Get Agreement to Protect Confidentiality of PACS Images

Many—if not most—imaging centers and hospital radiology departments are moving toward digital operations using PACS technology. PACS allow for storage of the digital image on a computer system, electronic transmission of the image, and a filmless operation. This solves the problems associated with storing large numbers of film images. And it means that radiologists no longer have to be at the office or the hospital to view images. With a home computer hooked up to a PACS network, a radiologist can view an image in real time, from anywhere.

Another benefit of PACS technology is that it permits other physicians, like referring physicians and specialists, to directly view the tests and images the radiologists interpret. So, many imaging centers and hospital radiology departments are allowing physicians outside their practice—like referring physicians and surgeons—to gain access to their PACS network.

But allowing others access to patient images via a PACS network raises potential compliance issues, notes Washington, D.C., health care attorney Anna Spencer. We’ll explain those compliance issues, and we’ll give you a Model Agreement for password acknowledgment and use (see p. 3) that you can ask physicians outside your practice to sign if they’re going to use your PACS network to access patient images. Plus, we’ll give you a second Model Agreement for user log-ins (see p. 4) that you can post electronically right on your PACS network. You can set it up to require users to indicate their agreement with your terms of use before they access your network.

Images on PACS Network Part of Patient Record

An image on a PACS network is a part of the patient’s medical record, and it’s considered protected health information (PHI) under HIPAA, Spencer explains. So it’s important that you safeguard the images and limit access just as you would limit access to any part of a patient’s medical record, she advises. And keep in mind that starting in April 2005, the HIPAA security regulations will go into effect—and they’ll have some bearing on how your PACS network should operate.

But it’s also important not to go overboard when limiting access to your PACS network, because being able to review the images through a PACS network can be a real benefit to patient care and can improve your relationship with your referral sources, remarks New York health care attorney Jay Silverman. So the trick is to establish a system that permits sufficient access to provide good and efficient care but doesn’t permit more than the “minimum necessary” access to PHI, the experts agree.

HIPAA Affects PACS Access

The HIPAA privacy regulations permit health care providers to disclose a patient’s PHI for treatment, payment, or health care operations purposes without patient (continued on p. 2)
authorization unless another law, such as a stricter state law, requires such authorization, Spencer points out. So a radiologist may permit referring physicians and specialists to access a patient’s images for the purpose of evaluating the patient’s condition or forming a treatment plan, without notifying the patient of the disclosure or getting the patient’s consent.

The difficulty arises when the PACS network allows users to access any image on the network (as opposed to just their patients’ images)—and most of them do. That means that a surgeon who was properly given access to the PACS network for the purpose of monitoring the condition of his patient could, for example, use that access to improperly review radiological images of another patient. And because you permitted the surgeon the access that led to the improper disclosure, you could be held liable if the other patient found out about the disclosure and decided to sue or to report the violation to the Department of Health and Human Services’ Office for Civil Rights, Spencer cautions.

Plus, Spencer explains that compliance with the HIPAA security regulations will require that access control measures be in place to prevent this sort of abuse. Even though compliance with the HIPAA security regs isn’t required until April 2005, you might as well start implementing access control standards that limit access to only those images physicians from outside your practice have a legitimate reason to see.

Take Steps Now to Protect PACS Network

The PACS technology you’re currently using may make it hard for you to control the images that an authorized PACS user decides to view, Spencer notes. Many networks restrict access by user only, and so don’t filter out the images the user shouldn’t be looking at. The HIPAA privacy regulations require health care organizations to implement reasonable safeguards to prevent unauthorized access. If modifying your PACS system to restrict a physician’s access to only his patients’ images is excessively expensive or technologically impossible without purchasing a new system, the HIPAA privacy regs wouldn’t require this level of access control. But you’ll eventually need to upgrade your network to ensure compliance with the HIPAA security regs by implementing better access controls. In the meantime, you have to make clear to users of your PACS network that they’re responsible for proper use of the network and must maintain the confidentiality of the information they view.

There are several steps you should take right now to ensure that your PACS network isn’t being abused, Silverman says:

Permission access only through a password and use agreement. Assigning passwords to authorized users is a basic step every PACS network should implement immediately, Silverman says. And give the password system teeth by requiring everyone who’s assigned a password to sign an agreement regarding its use. You can adapt and use our model password acknowledgment and use agreement, which Silverman developed for his clients who want to share access to PACS networks. This agreement asks the signer to acknowledge that her access to the PACS network is controlled through the use of a user name and password. And the signer agrees to the following conditions when using the user name and password:
She won’t share her password or allow anyone else to access the PACS network through use of the password and will do her best to keep her password and user name private [Agr. #1, par. 1];

She may access the PACS network solely for the purpose of providing treatment and evaluation to her patients and won’t seek access to images of anyone other than her own patients or for purposes other than treatment or evaluation [Agr. #1, par. 2];

She understands that the information she obtains through the PACS network may be protected under HIPAA, other federal laws, state law, and/or professional ethics [Agr. #1, par. 3];

She’ll contact the network administrator if she learns that the PACS network has been accessed by a third party, her password or user name is compromised, or she learns that the PACS network has been otherwise misused [Agr. #1, par. 4]; and

She understands that her use of the PACS network will be monitored and that any failure to abide by the agreement will result in denial of access to the PACS network [Agr. #1, par. 5].

Give this agreement to all the referring physicians and specialists you work with who would like to have access to your PACS network, Spencer suggests. Ask each of them to sign it and return it to you, and then have your practice’s privacy officer or network administrator sign it, too. Be sure to keep the signed agreements in a central file, she says.

Insider Says: Spencer emphasizes that it’s crucial that you conduct the periodic monitoring that the users agree to. Most PACS networks have features that make it a fairly simple matter to pull up a log that identifies who has accessed what images, she says. She advises her clients to regularly review which users viewed

(continued on p. 4)
PACS IMAGES (continued from p. 3)

which images—on a monthly basis, at least. If you find misuse, you should contact your attorney immediately, Silverman says. Your attorney can advise you whether you must account for the disclosure or take other action.

Require log-in acknowledgment. Here’s another step you can implement immediately: Set up a log-in page on your PACS network that asks the user to agree to certain conditions before viewing any images. You can adapt and use our model log-in agreement, which is similar to one Silverman developed for his clients. This agreement appears on the computer screen when a user tries to access the PACS network. It appears after log-in but before any images are selected for viewing. And the user must agree to its terms—by clicking on the icon that says “I agree”—before the network will permit him to access patient images. That is, the user must:

■ Acknowledge that the purpose of his PACS access is to allow him to view pertinent images of his patients [Agr. #2, par. 1];
■ Confirm that he has been assigned a password and has signed the password acknowledgment form [Agr. #2, par. 2];
■ Agree to use and disclose all information in accordance with HIPAA, other applicable federal laws, state law, and/or professional ethics [Agr. #2, par. 3]; and
■ Agree to be responsible for any improper use or disclosure he causes [Agr. #2, par. 4].

Get Additional Protection with Log-in Agreement

To better ensure that users of your PACS network are abiding by your rules, New York health care attorney Jay Silverman suggests requiring users to pass through an acknowledgment page before access is granted. It’s not too difficult for most network administrators to set up, he says. Here’s a Model Agreement that Silverman developed for one of his clients to install on its PACS network. The agreement should appear on the screen after the user has logged in, but the user must click “I agree” before any patient information will be displayed.

**ELECTRONIC USER LOG-IN AGREEMENT**

Authorized use of this computerized medical image viewing service (“PACS network”) is subject to the following terms and conditions, which must be accepted by the user as indicated below:

1. **PACS ACCESS LIMITED TO PATIENT CARE PURPOSES.** I acknowledge that the PACS network stores patient radiological images and that the purpose of the PACS network is to permit physicians to quickly access and view the radiological images of their patients.

2. **PASSWORD USE AGREEMENT RECEIVED AND ACCEPTED.** I acknowledge that I have received and signed XYZ Radiology’s Password Acknowledgment and Use Agreement and that I agree to abide by its terms.

3. **USE AND DISCLOSURE IN ACCORDANCE WITH APPLICABLE LAW.** I agree to use and disclose any information stored in the PACS network only in accordance with the Health Insurance Portability and Accountability Act of 1996, other federal laws, state law, and the ethics rules of the medical profession.

4. **RESPONSIBILITY FOR IMPROPER USE OR DISCLOSURE.** I agree that I will be legally responsible for any improper use and/or disclosure of images and/or information I access on the PACS network.

If you acknowledge and agree to all of the foregoing, click “I agree.” If you object to any of the foregoing terms or conditions, click “I do not agree,” and you will be logged off the PACS network.

[ ] I AGREE
[ ] I DO NOT AGREE

**Perform Due Diligence if Contracting for Overseas Transcription**

It’s increasingly common for medical transcription companies to outsource to—or directly hire—medical transcriptionists located overseas. Transcription companies that use overseas transcriptionists can offer high-quality service, often at a lower price than the domestic competition.

But there’s more than price to consider when hiring a transcription company that uses transcriptionists located overseas. You’ll need a guarantee that the turnaround time and the transcription quality will be acceptable—just as you would with any transcription service. And you’ll need to be sure the arrangement doesn’t lead to certain HIPAA compliance...
problems. We’ll tell you what you need to look out for and how to protect yourself if you’re considering using such a transcription company.

**Risks Higher for Overseas Transcriptionists**

Medical practices that use outside transcription services are assuming a certain amount of risk, regardless of the location of the company or its transcriptionists, says New Jersey healthcare attorney Michael Schaff. That’s because of the nature of medical transcription: The practice is allowing the transcriptionist access to its patients’ confidential information, including protected health information (PHI) governed by HIPAA and its privacy regulations. The privacy regulations require a practice to have a business associate agreement with the transcription company before releasing any PHI to the company.

The business associate agreement must require that your patients’ confidential information be handled in a manner that’s HIPAA-compliant. (For more detailed information on business associate contracts, see “How to Create a Business Associate Contract,” *Insider*, Nov. 2002, p. 7.)

Schaff clarifies that the practice would be liable under HIPAA for the conduct of the company if the practice:

- Knew that the company violated the terms of the business associate agreement; or
- Knew that the company engaged in a practice or pattern of activity that was likely to breach the terms of the business associate agreement; and
- Didn’t take reasonable steps to stop the violation (and if unsuccessful, terminate the contract).

A patient could sue a practice for a single improper disclosure that the transcription company made, Schaff warns. Even though a patient doesn’t have a private cause of action under HIPAA for improper disclosures of the patient’s PHI, a patient could file a breach of privacy lawsuit under state law, for example, asserting that the practice didn’t comply with the minimum protections HIPAA requires. So the business associate contract not only protects the patient, it protects your practice as well by making the transcription company agree to the proper handling of your patient’s PHI.

The problem with companies that use overseas transcriptionists is one of enforcement, Schaff says. And if the company itself is located overseas, it may be difficult to gain jurisdiction over the company to sue it if its negligence or malfeasance caused a HIPAA violation that your practice is being held responsible for. And even if you get jurisdiction and sue successfully, collecting any damages is more difficult if the company is located offshore, he notes.

Even if the company is domestic and only the transcriptionists are located overseas, you can still have problems. For instance, recently, a medical transcriptionist located overseas but employed by a company in St. Louis threatened to post several patient records on an Internet site if she didn’t get a raise. Although a domestic employee can make the same threat, preventing such a situation is simpler if the employee is subject to the laws of the United States, Schaff says.

All this means that the risks you assume are greater if the company or its transcriptionists are located overseas—and the risk to them is less than it would be if they were domestic. So you need to keep this in mind when deciding whether overseas transcription is right for your practice or facility.

**Due Diligence Key to Minimizing Risks**

To avoid getting burned by a transcription service that uses transcriptionists located overseas—whether the company itself is foreign or domestic—Schaff recommends that you take certain basic steps to assure yourself that the company is legitimate and offers an acceptable level of service. This process is called “due diligence.”

**Check references.** First, ask for references from the company and check them out thoroughly. Contact your specialty society, local medical society, and medical administration resource groups like the Radiology Business Management Association and Medical Group Management Association, to find out if they’ve heard anything good or bad about the company. And canvass your colleagues for information. If no one has heard of the company, or if the information you hear is negative, then you should pass, Schaff says.

**Get assurance of financial viability.** If you get good reports, you may want to go ahead. But your due diligence isn’t done. You need to make sure that the company has sufficient financial resources to cover any losses its negligence or malfeasance may cause you. There are several ways of establishing this, Schaff says, the most common being an indemnification provision coupled with a bond, a letter of credit, or proof of insurance naming the practice as an additional insured. To avoid unnecessary expense to your practice, ask to see these documents before you consult your attorney for help with the contract—if the company’s financial wherewithal isn’t satisfactory, you won’t need a contract because you won’t hire it.

**Get help from your attorney.** Let’s say that you hear good things about the company and its services, and it has demonstrated its financial responsibility to your satisfaction.

(continued on p. 6)
OVERSEAS TRANSCRIPTION
(continued from p. 5)

Even if you typically handle vendor contracts without the assistance of your attorney, it’s essential to get legal help when dealing with an overseas company or even a domestic company that will be doing work for you overseas, Schaff says.

So call your attorney and let him know that you’re considering a transcription contract with a company that will be doing the work overseas, regardless of where the company is located. Your attorney should help you make sure that you have a valid business associate agreement that binds the company and any of its employees or independent contractors to obey and comply with all laws that govern your practice. Schaff explains that, while not necessarily required by HIPAA, your attorney may want the actual transcriptionists, as well as the principals of the company, to sign the agreement. And your attorney must ensure that there is language in the contract that makes the company and its transcriptionists subject to the court’s jurisdiction in your locality, Schaff says.

INSIDER SOURCE

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CMS Issues Transmittal on New Reassignment Rule

On Feb. 27, 2004, CMS issued a transmittal that revised the instructions to Medicare carriers regarding Medicare’s new reassignment rule. We first told you about the new Medicare reassignment rule—which came about pursuant to the Medicare Prescription Drug, Modernization and Reform Act—in the March 2004 issue of the Insider. But CMS needed to issue new instructions to its carriers about how to implement the changes before practices could reap the benefit of the new law. These needed instructions were issued in the Feb. 27 transmittal, which went into effect on March 12, 2004. We’ll tell you about two instructions in the transmittal and show you how they’ll make things easier for some radiology practices. And we’ll give you some Model Language (p. 7) that you can adapt and use in your reassignment agreements.

Two Ways to Benefit from New Law

1) Place of Service No Longer an Issue. The transmittal—CMS Transmittal 111—instructs Medicare carriers to now pay an entity “that submits a claim for services provided by a physician or other person under a contractual arrangement with that entity, regardless of where the service is furnished” (emphasis added).

This new instruction is significant, says Virginia health care attorney Thomas W. Greeson. In the past, Medicare required that reassigned services be performed “on-site” (unless the technical component was performed at an IDTF)—which limited the ability of radiologists to enter into reading arrangements with other facilities and practices. Plus, although Medicare rules have long permitted teleradiology arrangements, it was impossible for the technical component provider to globally bill the service, because the professional component would be provided in a different place—violating Medicare rules that said that the professional component must be performed “on-site.” Now that Medicare no longer requires that the professional component be provided on-site when the right to bill Medicare is reassigned, professional services provided through teleradiology may be globally billed in some circumstances.

Insider Says: Greeson cautions that this change doesn’t affect “place of service” rules. So a claim for a professional service must still state the actual place where the service was rendered. And the claim must be submitted to the Part B carrier for that locality because, Greeson notes, there are still some geographical payment differentials in the Medicare fee schedule.

2) Independent Contractors May Reassign Benefits. The CMS transmittal instructs the carriers to accept claims from Medicare providers on behalf of independent contractors with whom they have a contractual relationship. In the past, providers could submit claims only on behalf of their W-2 employees.

This change should offer radiology practices more flexibility in structuring business relationships, Greeson points out. For example, a practice now may have independent contractors provide on-call services at a hospital, or read films at another practice’s office, and reassign the right to bill Medicare for these services to the practice. In the past, the practice would have been required to have an employee or partner perform such services, he explains. In addition, the new reassignment rule should make it easier for practices to have locum tenens reassign benefits—provided they have a contractual relationship with the practice.

CMS Adds Program Integrity Provisions

Although the new rule permits reassignment between parties with a con-
Be Careful When Structuring Financial Relationships with Clinical Research Sponsors

It’s becoming more common for practicing radiologists working in private offices or imaging centers to be involved in conducting clinical research studies. That’s because in recent years economic forces and competitive pressure are driving more research into the private practice realm.

There are many legal issues and compliance traps to be aware of when a private practice conducts clinical research, says Washington, D.C., health care attorney William A. Sarraile. Problems often come up because many private practices aren’t used to conducting clinical trials, and the sponsoring organizations aren’t as sensitive to the issues that can arise with the private practice physicians who conduct them. And it can be hard to find practical advice about how to deal with the compliance problems and the legal issues.

That’s where the Insider can help. We’re beginning a series of articles to help you decide whether to participate in clinical trials, and what to look out for if you do. In future issues, we’ll deal with topics such as acquiring informed consent for services provided as part of a clinical trial; Medicare coverage for services provided during clinical trials; maintaining data integrity; adhering to the research protocols; and appropriately publishing research results.

In this article, we’ll talk about financial relationships between physicians and the sponsors of clinical trials. We’ll discuss the forces driving clinical research into the private practice setting, and explain why clinical research sponsors are happy to pay your practice to assist them in their studies. Plus, we’ll point out the traps that you should avoid when entering into a relationship with a clinical research sponsor. And most important, we’ll tell you about the ways that financial relationships between your physicians and clinical trial sponsors can be structured within the law.

Research Explosion Overwhelms Academic Centers
Clinical research is moving into the private practice setting for several reasons, says Sarraile. Sponsoring...
organizations, such as biotechnology, pharmaceutical, and medical device companies, are under increasing pressure to launch drugs and devices quickly. Pharmaceutical companies, for instance, need drug sales to recoup their research investment, and patent protection is eroding. So the manufacturers and developers of drugs need a steady stream of new drugs to maintain profitability.

These factors act as incentives to increase the volume of clinical research. Approximately 100,000 clinical trials are going on in the United States at any given time, reports Sarraille. And although, traditionally, clinical research was conducted primarily at academic medical centers, there are no longer enough researchers affiliated with those academic centers to support the volume of clinical research in this country, Sarraille says. As a result, sponsoring organizations are looking to the private medical community for help at the same time that the profit margins for medical practices are eroding.

Clinical Trial Participation Can Boost Bottom Line
This shift toward conducting clinical research in private physician offices has come at an opportune time, since reimbursement for many common radiologic procedures is declining. Many radiologists are expanding into self-pay services, but may be finding that offering these services takes up only part of the slack. So they look for other ways to expand their practices and increase profits.

Conducting clinical research can help a practice grow in several ways, expanding its patient base by offering focused diagnostic studies or therapies for patients with certain conditions the clinical trial is designed to assess. The practice’s reputation in the community, and particularly among referral sources, may be enhanced, as well. Most important for many practices, research sponsors compensate physicians directly for conducting clinical research because conducting a clinical trial involves substantial administrative time and effort, Sarraille explains. Physicians must monitor patients closely and document their progress meticulously. Physicians must adhere to a rigorous protocol that may involve frequent reports to the sponsor. And sponsors don’t expect the physician to do all that for nothing—so they pay physicians for their participation.

Fraud and Abuse Concerns with Compensated Research
With the proliferation of clinical research outside the confines of academic medical centers, there have been instances of abuse, Sarraille says. And there’s a perception among regulators that research conducted outside the academic medical center may be more vulnerable to abuse. For instance, research sponsors could use the financial incentives associated with clinical trial participation to compensate physicians for their referral patterns or prescribing practices—and that would be a violation of the antikickback law, Sarraille notes.

The antikickback law bars anyone from giving or receiving remuneration in return for the referral of a service that’s reimbursable under one of the federally supported health insurance programs. Any compensation from the manufacturer of a drug or device to a health care provider in a position to recommend or prescribe the use of the drug or device has the potential of violating the antikickback law, Sarraille cautions.

The OIG has mentioned issues associated with clinical research as one of its enforcement priorities for the past several years. The OIG’s statements reveal a concern that clinical trials may be used as vehicles to direct improper compensation to physicians. In fact, the OIG has been concerned about these kinds of issues for a long time. Sarraille points out that the OIG released a special fraud alert in 1994 that expressed concern about the ways pharmaceutical companies may reward physicians for their prescribing practices. It mentioned schemes in which physicians were paid consulting fees and rewarded with research stipends and free trips, for simple administrative tasks. It noted that these arrangements could be harmful to patients because a physician’s clinical judgment might be clouded if the physician is rewarded for prescribing or using particular products.

Structure Relationships Carefully
If any of the physicians in your practice conduct clinical research, it’s important to structure the financial relationship between your practice and the sponsor of the research properly. The “smell test” is a good place to start, Sarraille remarks. Think twice if a sponsor approaches your practice with a proposal that:

- Appears to involve “research” that’s perfunctory or unlikely to be of clinical import;
- Fails to delineate your practice’s obligations and duties;
- Involves minimal reporting and record keeping;
- Lacks a definite time commitment or termination provision;
- Provides incentives that seem to seek to influence the physician’s clinical judgment; or
- Seems to offer rewards, financial or otherwise, that substantially exceed the value of the services your practice agrees to provide.
“If it sounds too good to be true, it may be just that—too good to be true,” Sarraille remarks. But if you think the sponsor seeks legitimate research assistance, you can structure the arrangement so that it doesn’t violate the antikickback law. Most clinical research participation arrangements can be structured to fit within the safe harbor for personal services agreements, or to at least come close to doing so, Sarraille says.

To conform to this safe harbor, a physician (or physician practice) and a research sponsor must both sign a written agreement that:

- Sets a term for the agreement of one year or more;
- Describes all the duties or services covered by the agreement, and establishes a time commitment for the services—whether full-time, part-time, or sporadic;
- Sets the compensation for the services in advance at their fair market value in an arm’s-length transaction, and doesn’t determine the compensation in a manner that takes into account the volume or value of referrals between the parties;
- Attests that the services to be performed don’t violate any state or federal law;
- Attests that the aggregate services to be performed under the contract don’t exceed those that are reasonably necessary to accomplish the commercially reasonable purpose of the contract.

Sarraille emphasizes that an agreement doesn’t necessarily violate the antikickback law if it doesn’t fit within this safe harbor. But fitting an agreement within a safe harbor offers your practice protection. Always consult your attorney for help determining whether an agreement fits within a safe harbor, he suggests.

**Insider Says:** The American Association of Pharmaceutical Manufacturers has developed voluntary guidelines for relationships between physicians and pharmaceutical manufacturers. To read more about those guidelines and about those relationships in general, see “Adopt Guidelines for Dealing with Drug and Medical Device Manufacturers,” *Insider*, Nov. 2003, p. 1.

**Insider Source**

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**Get Key Info on Plans from Government Agencies, Courts**

It’s more important than ever to get financial and other information about plans so you can evaluate whether to sign or keep their contracts. But not every plan is willing to hand over information about itself, especially if it’s running into financial or legal trouble. And like many practices, you may assume that if you haven’t yet signed a contract with the plan—or if the contract doesn’t require the plan to divulge information about itself—getting the information is hopeless.

But practices shouldn’t give up so easily, says California attorney Stephen Hansen. Even if you can’t get information from a plan, you can usually get at least some information about the plan from government agencies or courts. We’ll explain how this information may be available to you and how you can get it.

**Why Government Agencies, Courts Have Plan Info**

Most states require plans to file information with the state agency that licenses or regulates them, says Hansen. For instance, state law usually requires HMOs to file periodic financial statements and auditing reports by certain deadlines. In some states, such as California, the state can shut down an HMO that doesn’t file its financial statements on time. Once the statements have been filed, they’re considered to be public information, and you can get a copy, says Hansen, who regularly gets information on plans this way on behalf of his clients.

This isn’t the only way to get information from the government. For instance, if a plan is publicly traded, you can get information about it from the Securities and Exchange Commission, since the plan is required to file statements and reports with that agency. And if you know that a plan is involved in a lawsuit, you can get copies of whatever records have been filed with the court, since those also become public documents once they’re filed, notes Hansen.

**Hospital Bailed Out of Contract Based on Info from Court**

For example, one of Hansen’s hospital clients had a contract with a plan that allowed either party to terminate the contract with only three days’ notice if...
the other party wasn’t in compliance with the law. When the plan let its monetary reserves fall below the minimum amount required by the state, the state agency that regulated the plan sued the plan to force it to either add money to its reserves or get a receiver appointed to run it. The local press reported the lawsuit. Hansen asked for and got a copy of the lawsuit and its supporting documents from the court and discovered that the plan was in much worse financial difficulty than anyone had known.

Based on that information, the hospital terminated the contract on three days’ notice using the out-of-compliance termination clause. It was able to bail out of the contract right before the plan filed for bankruptcy protection. Had the hospital still been in the contract when the plan filed for bankruptcy, it would have been stuck in the contract—and obligated to treat plan members—until the bankruptcy court allowed it to get out of the contract, says Hansen. “We were accused of having inside information, but that’s not true. We were just savvy and followed up on information that anyone could have gotten,” he explains.

Two Steps to Get Info
To use plan information from government agencies and courts to your advantage, take these two steps:

Step #1: Know where to get info.
Find out where the plans you work with (or want to work with) must file information with the government. This will vary based on the plan and your state law. For instance, many states don’t require PPOs to file any documents to do business in the state. But if a plan has a Medicare HMO, it will have to file reports with CMS.

If you’re not sure where to look for plan information, ask your attorney for help. And keep an eye out for nonroutine opportunities to get this information, such as lawsuits filed by or against a plan.

Step #2: Ask for info. Once you identify where to get plan information, contact each agency or organization to find out what information it has on a plan and how to get the information. Then follow the agency’s or organization’s procedures.

For instance, some agencies may require you to prepay for copies of the documents on file, especially if there are many. Some agencies may require that you ask for the information by saying that you’re asking for it under the federal Freedom of Information Act or similar state laws, which allow members of the public to get information filed with the government.

But it’s usually not hard to get the information, says Hansen. “You’re entitled to it, after all,” he points out.

Insider Source
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