Seven Possible Legal Pitfalls at Your Medical Practice

By Ericka L. Adler [6]

It’s cheaper to spend the time and money setting things up properly at your medical practice then to defend yourself when a problem arises.

Operating a medical practice is a challenge for almost every physician. Not only do you need to stay current on medical treatments and protocols, but you also need to meet a laundry list of legal, billing, and other requirements of which you may or may not be aware. Here are some legal issues that I have come across recently in my practice which you may be facing as well:

1. Does your practice refuse to release medical records to patients with a balance? Last week I spoke with an obstetrics practice that refused to release medical records to a patient who was 36 weeks pregnant because she owed the practice money. Most states require the release of medical records as long as copying charges are paid. Holding on to medical records in this manner is likely illegal and is certainly inappropriate.

2. Have you entered into leases or contracts for space, equipment, or other items or services with people or entities to which you refer patients? A new physician who started her own practice described to me an arrangement with a company which came to her practice several days a week to provide ultrasounds to her patients. The company billed the professional and technical components of all services. The arrangement was not only oral, but the physician was given an envelope of cash on a monthly basis as “rent.” Physicians need to know never to accept cash under any circumstance and that all leases need to be in writing and set at fair market value to comply with federal law and most state laws.

3. Are you collecting copays and deductibles from your patients? I was recently involved in the investigation of a practice that deals largely with workers’ compensation patients but also billed some private insurance. Although I thought every physician knew that collecting copays and deductibles is most often required, this particular physician had never collected them. Make sure that you are familiar with the requirements of all of your payers!

4. Does your practice credit physicians for the professional and technical component of X-rays, ultrasounds, and lab tests they order for federal patients? It’s not unusual for me to meet with new clients who have been using a formula that in no way distinguishes between ancillary and non-ancillary income for which a physician may be credited. If your practice is not familiar with how income from ancillary services may be properly credited to a physician, see my recent blog on this topic.

5. Are you still receiving catered lunches and gifts from pharmaceutical representatives, durable medical equipment (DME) companies, or physicians to which you refer? Every week at least one client asks me if “free lunches” or other gifts are really not allowed? There are some very strict rules for physicians regarding accepting anything of value from individuals or entities to which a physician refers. This is true under federal law and many state laws. Your practice should be aware of these regulations and have a formal policy in place.

6. Do you have licensed mid-level providers working in your practice? Recently a physician being investigated for billing issues was asked to provide the supervision agreement for his PA. He did not have any such agreement and, apparently, had also never registered the PA with the state to be able to write prescriptions. Every practice needs to check their own state’s laws to make sure requirements are being met for its licensed staff.

7. Are you dispensing DME in your practice? Many clients think of DME as a lucrative source of income but do not realize that, under Stark, group practices can provide federal patients with very limited items such as blood glucose monitors and ambulatory devices necessary for the patient to be able to leave the office (crutches, canes, walkers, etc). Otherwise the practice needs to explore becoming a DME provider. As DME rules are complex, I recommend any practice interested in DME obtain professional advice.
These are just some of the issues that you should be reviewing in your practice to assure that you are compliant. As I always say, it’s cheaper to spend the time and money setting things up properly then to defend yourself when a problem arises.

*Are there other legal pitfalls you feel your practice may be falling into? Send your legal quandary to editor@physicianspractice.com for a reply from Ericka Adler in a future blog. Please remember that her replies are for informational purposes only and should not be construed to establish any kind of attorney-client relationship.*

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