How to conduct legitimate internal investigations

Physicians spend plenty of time worrying about investigations: the OIG, CMS, and IRS can cause nightmares.

But not all investigations are bad. In fact, doing internal investigations -- an inquiry into your own practice -- can actually keep your practice from having to face more serious external examinations down the road.

For example, if a patient or staff member suspects Medicare fraud and abuse, you don't especially want them to go directly to the attorney general. Instead, first offer the critic a thorough internal investigation. It may be enough to reassure him -- assuming, of course, that everything is as it should be or can be rectified.

Touchy personnel issues, such as accusations of sexual harassment, similarly warrant internal investigations. Such problems are made worse if the victim believes that no one took the issue seriously. Completing internal investigations gives people confidence that the practice approaches issues seriously and takes fair, decisive action. Good research and documentation can even ease firing decisions or support proof of HIPAA compliance.

If a practice does internal investigations whenever warranted, it will accumulate a file of well-documented self-study and follow-up actions that can be used to defend the practice during all sorts of government investigations or legal actions.

To be most effective, however, your own examinations should be conducted in a fairly formal way. Be careful, too, with documentation and follow-up. Here are some guidelines.

Start the process

The goal of your investigation should be closure: document the process, end the inquiry, communicate results to the party that raised the question sparking the study, and -- if needed -- take corrective action.

See the sample "Investigation of an Incident or Suspected Violation" in the Tools area of www.PhysiciansPractice.com.

Start by listening closely to the complaint and collecting detailed information from the concerned person or group. At the very least, capture a name, title, the date the report is being made, the date or period of the incident, and a detailed description of the problem.

You can ask the complainant to fill out a form, but make sure everyone in your practice knows that it is just as acceptable to report problems on paper, in e-mail, in person, or any other way. The goal is to make people feel comfortable coming to you with problems. No matter how a report comes to you, just be certain to collect all the pertinent information and document it carefully.

Document, document

Next, investigate the issue completely and record all your findings and actions. A record in the form of a log works well. For example:

3/12/03- Interviewed Sally Smith in the billing office: Ms. Smith described several incidents when employee John Jones discussed ailments, in detail, with patients at the reception desk while other patients were able to overhear the conversations.

3/13/03- Interviewed Sue Moore who confirmed the report by Ms. Smith. In addition, Ms. Moore stated that Mr. Jones sometimes offers advice to patients that borders on providing medical advice.

3/13/03- Meeting with John Jones: Discussed the reported behavior, in detail, with Mr. Jones for over an hour. I re-educated him about HIPAA requirements, and we discussed ways to fulfill his duties without asking about health information. With regard to providing information that could be construed as medical advice, I instructed Mr. Jones to limit his comments to scheduling. Mr. Jones stated that he understood. Another meeting is scheduled with Mr. Jones on 4/10/03 to review progress.
If you do uncover a problem, it is, of course, important to correct it. Just as in cases concerning medical errors, the least productive course of action is to focus on an individual's errors. Usually, it is more effective and fair to look at policies, procedures, voids in training, or gaps in communication that triggered the mistake.

Corrective action should raise the awareness of all employees, generate discussion, and improve all processes. When warranted, individuals may need to be fired or otherwise corrected.

Make corrective action a multifunctional tool. Correct the immediate problem, but also try to send the message that the practice appreciates people who report incidents that are potentially damaging to the business, and that the practice sincerely wants to correct and improve wherever and whenever possible.

A key element of any corrective action is future audits. It's not enough to say you want to change; you should make sure change happens. Build into the corrective action plan verification of improvement or compliance. For example, in the case of a person's inappropriate behavior, interview key personnel to see if behavior has improved four months later. In the case of a billing issue, audit 10 records in three months to see if a new procedure is being complied with. Always record the audit process, date(s), and results. If you don't see improvement, take action and schedule another audit. This demonstrates a commitment to improvement.

To end the investigation, bring the entire case to some governing body or authority for review and have them agree that the case can be closed -- that appropriate review and corrective actions are complete. The appropriate authority in a small practice is almost always the practice owner. In a larger practice, it may be an executive committee or compliance committee. Investigations involving personnel matters might be reviewed by an employment attorney and the managing partners. While the process of closing the investigation will vary slightly based on the organization of the practice, the review has the secondary effect of making the incident a training tool for management and the physicians.

Record a decision to close an investigation in meeting minutes. The minutes do not have to be elaborate. A simple document recording the date, the people present, identification of the investigation, decision to close the investigation, and the signature of the leader is sufficient.

In an appropriate setting, go over the process, the results, and actions taken and planned. Depending on the situation, the appropriate setting may be a private discussion, a staff meeting, or a written summary.

Some issues will be sensitive and make it difficult to communicate corrective action without breaching confidentialities. Be creative. For example, in one practice I worked with, a staff member overheard a conversation between two physicians in which a specialist offered to a primary-care physician the use of a house in the mountains. She accused the specialist of offering a bribe for referring Medicare patients. The investigation revealed that five physicians owned the house, and the specialist was only offering to swap his scheduled weekend with the other physician because he was not going to use it.

There was no reason to divulge the location or luxuriousness of the mountain get-away, a revelation that would only have enhanced staff perceptions that physicians are too wealthy, and invaded the privacy of the physicians. Instead, I simply told the staff member enough about the joint use of the property and said that our investigation found the offer was not a bribe but a weekend swap. I also made it clear to both physicians that they used poor judgment in having such a conversation in proximity to staff, and used the incident in training class.

Ideally, sensitive but thorough research will reassure staff and patients as well as provide a solid, documented history of compliance and high ethical standards.

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Disclosures: