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OIG Cautions Providers to Take Care When Choosing Consultants

In June, the OIG issued a special advisory bulletin on health care consultants. In it, the OIG recognized the legitimate role that health care consultants play in improving the overall integrity of the health care system and acknowledged that most consultants are honest. But the OIG cautioned providers about a "small minority" of consultants that engage in improper practices.

The OIG bulletin doesn't say anything new about what conduct constitutes fraud and abuse, says health care attorney Alice G. Gosfield. What it does is remind providers to be careful when relying on consultants and not blindly accept advice from consultants or anyone else, she says. The bulletin emphasizes that relying on a consultant's advice doesn't relieve a provider of its responsibility to comply with the law, adds health care attorney Carol Bowen. It also sends a message that the OIG is concerned about inappropriate consulting practices and will be looking out for them, says Bowen.

We'll tell you the questionable consultant practices the OIG says to be on the lookout for. And we'll give you seven tips on how to protect your practice when hiring and dealing with consultants.

Questionable Practices Highlighted in Bulletin

In the bulletin, the OIG highlighted four questionable practices that providers should be aware of when dealing with consultants:

Illegal or misleading representations. The OIG warned that some consultants may mislead providers about their relationships with Medicare or the OIG. For example, some consultants may falsely claim that:

- They have "inside" or "special" access to the OIG or OIG materials;
- They or their services or products are approved, certified, or recommended by Medicare, CMS (formerly HCFA), the U.S. Department of Health and Human Services (HHS), or the OIG;
- Their seminars are mandatory for maintaining a Medicare provider number (or they may claim that failure to attend could lead to government sanctions);
- They're recommended by the OIG (or they may imply this by using federal program logos or symbols in their marketing); or
- They offer government-recognized accreditation or certification for compliance programs or officers.

In the bulletin, the OIG explained that Medicare doesn't require providers to attend training courses. The OIG also said that it doesn't endorse or recommend any consultant or permit consultants to use its logo or any other federal logo or symbol.

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OIG CAUTIONS PROVIDERS (continued from p. 1)

Promises and guarantees. The OIG cautioned that some consultants may promise or guarantee unreasonable or improbable results. For example, a consultant may promise a client an appraisal of a physician's practice that will support the "fair market value" the client "needs." Or a consultant may promise that its advice or services will result in a specific dollar or percentage increase in the client's reimbursement (and may base the consulting fee on a percentage of that increase). To make good on their promises, these consultants may help the provider submit false claims or false cost reports.

Encouraging abusive practices. According to the bulletin, some consultants may also encourage abuse by promoting "aggressive billing schemes" and unreasonable practices. For example, the OIG says, a consultant may suggest that a client use inappropriate coding to increase reimbursement. Consultants may also suggest ways to avoid detection by the government. Other examples in the bulletin include advising a client to:

- Slightly modify a routine medical supply "in an insignificant manner to justify billing the supply as a device" that gets higher reimbursement;
- Bill for a more expensive item or service when a less expensive item or service was provided;
- Adopt a "patently unreasonable interpretation" of laws or regulations to justify higher reimbursement;
- Create deceptive documentation to mislead auditors or others reviewing claims; or
- Disguise double billings and claims for medically unnecessary laboratory services.

Discouraging compliance efforts. Finally, the OIG said that some consultants may advise clients against implementing specific compliance efforts or cooperating with payor audits. For example, they may advise clients not to perform retrospective billing reviews because of the possible ramifications of finding overpayments.

What You Can Do to Protect Your Practice

The OIG concluded by reminding providers that most consultants are honest and provide valuable services. To avoid the few consultants who do engage in the questionable practices the OIG highlighted, the bulletin advised keeping in mind that "if a consultant's advice seems too good to be true, it probably is."

We asked several attorneys and consultants what providers can do to avoid difficulties caused by improper advice from consultants. All agreed with the OIG that you should think twice before you follow advice that seems too good to be true. But our experts had some specific tips for making sure you're getting the best advice from consultants, whether you're hiring a consultant or attending his seminar or workshop. Here's what they suggest doing:

Tip #1: Ask for references. This advice seems simple, but it's true for any person or organization you hire or work with, advises Bowen. If a consultant has solid references, it's more likely that her practices are appropriate. Don't just ask for one or two references. Get several. And make sure you check them, she says.

For seminars and workshops, ask colleagues if they've attended seminars given by the consultant you're considering, says health care consultant

Barbara J. Cobuzzi. She suggests you take advantage of the vast resources available through list services, online discussion groups and message boards, and such organizations as local chapters of the Professional Association of Health Care Office Management (PAHCOM) and the American Academy of Professional Coders (AAPC). These resources will allow you to reach a number of colleagues who can share their experiences with specific seminars and consultants.

Insider Says: Remember that list services and similar Internet resources are a public forum, says health care attorney Robert E. Mazer. So be careful what you say. For example, don't acknowledge doubts about advice that you plan on following or have already implemented, he says.

Tip #2: Check consultant's experience. Whenever you hire consultants, make sure they have relevant experience and the expertise needed to address your compliance issues, says Mazer. For example, if you hire a consultant to help you with billing and coding, make sure that the consultant has extensive coding experience, says Bowen. And find out whether the consultant has expertise in your specialty, recommends Cobuzzi. You want to be sure the consultant keeps current on the latest coding and regulatory developments affecting your specialty. Finally, Cobuzzi warns, if you're attending a coding seminar given by consultants, make sure the consultants practice what they teach before you follow their advice. Be certain a consultant has actual coding experience and isn't just someone trained to teach a coding seminar. You can find this out by asking the seminar presenter for her bio or résumé.

Tip #3: Ask for compliance plan. When hiring a consultant, check whether the consultant has a compli-

ance plan, recommends Bowen. This is especially important if the consultant will be handling your billing and coding. The OIG has issued compliance guidance for third-party billing companies, recommending that they adopt compliance plans. If the consultant has a compliance plan in place, that's one piece of evidence that the consultant is taking compliance seriously. If he doesn't have a compliance plan, that should raise some questions in your mind, says Bowen.

If the consultant does have a compliance plan, Cobuzzi suggests asking for a copy and reading it. Of course, a compliance plan is meaningless unless the consultant implements it. So try to get a sense of whether the consultant actually follows the compliance plan, she suggests. You can do that by selecting a section in the plan and asking the consultant about it.

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► Congress Holds Hearings on Health Care Consultants

The OIG issued its special advisory bulletin as part of recent hearings the Senate Finance Committee held to look into the practices of health care consultants. At those hearings, representatives from both the OIG and the General Accounting Office (GAO)—which is Congress's investigative arm—reported on suspect practices by health care consultants.

OIG AND GAO PRESENT REPORTS

The OIG bulletin was presented by Lewis Morris, the Department of Health and Human Services' assistant inspector general for legal affairs. Morris acknowledged that providers should be fully compensated for their services and that they need consultants to help them "navigate the sometimes complex rules of health care programs." But, he said, a small minority of consultants were engaging in improper practices and encouraging abuse of federal health care programs.

The GAO report focused on two workshops and one seminar given by health care consultants. The GAO investigators who attended the workshops found that the consultant gave improper advice that could lead providers to commit fraud and abuse in violation of federal law.

CONSULTANTS QUESTION GAO INVESTIGATION

Many consultants are taking issue with the attention consultants are getting as a result of the OIG bulletin and the GAO report. In particular, consultants point to the limited nature of the GAO investigation. For example, although GAO testimony indicates that they contacted an individual consultant, the report focuses only on comments made at two workshops (both presented by the same consulting firm) and one seminar that the GAO investigative team—a licensed physician and a criminal investigator—attended.

Consultants also claim that some statements the GAO cites as encouraging fraudulent billing appear to have been taken out of context. For example, health care consultant Barbara J. Cobuzzi notes that the GAO played a tape recording at the hearings in which a consultant gave workshop participants advice about billing under a physician's name for services rendered by a nurse or nonphysician practitioner. The GAO implied that this advice was improper. But it appears the consultant was referring to the practice of "incident to" billing, which is legitimate when specified requirements are met.

Insider Says: Morris' testimony can be found at www.dhhs.gov/progorg/oig/testimony. Scroll down to 6/27/01 testimony.

And you can find the GAO report at www.gao.gov/cgi-bin/getrpt?rptno=GAO-01-818, and GAO testimony at www.gao.gov/cgi-bin/getrpt?rptno=GAO-01-899T.

OIG CAUTIONS PROVIDERS (continued from p. 3)

Tip #4: Question the fee arrangement. Carefully review the fee arrangement before you hire a consultant. If the consultant's fee depends on how much payors reimburse you, the arrangement may give the consultant an incentive for improper practices, says Bowen. Take a close look at the consultant's fee arrangement to make sure it doesn't offer incentives for the consultant to get you to maximize your reimbursement, especially if the consultant or a third-party billing agency is providing coding advice or services and is compensated based on a percentage of your increased reimbursement, she says.

Tip #5: Require insurance. Before hiring a consultant, make sure she maintains professional liability insurance. Also, in the contract you sign with the consultant, require her to indemnify your practice—that is, promise to defend you and cover your damages—if her negligence or intentional actions create liability, suggests Mazer. Although you shouldn't assume insurance and indemnity provisions will cover your potential liability, they could be helpful. And the fact that a consultant agrees to these provisions may be another indication of good business practices, he adds.

Tip #6: Get it in writing. Whenever possible, ask a consultant or sem-

inar provider to give his advice in writing, says Cobuzzi. And ask for cites to relevant regulations, laws, or policy manuals. If you're hiring a consultant, ask him to prepare a report concerning his services, says Mazer. If the consultant performed an audit, make sure the report specifies the scope of the audit, he adds. It should say what was—and more important, what wasn't—reviewed during the audit. For example, you want the report to show whether the audit covered not only Medicare but also Medicaid and private payors and whether it covered compliance with the Stark II law's self-referral provisions and the federal antikickback law.

Tip #7: Get second opinion if advice seems too good to be true. "Do what you bill, and bill what you do," says Gosfield. That means you should be getting paid only for the services you render. Make sure your consultant is helping you capture all the services you did, not trying to increase your bottom line at any cost, says Cobuzzi. And don't blindly accept a consultant's assurance that a certain coding method always gets paid. Just because it got paid doesn't mean it was coded accurately, she says.

If a consultant's advice leaves you feeling you're getting paid for services you didn't render, or just sounds too good to be true, get a second opinion,

advises Cobuzzi. If you get a consensus confirming the advice your consultant gave you, you can more safely rely on the advice. You can use the resources suggested above—list services and local chapters of PAHCOM and AAPC—to get your second opinion, but remember our warning about being careful what you say. Mazer suggests that in some cases you may want to consult an attorney or get government advice to confirm that a consultant's recommendation complies with the law. If your attorney or a government representative says the consultant's advice is wrong, don't follow it, says Mazer. Otherwise, you could face allegations that you knowingly and willfully broke the law, he cautions.

Insider Says: You can find the OIG Special Advisory Bulletin at www.dhhs.gov/progorg/oig/frdalrt/consultants.htm. ■

Insider Sources

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INSIDER CHECKLIST

Top 10 Items to Include in Your Practice's Compliance Library

Many practices spend more time and money getting and staying current on compliance issues than on clinical developments. But this commitment to compliance is necessary because failing to comply with applicable laws and regulations can mean audits, demands for repayment, exclusion from Medicare, trouble

with state licensing authorities, and even false claims charges.

One way to help your staff stay on top of compliance issues is to establish a compliance library, says Sue Prophet, director of coding and compliance with the American Health Information Management Association. It doesn't have to be

a real library—just a shelf or a file drawer in the office to hold materials in which employees can look for answers to their compliance questions.

With help from Prophet, we've put together a checklist of the top 10 items that every compliance library should contain:

❑ **CPT Standard Edition and Looseleaf Supplement**

Published by the AMA, these tools describe the official codes and help coders determine which codes to use for procedures and office visits.

There's no substitute, says Prophet. Be sure to always have the up-to-date editions, she cautions. The AMA comes out with new versions every couple of years, and even though the changes are sometimes small, it's crucial to code using the current version.

❑ **ICD-9-CM and Looseleaf Supplement**

These are also must-haves, Prophet says. They're the official "bibles" of diagnosis coding. With correct diagnosis coding a continuing enforcement priority for the OIG, it's essential that your staff has the official guides to help them assign correct diagnosis codes.

Keep in mind that coming up with a diagnosis is a job for the physician. The physicians in your practice should have copies of the ICD-9 guide available so that they can assign diagnosis codes themselves. Or they should be trained to document the signs and symptoms of the diagnosis so that coders can easily assign a code without having to make assumptions or clinical judgments, Prophet cautions.

❑ **CCI Directives**

The correct coding initiatives (CCI) directives for your specialty are important tools. They're special edits that affect how you code certain procedures, says Prophet. Most specialty societies will provide the CCI directives to their members.

❑ **Carrier/Intermediary Bulletins**

Bulletins from your carrier or intermediary are terrific sources of information about how the carrier

or intermediary expects you to do things, Prophet says. Make sure you keep your file of these bulletins up to date, and encourage your staff to read the latest bulletin as soon as it arrives.

❑ **LMRPs**

You must keep your staff current on your carrier's LMRPs for procedures you do frequently. And you should get in the habit of checking your carrier's LMRPs whenever you do an unusual procedure, Prophet remarks. The most up-to-date versions are available on your carrier's Web site. Or you can visit www.lmrp.net for all the LMRPs currently in effect nationwide. But the nationwide site is updated only quarterly, says Prophet, so be sure to verify with your carrier any information you get from the site.

❑ **Billing Directives from Commercial Payors**

Most practices deal with many payors besides Medicare and Medicaid, and many of those commercial payors have their own rules about billing procedures and seeking coverage determinations and treatment approval. Most payors send out newsletters or bulletins with this information, and sometimes it will be in your provider agreement. Be sure to keep all this information handy so that your staff can easily find the answer to questions that may arise regarding patients who are covered by payors other than Medicare or Medicaid, Prophet suggests.

❑ **OIG's Compliance Program Guidance for Physician Practices**

The OIG's compliance guidance contains a lot of useful advice about procedures you should implement to ensure compliance. It's a useful tool for practices to refer to when problems arise—or preferably before problems arise. You can get the compliance guidance for physician practices at

the OIG Web site www.hhs.gov/progorg/oig. And if your practice has developed its own compliance plan, be sure to have it readily available for employees to consult.

❑ **OIG's Special Fraud Alerts and Workplans**

The OIG's fraud alerts and workplans provide a road map to the issues getting top enforcement priority by the federal government. When the government hands you information, you shouldn't ignore it, Prophet says. So assign someone from your office to check to OIG's Web site at least once a month and print out any relevant information.

❑ **Information from Professional Organizations and Specialty Societies**

One of the most valuable benefits of membership in professional organizations and specialty societies is their publications, Prophet says. Too often these publications are discarded as soon as they arrive. That's a mistake because they're often one of the first and best sources of information about compliance issues relevant to your practice. Make a binder or folder, and keep these publications for your staff to look through when they have questions or just want to keep up with current topics of interest in your specialty.

❑ **Newsletters**

A good newsletter—like the *Insider*—is a great source of practical compliance information. Subscribe to one or more, and keep the back issues available for your staff to consult when questions arise, she advises.

Insider Says: Although technically not compliance tools, Prophet advises keeping a medical dictionary and some basic clinical texts available for your nonclinical staff.

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INSIDER CHECKLIST (continued from p. 5)

These resources may help your coding staff if some question arises about documentation in the patient's

clinical record (but be sure to regularly remind them that assigning a clinical diagnosis is a job for physicians only). ■

Insider Source

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Three Tips to Help You Get Hospital to Carry Its Fair Share of Financial Burdens

Radiology groups can be in a delicate situation when negotiating with hospitals because the groups that don't do a lot of interventional work depend on referrals, rather than bringing referrals to the hospital. Sometimes hospitals try to exploit that dependence and make the radiology group pay for the space it occupies, the equipment it uses, or clerical and professional support. Don't let the hospital get away with it, advises Virginia health care attorney Thomas W. Greeson. The hospital should be paying for these items. Also, if the hospital is trying to deny radiologists services it provides to high-admitting specialists, it may be violating the antikickback law.

We'll give you three tips to help you avoid assuming financial burdens that hospitals may unfairly try to shift to you. And we'll give you some Model Contract Language that you can adapt and use in your hospital contract, to make it more evenhanded.

Insist on Fair Allocation of Expenses

You have to be hard-nosed when you negotiate your hospital contract, Greeson says, since it will have a critical effect on your practice. No matter how good the relationship seems, or how valuable you and the hospital may be to each other, some hospitals may try to exploit the perception that the radiology group is in a weaker negotiating position. Don't take it personally, Greeson suggests, but don't just accept it. When Gree-

son negotiates hospital contracts for his clients, he always tries to insert provisions to do the following:

Tip #1: Require hospital to provide support services. Your contract with the hospital should spell out what support services it will provide, says Greeson. Be sure this includes office space as well as salary for technologists, nurses, appointment and clerical staff, and any billing or medical records personnel who work exclusively for the radiology department. The hospital should also be responsible for paying the utilities. If the hospital balks, Greeson suggests that you mention the need to comply with the antikickback law. You could point out that the OIG, in its Compliance Program Guidance for Hospitals, notes its concern about hospitals undercompensating hospital-based physicians or depriving them of services the hospital provides to other, high-admitting physicians. You can find this guidance, which was issued in February 1998, on the Web at <http://oig.hhs.gov/modcomp/index.htm>.

To make sure all these items are covered, you can use language like the Model Contract Language below. It assumes that the hospital hires and pays the technologists and nurses, but it can easily be adapted if your group prefers to hire its own nurses and technologists.

Model Contract Language

Hospital will provide office space for Practice adequate for Practice which shall include appropriate work space for each member of

practice, a furnished waiting area sufficient to accommodate [*insert #*] patients, office space for technologists, nurses, and other professionals employed in the radiology department, and all such other space necessary for the Practice to fulfill its duties under this contract. Hospital shall be responsible for paying the salaries and benefits of all technologists, nurses, appointment staff, clerical staff, and billing and medical records personnel assigned to the radiology department. Hospital shall be responsible for providing heat, air conditioning, electricity, water, sewage, phone service, waste disposal, infectious waste disposal, radioactive waste disposal, and all other utilities necessary for the safe and proper operation of the department.

Tip #2: Require hospital to provide up-to-date equipment. Advances in radiology are rapid, and you can't provide up-to-date medical care if you don't have the right equipment. Your contract should require the hospital to provide the necessary equipment to maintain accreditation under the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and any state standards, and provide high quality care to patients. To do this, you can use language like the Model Contract Language below. It gives you the hospital's general assurances that you'll get appropriate equipment. It also includes a place to insert a list of any specific equipment you want or have been promised by the hospi-

tal and the date you expect to get it, Greeson says.

Model Contract Language

Hospital shall provide all equipment and services necessary for the proper operation of the department and sufficient to enable Practice to operate radiology department in accordance with JCAHO and ACR standards, state licensure requirements, and the duty to provide high quality care to hospital inpatients and outpatients. Hospital shall provide *[insert specific equipment and date by which you want it]*. Hospital shall be responsible for the costs associated with maintenance, repair, inspection, accreditation, and licensure of the equipment.

Tip #3: Assign administrative duties and require hospital to compensate them appropriately. If a member of the radiology group will have administrative responsibilities—for instance, as department director—the contract should spell this out. If possible you want the practice to be able to select the member who will serve as the department director. To do that, include a provi-

sion in your contract like our Model Contract Language that follows.

Our language assumes that the Hospital Medical Staff Bylaws discuss a department director's general duties, but it allows you to insert additional tasks assigned to the director. If your hospital's bylaws don't cover the director's duties, you can easily adapt the model language to list them. Our language permits the director to make decisions about hiring and equipment purchases in consultation with a hospital executive. It also assumes that the group will be compensated for the director's services. If other heads of departments receive compensation for these administrative duties, the radiology department head should, too. Again, if the hospital resists paying for administrative services in the radiology department, but pays other departments for similar services, mention the antikickback concerns and suggest that the hospital take a look at the OIG Compliance Program Guidance for Hospitals, Greeson advises.

Model Contract Language

Practice shall nominate one of its members to serve as Director of Radiology with responsibility for overseeing and supervising the professional and administrative operations of the radiology department, and such other duties assigned to department directors pursuant to the Hospital Medical Staff Bylaws. In consultation with *[insert name of hospital administrator or chief financial officer]* the Director shall select equipment and personnel for use in the radiology department and shall assume the following other enumerated duties *[insert list of additional duties]*. Practice shall receive additional compensation of \$*[insert amount]* annually in consideration of the Director's administrative duties.

Insider Says: If your hospital won't accommodate you on some of these points, reconsider whether you want to sign a contract with it. You may be better off setting up an imaging center on your own, Greeson says. ■

Insider Source

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Do Thorough Credentials Check of All New Health Care Providers

If your private practice brings in new physicians or other health care professionals, it's a good idea to check their credentials, just as a hospital would, says New York health care attorney Matthew Kupferberg. Although neither federal law nor most states' laws require private practices to do extensive background checks, it's the prudent course, Kupferberg says. We'll explain why it's important to check credentials and what you should check before you bring in any licensed medical professional as an employee, independent contractor,

or even partner, whether the professional is full-time or working only a few hours a month.

Why Do a Credentials Check

You have a responsibility to make sure your patients receive proper care from an appropriately trained and licensed individual, Kupferberg explains. Bringing a new medical professional into your practice without a background check can lead to major headaches for you and your practice.

For example, suppose you ask a radiologist with several years of

experience and great academic training to join your practice. Her license in your state is valid—you checked. But you don't do the kind of check that would show that her license was suspended in another state a year ago. "Even if her license is valid in your state, if there's a problem in another state, it's just a matter of time before your state takes some action," says Kupferberg. Among the problems you could face:

■ Your state would probably notify your hospital about the physician's

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DO THOROUGH CREDENTIALS CHECK

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licensing troubles, which would reflect badly on you;

- Your malpractice insurer could object to insuring your group if one physician has licensing issues, or it could charge a higher premium for the same coverage;

- The plans you're enrolled with might terminate your enrollment, and you would lose patients;

- Medicare and Medicaid could sanction your group if the physician with the problem provides services to your patients that are reimbursable under federally sponsored health insurance programs;

- Your state's licensing board might investigate you if it believes you negligently hired or supervised the physician or knew anything about the physician's alleged misconduct;

- A patient could sue you if a problem occurred with a professional working in your office and you could have discovered the problem ahead of time if you'd checked, Kupferberg points out; and

- Your reputation in the community could suffer if you allowed a person who'd had problems in the past to examine or treat your patients.

How to Get Started

Doing a credentials check can be time-consuming, Kupferberg says, so you don't want to bother unless you're sure you want to hire someone. But because it's so time-consuming, you want to leave yourself enough time to do the check before your candidate begins working for you. Kupferberg suggests that once you and your candidate have expressed mutual interest in working together, tell the candidate that you need to verify credentials before you can extend a formal offer. Then take the following steps to get started:

Get candidate's CV. You should already have a copy of the candidate's CV. If you don't, get one. It should list the candidate's education, honors, residency programs, state licenses, board certification, hospital staff appointments, and so on.

Ask for additional information. If the CV doesn't show that the candidate has full Medicare/Medicaid status and unrestricted prescription writing privileges, ask about this. Also ask for an accounting of any current or previous malpractice suits involving the candidate. And find out if there are any states in which the candidate once was licensed but isn't now, and the reason. This is all information you'll need to do a thorough check.

Ask for National Practitioner Data Bank report. If you're hiring a physician, ask him for a recent copy of his National Practitioner Data Bank report. This report contains information about the physician that state licensing boards, hospitals, peer review organizations, health care plans, and medical malpractice insurers must report to the data bank. As a private individual or practice, you can't ask the data bank for a report about someone else. The information in the data bank isn't supposed to be public, and only licensing boards, hospitals, and health care plans are entitled to get reports at this time, says Kupferberg. But any physician can ask for his own report.

The information in the report can help you speed up the credentialing process. It lists a physician's:

- Education;
- Licensing information, including any final action taken against a physician's license in any state;
- Hospital affiliations, including any loss or restriction of privileges in excess of 30 days;
- Any peer review activities against the physician;

- Any exclusions by Medicare, Medicaid, or even private health plans (under certain circumstances); and

- Malpractice verdicts and settlements.

Cross-check information. Compare the data bank report to the candidate's CV and the other information provided. Look for any discrepancies. For example, make sure the dates and places of the candidate's training match up; all the hospitals that reported to the data bank appear on the candidate's CV; and the candidate disclosed every state that has licensed him. If you find a discrepancy, you could try to clear it up with the candidate—or you could just keep looking for other candidates.

But even if the CV and the data bank report match up, you need to do some more checking. The data bank doesn't accept reports of *pending* lawsuits, licensing investigations, and other incomplete actions. For example, if a spate of malpractice lawsuits was filed against a physician within the last year or two, none of those suits may even have gone to trial yet. If there's no verdict or settlement, there won't be any report in the data bank. You could be hiring a physician with competency issues and not be able to tell.

What Outside Sources to Contact

Your next step is to contact outside sources to confirm the candidate's information and look for any crucial omissions. At this point, you may want to consider getting outside help. There are companies that specialize in credentialing physicians, and many of them are quite good, Kupferberg says. Some county medical societies or specialty societies have formed companies that provide this service to their members for a fee, he says. Professional societies, medical malpractice insurers, and your hospital may

all be able to give you information on reliable, competent credentialing services in your area.

If you'll handle the check yourself, here's what Kupferberg suggests you do:

Verify license in your state.

Every state will tell you whether someone is licensed to practice medicine there. Some have a phone line you can call, and some have Web sites you can check. To find out what to do, contact the local office of your state's department of health. Remember, though, that even if you find out that your candidate has a valid state license, that doesn't mean he or she isn't under investigation. Most states release disciplinary information only if there's been some final decision like a license revocation or suspension.

Verify license status in other states. Your candidate should have informed you of all the states that have ever licensed him. Check every one of these states to verify his status, Kupferberg emphasizes. Sometimes a physician will relocate to another state and not want to continue to pay licensing fees, so a license expires or isn't renewed. But you need to make sure that the license wasn't revoked, suspended, or "non-renewed" for some reason. The best way to find out, according to Kupferberg, is to ask the state authorities whether the physician is eligible to get a license in the state. If not, there's a problem, and a problem in the past is a red flag for the future.

Contact hospitals. Get in touch with the administrator of every hospital where your candidate has ever worked (including just having staff privileges). Hospitals are sometimes reluctant to freely disclose information if a physician has left involuntarily or under a cloud. This is particularly true if the problem with the physician was something that arguably should have been

reported to the data bank but wasn't, Kupferberg explains. So you'll have to be an active listener when you call. Ask general questions, such as the dates your candidate worked there, the status of his privileges when he left, and whether he was ever the subject of a chart review. Then listen for hesitation or vagueness in the answers, Kupferberg suggests.

Insider Says: "If you get a bad feeling after talking to the hospital, you can try to get more information through indirect means. Colleagues in the area, the local county medical society or specialty society, or old newspaper reports—often available in a library or online—are good sources of information that the hospital may not want to share," says Kupferberg.

Contact current and former employers, if any. If your candidate has been working at a practice, you probably asked at the interview why he's looking to leave. It's a good idea to confirm that information, but only after asking the candidate if you can contact the current employer.

You probably contacted former employers for references at the interview stage, but if you missed any, contact them now. Although former employers, like hospitals, may be reluctant to disclose much information, you may get some insight into the candidate's character and work habits. And you may be lucky and reach someone who's happy to give you all the information you want.

Verify education and training. It's not uncommon for a medical professional, like anyone else, to fudge his academic accomplishments or embellish his training, Kupferberg reports. So call the university, medical school, and residency program to see if all the information the candidate gave you is correct. That means not just grades, but dates, courses of study, fellowships, and honors. If it's on the CV, verify it.

Confirm board certification. If your candidate has claimed to be board certified or board eligible, confirm that status with the appropriate specialty board. Because many managed care plans now demand board certification of all the physicians they include in their plans, Kupferberg is seeing more situations in which physicians falsely claim board certification. Make sure your candidate has reported his board status accurately or you could be in for a shock when you try to add him to a plan panel.

Verify DEA license. Contact the Drug Enforcement Administration (DEA) to verify that the candidate has an unrestricted license to prescribe controlled substances. Do this even if he's unlikely to have to write a prescription for controlled substances for your patients. If the DEA has restricted him, it's a red flag that there's a problem you should know about, Kupferberg explains.

Check Medicare sanctions list. The OIG Web site lists all the physicians and other health care providers who have been sanctioned by Medicare. You must check this list and make sure your candidate isn't on it. If you hire or contract with a person who's excluded from the Medicare program, you are prohibited from billing Medicare for any service that person provided. Because it's often difficult to segregate your patients into Medicare and non-Medicare populations, many practices end up violating this rule and endangering their own Medicare status, Kupferberg reports. If your candidate is on Medicare's sanctions list, the prudent choice for your practice is to find another candidate, Kupferberg advises.

Insider Says: Don't hire a person on the Medicare sanctions list even if the person is excluded for reasons unrelated to billing or medical care,

(continued on p. 10)

DO THOROUGH CREDENTIALS CHECK (continued from p. 9)

warns Kupferberg. Some physicians get excluded from Medicare because they default on child support payments or their federally guaranteed student loans or don't complete required years of service to an under-

served population, he notes. Practices will sometimes mistakenly shrug off these exclusions because they're not the result of health care fraud or billing irregularities—they'll hire the excluded person anyway. But as far as the government is concerned, an exclusion is an exclusion, and if

Medicare reimbursable services are provided by an excluded person, you've got trouble. Let someone else take the risk, Kupferberg advises. ■

Insider Source

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RADIOLOGY ROUNDUP

A look at recent legal actions around the country that may affect radiology providers and administrators.

► Court Says PROs Must Release Findings

A man whose wife had recently died of cancer filed a complaint with the local Peer Review Organization (PRO) responsible for monitoring the quality of Medicare services, claiming that his wife received inadequate care from three physicians. The PRO investigated the man's complaint and eventually sent him three letters, one about each physician. One letter said that no deviation from the standard of care was found in treatment provided by one of the physicians. But the other two letters said only that the complaint had been investigated and that the other two physicians didn't consent to the release of the PRO findings.

The consumer group Public Citizen filed a class action lawsuit against the Department of Health and Human Services (HHS) and HCFA (now CMS)—the agency within HHS that hires and oversees PROs—to force PROs to release their findings, even if the physician who's the subject of the complaint doesn't consent to the release. Public Citizen argued that the law establishing the PRO says that the PRO "shall inform the individual (or representative) of the organization's final disposition of the complaint." This means the PRO's decision about whether the physician met

the proper standard of care must be disclosed to the party who complained about the care.

HHS and HCFA argued that "final disposition" means the PRO must notify the complaining party only the complaint was received and investigated and that the investigation is complete. HHS and HCFA added that revealing the PRO's findings to the complaining party without the physician's consent would undermine the educational and quality improvement functions of peer review.

A federal court ruled that PROs must reveal the substance of their findings to the complaining party when an investigation is complete, even if the physician who is the subject of the investigation doesn't consent to the release [*Public Citizen v. Dept. of Health and Human Services*]. ■

SHOW YOUR LAWYER

Here are the court cases and/or laws referred to in this issue.

- *Public Citizen Inc. v. Dept. of Health and Human Services:* Civil Action No. 00-0731, 2001 WL 800013 (U.S. Dist. Ct. D.C. 7/9/01).