CASE MODEL

THE SOUTH EASTERN MULTI-SPECIALTY GROUP PRACTICE

In a community that is growing rapidly with the migration of older adults trying to avoid the more harsh climates of the country, a large multi-specialty medical group practice has formed to provide comprehensive health services to the new residents. The group is made up of primary care physicians including family practice and internal medicine, specialty physicians in cardiology, gastroenterology, rheumatology, ophthalmology, oncology, pulmonology, nephrology, and orthopedics. They have multiple offices throughout the community and one central office building that houses the many ancillary services ordered by this diverse group including radiology (with CT, MRI and interventional suite), laboratory with a high complexity certificate, and a physical therapy suite.

ATTENTION TO COMPLIANCE

In the rapid growth of this practice, compliance was not considered as a priority, although it did provide educational opportunities to its professional staff members to participate in seminars and conferences relating to their job positions. A number of employees attended compliance-related courses and have informed management of the "need" to develop a comprehensive compliance program to protect the organization from regulatory investigation, fines and penalties.

A shareholder-physician is named as compliance officer by the board of directors and is given the assignment of developing the compliance program. The compliance officer delegates the assignment to the business manager of the organization. The business manager gathers a team of co-workers to begin the development process.

BASELINE AUDIT RESULTS

The baseline audit reveals a number of discrepancies between the applicable rules and regulations and the actual work practices of the organization. The list below is brought to the attention of the physician compliance officer, who in turn brings the list to the next board of directors' meeting.

1. The medical chart audit reveals many problems that affect the validity of the claims sent to Medicare (and other insurers) including:
    a. illegible documentation by three providers;
    b. missing documentation of office visits (encounters) and laboratory orders and results;
    c. billing codes submitted that are higher than allowed when compared against the documentation in the medical record in 57% of the claims audited;

d. non-physician practitioners (NPs and PAs) performing evaluation and management services to new patients and these are billed as "incident to" a physician supervisor;

e. hospital residents performing and documenting evaluation and management services and the services are billed using the provider numbers of group practice physicians without the requisite physician at teaching hospital (PATH) documentation by the attending physicians;

f. the analysis of CPT and ICD-9 code utilization indicates large variation for more than one-half of the physicians from the national averages.

2. The assessment of the billing and reimbursement procedures indicates that professional courtesy is routinely extended to other physicians and their families from the community, and one physician routinely orders laboratory and radiological studies for his parents and these tests are billed to Medicare.

3. The review of the OSHA program reveals that there are no OSHA program manuals or copies of MSDSs at any of the office facilities, no training has been provided to employees, and no offer or documentation of Hepatitis B vaccinations to employees. In addition, no DOT hazmat training has been performed.

4. The review of the laboratory compliance found that most of the regulations have been followed in the central laboratory facility, but there are no separate CLIA numbers requested/obtained for each of the practice locations where waived testing is performed within the office. In addition, the CLIA certificates that are in some of the practice location offices have not been updated to reflect the group-practice name. The central laboratory facility has not updated the certificate to CMS to reflect a new laboratory director and the lab director has not personally signed each of the procedures in the standard operating procedures manual.

5. HIPAA has been addressed in the form of implementing the Transaction and Code Set Rule with the help of the practice's practice management system vendor. The Privacy Rule is addressed with initial training of existing employees, but no new employees have HIPAA training and there have been no annual updates of the Privacy Plan training. The practice has purchased of an "off-the-shelf" Privacy Plan Manual, but the policies and procedures have not been customized or implemented throughout the organization. The Security Rule has not been addressed at all.

6. The review of the employment and ERISA laws and regulations reveals that the practice has non-exempt employees as salaried exempt employees improperly, there is no sexual harassment policy, the policy on equal employment and non-discrimination is not up-to-date and there is no written acknowledgement from any employee of their receipt of the policy manual. No summary plan descriptions or summary annual reports have been provided to eligible employees. In addition, there is no record of any Form 5500s being filed for the pension plan for the last two years.

BOARD OF DIRECTORS' REACTION

Members of the board of directors express surprise at the number of issues identified as problematic. However, the information presented does not include the potential consequences of ignoring the problems. In the absence of such information, the following decisions are made:

1. Continue formulating policies and procedures for the compliance program.

2. Purchase OSHA program manuals and have a staff member obtain MSDSs.
3. Address the CLIA issues by filing the necessary paperwork for change in ownership and file applications for the offices that do not have CLIA waived certificates.
4. Table all other issues for further discussion and future meetings.

Some of the comments regarding the billing and reimbursement issues and the employment/ERISA issues are listed below:

1. "We haven't had the government look at our documentation, so it is probably okay to continue without making changes."
2. "No one can tell us who we can provide free services to, and anyway, how would anyone know who we don't send billing statements to?"
3. "We are not paying the staff any more money and especially not overtime."
4. "HIPAA is a joke — there is no agency investigating whether or not we have written policies or do training."
5. "We just have to do all the paperwork, then we can't get in trouble if anyone does bother to look."
6. "Hepatitis B vaccinations are performed as routine now, so everyone probably has had them, so why should we have to pay for them if they haven't?"

KEY ISSUES:

1) To what extent are the members of the board of directors personally at risk for not implementing an effective compliance program?
2) How great is the potential risk for allegations of fraud and/or abuse by governmental or third-party payors?
3) What level of risk is the board of directors incurring for Department of Labor and Internal Revenue Service fines and penalties for failing to do the following:
   - provide the appropriate documentation to eligible employees of the welfare and pension plans?
   - file a pension plan informational tax return?
   - pay overtime compensation to some of the employees?

   By having knowledge of the issue and ignoring it, has the board of directors considered the ramifications of having the statute run for an additional year for "knowing and willful violation"?
4) What is the potential for the business manager to file a complaint with any of the regulatory agencies when he or she has been told to continue writing policies and procedures, but that the majority are not going to be implemented?
5) What is the potential that one of the physicians of the group, in an effort to protect himself or herself from the risk of non-compliant partners, will leave the practice and then report the billing deficiencies to the local Medicare office?