

BULLSEYE



PRACTICE MANAGEMENT GROUP, LLC

TARGETING THE "BUSINESS" OF MEDICINE

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The Bottom Line

In trying to decide what articles to include in this issue of Bullseye, I decided to browse the web for hot topics related to medical care and the upcoming Presidential election. What continued to be overwhelmingly present in my quest was the abundance of discussions about the candidates' lack of detail on how they plan to fully fund and implement all of the programs and initiatives each of them proposes. Blogs, chat rooms, and discussion boards all over the internet are discussing the lack of detail these candidates have provided for carrying out their health care agenda.

WEBMD reports that health care is expected to remain among the top domestic issues for voters in the 2008 election. It is also important to note, according to the US Census Bureau, approximately 45 million Americans living in the United States are without health care.

When looking at the two candidates' website related to health care, there are actually a lot of similarities in each candidate's health care platform. There are obvious differences in the amount of issues each addresses. Obama provides a lengthier discussion, but it is not necessarily "meatier" or detailed, just longer. They both

tout reform, portability, and cost reduction in some areas, while simultaneously discussing expansion and growth in other areas of health care. Neither candidate gets into the nuts and bolts of executing their particular health care agenda. Both candidates only have a proposal while they both call it a plan. Call it whatever you want to, it is incomplete and vague.

The Bottom Line.

While the details are absent on how each candidate plans to fully fund and implement all of the programs and initiatives they have proposed, I encourage all Bullseye readers to ask more questions re-

garding each candidate's health care platform. What impact do these candidates anticipate their plans will have on providers and how will their plans influence the already dwindling numbers of people choosing medicine as a profession?

These are just a few questions to the many unanswered in analyzing the future of America's health care system. With the limited information available, I implore each Bullseye reader to be proficient on the information that has been made available on this very important and impacting issue.

Muffy Kneece – Director of Client Services



EVERY VOTE COUNTS

Practice Management Group has included this article about overpayments from the HBMA (Healthcare Billing and Management Association) newsletter due to the significant nature of the topic. Whether you are a provider who currently utilizes the services of a billing company or you do your own billing, this is a topic in which you should be very informed. The ramifications of non-compliance are considerable, both financially and criminally.

Rich Papperman has provided a clear and concise article explaining the issue of overpayments and the supporting citations. He has supported this discussion with specific case evidence of real life consequences for not satisfying the requirements of rectifying overpayments.

PMG's goal in including this article is to educate our readers on important issues medical professionals and those who serve medical professionals confront when handling the "Business of Medicine".

We hope you have found this article helpful.

**PRACTICE
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"BUSINESS" OF
MEDICINE

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Is it Found Money?

HBMA has advocated for compliance since 1995, when the association was still called the International Billing Association.

Programs followed each year. The first "big" compliance course under the HBMA banner was presented by Steve Vincze in Atlanta, GA, in 1999, which followed the release of the OIG Model for Billing Companies. Since then, the Ethics and Compliance Committee has presented numerous programs, articles, website offerings, etc, to further the "climate of compliance" for our members.

Unfortunately, we have often heard HBMA members comment that our clients do not believe us when we tell them that they need to issue refunds, can't upcode E&M services, and are prohibited from many other "no-no's." Members have asked for specific citations that they can show their clients to make their point.

This article offers tools that HBMA members can use in discussing compliance with their clients. A real-life scenario is followed by specific federal and state laws that were used to prosecute each case, including available penalties. The specifics of the Office of Inspector General (OIG) Compliance Program Guidance for Third-Party Medical Billing Companies and the Compliance Program for Individual and Small Group Physician Practices are cited. So when Dr. Jones says "Show me," you will have the answers on these tough issues.

A Typical Case

Do you have clients who think hanging on to insurance overpayments is "no big deal?" If so, you may want to caution them to reconsider that stance. East Tennessee Heart Consultants (ETHC) is a cardiology practice that neglected to refund overpayments to federal and private insurers and patients. It learned a rather expensive lesson: if you have money you're not entitled to, you better give it back!

ETHC entered into a \$2.9 million settlement with the US Attorney in connection with its alleged failure to refund overpayments over a period of six years. The allegations focused on the practice's failure to refund overpayments to Medicare, Medicaid, and other state and federal payers. The US Attorney's office for the Eastern District of Tennessee began its investigation as result of two former employees of ETHC filing a quitam action using the federal False Claims Act and the Tennessee Medicaid False Claims Act. The employees alleged that ETHC had established a policy to retain overpayments that were paid by government insurance programs and only issued refunds if those programs specifically sent a request.



What made this case unique and significant was the government's approach using the Federal False Claims Act (FCA). The argument was that the claims billed during those six years were false because they were made during a time that ETHC had an existing legal obligation to refund money that had been received previously as overpayments on prior claims. The government based its case on ETHC submitting claims even though it knew there was a legal obligation to promptly refund the prior overpayments.

To explain it another way, these claims were valid as submitted to the insurers for payment. But the prosecution took the stance that if a provider knowingly was retaining credit balances from those insurers, then those claims were false under both state and federal false claims statutes.

EPILOGUE: ETHC entered into:

1. A criminal pretrial diversion agreement
2. Separate civil settlements with the federal and state governments
3. A five-year Corporate Integrity Agreement (CIA) with DHHS OIG.



Of the approximately \$3.3 million paid by ETHC, \$2.9 million in penalties included:

- \$1.5 million to the Department of Justice
- \$1.2 million to patients and/or their health insurers
- \$200,000 to the state of Tennessee Plus, the whistle blowers were paid over \$300,000 and their attorneys nearly \$72,000.

MORAL OF THE STORY: Providers really are required, legally and morally, to return overpayments on a timely basis. If you overpaid for something, wouldn't you want your money back?

Found Money???

According to an article published in the Wall Street Journal (WSJ) on September 22, 2008, the credit crunch is not only throwing the economy into a deep slump, it's effecting the health care sector significantly as well. Health care, a sector once thought to be invulnerable to recession, is seeing noticeable impacts on everything from doctors' appointments to preventive tests to prescriptions drugs.

The following statistics were included in the article:

- The # of prescriptions filled in the U.S. fell 0.5% in the 1st Qtr. of 2008 and a steeper 1.97% in the 2nd Qtr. of 2008, when compared to the same periods in 2007. This is the first negative Qtrs. in at least a decade.

(According to data collected from market research company IMS Health)

- Despite an aging and growing U.S. population, the # of physician office visits has been declining since the end of 2006. Between July 2007 and 2008, visits fell 1.2% (According to IMS)

- A study, analyzing claims from 250,000 people, was conducted for the WSJ by the research firm, D2Hawkeye, found that a # of preventive or non-acute areas of care saw declines despite little change in benefits or employee cost sharing. Knee replacements per 1,000 people fell 18.6% between 3/2007 & 3/2008, PAP smears fell 6%, and dispensed prescriptions for anti-depressants dropped 29%.

CITATIONS

Here are the citations to use with your clients that cover the issues and actions in the above scenario.

OIG Compliance Program Guidance for Third-Party Medical Billing Companies.

(Federal Register / Vol. 63, No. 243 / Friday, December 18, 1998).

Web link: <http://oig.hhs.gov/fraud/docs/complianceguidance/thirdparty.pdf>

- In Section II. Compliance Program Elements, Written Policies and Procedures, page 70144, Sub-section 2. Written Policies for Risk Areas, (page 70142): *"Among the issues to be addressed in the polices are the education and training requirements for billing and coding personnel... the procedure for identifying and reporting credit balances; ..."*

In Sub-Section 2.a. **Risk Assessment – All Billing Companies:** *"Among the risk areas the OIG has identified as particularly problematic are: Inadequate resolution of overpayments." This statement is identified with footnote 32, which defines an overpayment as: "... an improper or excessive payment made to a health care provider as a result of patient billing or claims processing errors for which a refund is owed by the provider. Examples of Medicare overpayments include instances where a provider is: (1) paid twice for the same service either by Medicare or by Medicare and another insurer or beneficiary; or (2) paid for services planned but not performed or for non-covered services. Billing companies should institute procedures to provide for timely and accurate reporting to both the provider and the health care program of overpayments."*



- In Section II. Compliance Program Elements, Written Policies and Procedures, Sub-section 4. Credit Balances, (page 70144) states: *"Credit balances occur when payments, allowances, or charge reversals posted to an account exceed the charges to the account. Providers and their billers should establish policies and procedures, as well as responsibility, for timely and appropriate identification and resolution of these overpayments. For example, a billing company may redesignate segments of its information system to allow for the segregation of patient accounts reflecting credit balances. The billing company could remove these accounts from the active accounts and place them in a holding account pending the processing of a reimbursement claim to the appropriate payor. A billing company's information system should have the ability to print out the individual patient accounts that reflect a credit balance in order to permit simplified tracking of credit balances. The billing company should maintain a complete audit trail of all credit balances. In addition, a billing company should designate at least one person (e.g., in the patient accounts department or reasonable equivalent thereof) as having the responsibility for the tracking, recording, and reporting of credit balances. Further, a comptroller or an accountant in the billing company's accounting department (or reasonable equivalent thereof) may review reports of credit balances and adjustments on a monthly basis as an additional safeguard."* Footnote 55 states, *"The billing company should also refer to State escheat laws for the specific requirements relating to notifications, time periods and payment of any unclaimed funds."*

Although we are 60 % through the 2008 Hurricane season, there is still plenty to worry about. According to the Weather Channel's lead meteorologist, Dr. Steve Lyons, there will be a second peak in October and this second peak is predicted to be at least as active as August. Dr. Lyons also reported that storms typically form more to the West in October, which means there is a greater threat for a United States landfall during the later peak. The Weather Channel reports that the strongest Hurricane ever recorded in the Atlantic basin was in late October of 2005 and had recorded winds of 185 MPH.

Hurricane Kate made landfall in Florida in 1985, a week before Thanksgiving.

Ike's wind damage path was, on average, 200 miles wide and 1600 miles long. There were twelve states affected by Ike's swath. Numerous homes and businesses in these effected states (other than Texas and Louisiana, who are still without power) were without power for at least two weeks. Kentucky experienced its largest power outage in Kentucky history.

What would you do if your business was without power for two weeks or more? Would your business survive?

Business consultant, Dave Jakielo's quote of the week is, "Fail to plan and you plan to fail". Your plan for success should include a plan for economic distress due to natural and man made events.

Are you ready?

PD Disaster Preparedness

GET PREPARED - GET INVOLVED

Getting back to business after a disaster depends on preparedness planning done today. Small business owners invest a tremendous amount of time, money and resources to make their ventures successful, and yet, while the importance of emergency planning may seem self-evident, it may get put on the back-burner in the face of more immediate concerns. For small business owners, being prepared can mean staying in business following a disaster. An estimated 25 percent of businesses do not reopen following a major disaster, according to the Institute for Business and Home Safety.

There are materials and resources on the internet that can help small businesses make plans to recover from financial losses and business interruption and to protect their employees, the community and the environment.

Q: How can I prepare my small business for a disaster?

A: As a small business owner, you should develop a disaster preparedness plan. It's just as important as developing a business plan. Having a disaster plan in place will make the difference between being shut down for a few days, and losing your livelihood.

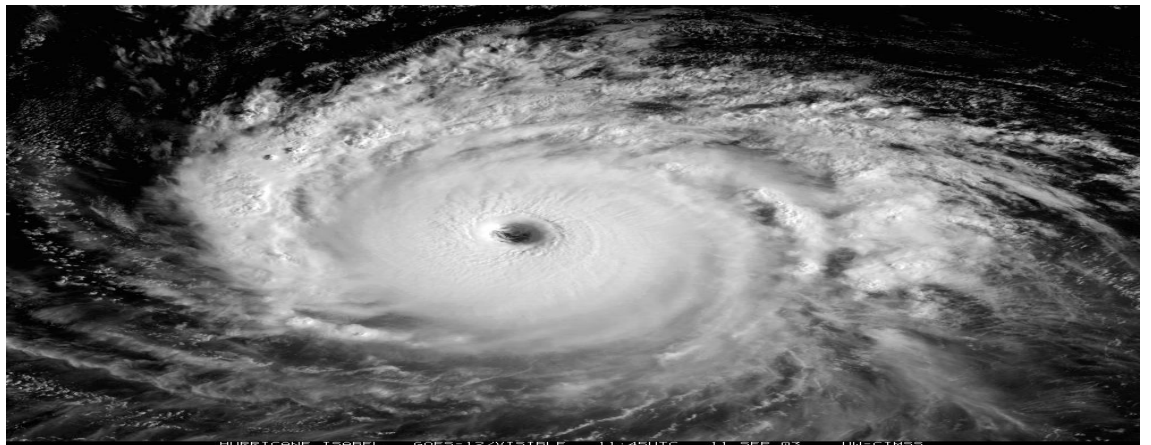
Meet with an insurance agent who understands the needs of your business. Business-interruption insurance — which replaces income lost when a business suffers downtime because of a covered peril — should be a consideration. Normal hazard insurance does not cover floods, so make sure you have the right kind of insurance. Make sure you know what your insurance **does not** cover.

As the business owner, you should ask yourself the following questions: Am I prepared to relocate temporarily? What would happen if my suppliers shut down? Do my employees know what to do in case of an emergency?

Employees should know where all the emergency exits are located. A safety coordinator could be appointed—someone who will take responsibility for making sure all the fire extinguishers work, planning safety drills, developing evacuation plans.

Vital business records—information stored on paper and computer, should be copied and saved on both the hard drive and on backup disks at an offsite location at least 50 miles away from the main business site.

Your business should also have a "recovery communications" plan in place. Key employees can be assigned as spokespersons who will contact suppliers, creditors, other employees, customers, media and utility companies to get the word out that the business is still viable. Also, that spokesperson can keep the public informed of rebuilding efforts, if necessary.



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