compliance. Any penalties for non-compliance are placed on you, not the manager. That means that you must keep current, and be aware of what is going on with your business. While you can delegate responsibility and authority, you, the owner, carry the ultimate authority when it comes to your own practice. It will not suffice to state you did not know what happened or which codes were used, any more than ignorance is an acceptable reason for a tax return problem.

No matter how good your compliance people are, as the owner of the practice, you still have the Sword of Damocles hanging over your head. It is called the False Claims Act, a federal law. It encourages people to “drop the dime” on you. The informer gets

ber, staff is being added and removed all the time. New staff needs to be brought up to speed as to compliance issues that fall within their group of responsibilities. Use of updates and refresher videos, lectures, or demonstrations should not wait for a problem to rear its head.

Such mundane tasks as checking the dates on the fire extinguishers, making sure any oxygen tanks are filled, double-checking the status of the emergency kit, scrutinizing the dates on samples, reviewing the dates on sterilized items such as syringes, and keeping records on sharps pickups are all a very important part of compliance. Frankly, if your health department should ever request to inspect your office, these are the things

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they look for; it is very easy to check these items. Another area to mention is retention of medical waste disposal records. Have you obtained

concerning anything going on in the practice should be strictly controlled by the compliance officer. Spreading private information is not only rude, but it can also be illegal in terms of protected health information.

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## Have you obtained the state-specific requirements for disability and workers compensation coverage?

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As not all medical assistants take courses in personal health information and its protection, this is an area that requires constant training by the Compliance Officer. The person you use to make phone appointments cannot be telling her/his friends about the famous person who called for an appointment. Texting, emailing, and use of social media

The importance of keeping accurate and detailed records about all that your office is doing to comply with the various requirements is important.

By now, you may be saying it would be much easier to work for the local hospital and allow them to handle compliance. For some people, that may be a good choice. Healthcare attorneys have often called their clients to remind them to update their Physician Profile with their

state. Their client usually states they will call the hospital compliance officer to take care of that. For those of you who enjoy the ability to be your own boss, the hospital supervision will not work well. Choosing who is going to be your practice compliance officer can be one of the most crucial decisions you make while in practice. **PM**

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**Dr. Kobak** is Senior Counsel in Frier Levitt's Healthcare Department in New York. Larry has extensive experience representing physicians in connection with licensure issues, as well as successfully defending physicians before Medical Boards, OPMC, OPD investigations, as well as Medicare Fraud, Fraud & Abuse, Hospital Actions, RAC Audits, Medicare Audits, OIG Fraud, Healthcare Fraud, Medical Audits, and Health Plan Billing Audits. As a licensed podiatrist prior to becoming an attorney, he served as the international president of the Academy of Ambulatory Foot and Ankle Surgery.