

# Radiology Administrator's

## Compliance & Reimbursement Insider

NOVEMBER 2004

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## Don't Rely on Vendor's Coding and Reimbursement Advice

Vendors who want to sell your practice equipment or drugs that will allow your radiologists to perform a new procedure or perform an old procedure differently or more accurately, often come armed with coding and reimbursement advice. As part of their pitch, these vendors will often claim that the new procedures their product will allow you to perform will help your practice to quickly recoup the cost of their product—and they'll even give you the CPT codes to use to maximize your reimbursement.

The problem is that this coding and reimbursement advice is often incorrect, says Atlanta radiology compliance expert Jackie Miller. And if your practice relies on incorrect information when making purchasing decisions, the consequences could be dire, both on the business front and the compliance front, adds New York health care attorney Jay Silverman.

We'll tell you why you need to be skeptical of vendors' coding and reimbursement advice. And we'll explain the potential consequences of relying on their erroneous advice. We'll also show you how to set up a simple policy to make sure that purchasing decisions aren't based on incorrect information. And we'll give you a Model Policy (see p. 3) that you can adapt and distribute to your staff and radiologists.

### Sales Pitches Aren't Necessarily Accurate

Vendors of drugs, devices, and equipment have only one purpose—to sell your practice their product. So anything the vendor says about the product should be considered in a critical light because it's all part of the spiel. Objective information is crucial to making a good decision.

Physicians intuitively know to ask for any relevant studies or articles in the medical literature describing the product and its usefulness, says Miller. And often physicians will poll colleagues about their experience with the product and do their own research about the product's clinical value before making a purchasing decision. Yet these same physicians will often rely on the vendor's assertions about reimbursement and eventual cost-effectiveness and never give a thought to checking up on the information of this type that the vendor presents, Silverman remarks.

### Poor Information Now Causes Problems Later

Two main problems can arise if you don't independently verify information regarding the reimbursement available for using a product and the proper way to code for its use:

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## DON'T RELY ON VENDOR'S ADVICE (continued from p. 1)

**Product won't be cost-effective.** Sometimes a product is medically useful, but it costs the practice money to use it. Miller offers this example: A vacuum-assisted percutaneous breast biopsy system can make breast biopsies quicker, increase the chances of getting a good sample, and so, make life easier on both the radiologist and the patient. Vendors tout this aspect, but they often fail to mention—or they misstate—the high cost of supplies, Miller notes. And they don't say that Medicare reimbursement for the supplies used with every biopsy is so low that most practices lose substantial money—\$50-\$100—with every biopsy they do on a Medicare patient, she adds. Also, the vendor probably won't mention that the practice can't bill a Medicare patient for the shortfall.

So a practice that sees a lot of Medicare patients should consider these factors when it considers buying this biopsy system. The practice may still decide that the benefits to its radiologists and patients outweigh the financial loss, or it may decide to wait until reimbursement improves or supply costs decrease before buying the system. Regardless of its decision, a practice that doesn't consider these factors before buying the equipment is in for a shock, Miller notes.

**Bad information creates compliance issue.** Vendors will often advise using certain CPT codes for the procedures you can perform using their product. But what if this coding advice is incorrect? You could end up being audited or asked to return large sums to a payor—you might even get into trouble with the Medicare program. And asserting that you relied on the vendor's advice won't cut you any slack from the authorities, Miller cautions.

Yet physicians, especially, are often insistent that coders use the codes the vendor suggested, Miller says. As a result, some practices have been forced to repay large sums because they relied on improper coding advice from vendors. In 2003, for example, Medicare received so many incorrect codes for placement of a vascular closure device, including codes for surgical repair of blood vessels, that CMS issued its own code to try to clear up the confusion. "I would say vendors' information on coding is wrong at least as often as it's right," Miller says. "And frequently it's misleading, in that the suggested codes may appropriately describe the procedure performed, but using the codes won't entitle you to payment," she adds.

## Set Policy so Practice Makes More-Informed Decisions

Practices that want to stay competitive are constantly on the lookout to add new procedures to their offerings. And that means they'll always be in the market for products that will help them do this. So to avoid situations like the ones described above, Silverman advises his clients to adopt a policy regarding the purchase of new products.

The key to making an appropriate decision is to get full information. So your policy, like our Model Policy, should be focused on getting the maximum information available in a reasonable amount of time so that your radiologists can make informed but timely decisions. And in delegating those information-gathering tasks, you, as administrator, should establish a policy

that plays to everyone's strengths. So, like our policy, your policy should:

- Assign a radiologist to investigate the clinical efficacy of any product that your practice is considering using to perform a new procedure or do a procedure differently [Policy, par. 1];

- You or your designated person should find out whether any special supplies, drugs, or storage procedures will be necessary if you buy the product and, if so, get an idea of the costs involved [Policy, par. 2];

- Your billing supervisor or other designated person should research the appropriate coding and expected reimbursement for the procedure. Two very valuable resources are the American Medical Association (AMA) and specialty societies like the American College of Radiology and the Society of Nuclear Medicine. AMA members (or others who pay a fee) can submit coding questions to the organization, and many specialty societies have a coding resource person or committee to assist members. Monitoring online discussion groups will often provide advance warning on reimbursement issues related to new technology. Finally, the billing supervisor should contact your major payors, as well as Medicare, to find out how they expect you to code the new procedure—and to get a sense of the reimbursement amounts these payors offer [Policy, par. 3]; and

- Your practice should make no purchasing decisions until all this information has been gathered [Policy, par. 4]. ■

#### Insider Resources

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## MODEL POLICY

### Set Policy to Verify Vendor's Information

Here's a Model Policy that you can adapt and use in your practice to help your radiologists make more informed purchasing decisions. The policy makes it the practice's responsibility to gather complete information regarding the efficacy, costs, coding, and reimbursement for a new procedure before buying equipment that will allow you to add the procedure to your practice. Explain to your radiologists that just as they want to be sure that a procedure is clinically

appropriate before they perform it, you want to ensure that the product/procedure is fiscally viable for your practice. If you meet with resistance from your radiologists, emphasize that they may still choose to purchase a piece of equipment that may not pay for itself—you just want them to be aware of that fact before they do so, recommends New York health care attorney Jay Silverman.

**RACRI0020**

## PURCHASE POLICY

From time to time, vendors approach our practice selling equipment, drugs, and devices that will enable us to offer new or improved services to our patients. To ensure informed decision making regarding such purchases, please adhere to the following policy.

If a vendor offers a product that you think our practice should consider for purchase, please:

1. Approach [*insert name of designated radiologist*] with the vendor's literature and request an investigation of the product. [*Insert name of designated radiologist*] will do a literature search and conduct other relevant research to determine whether the product is clinically effective and appropriate for our practice.
2. When [*insert name of designated radiologist*] has determined that our practice should consider such a purchase, I (or my designee) will investigate whether any special supplies, equipment, or storage procedures are necessary to use the product properly. I will gather information about the cost of such supplies, equipment, and processes, along with any available reimbursement information for these ancillary necessities.
3. Simultaneously, [*insert name of designated biller*] (or other designated person) will contact the AMA, our specialty society, our major payors, as well as our Medicare carrier, as appropriate, to determine proper coding for the procedure(s) our practice is considering adding and the levels of reimbursement that we can expect.
4. All the information gathered pursuant to steps 1-3 above will be presented to all partners of our practice within 60 days. No decision will be made until all such information has been presented.

Arnold Administrator

## Understand the Switch from LMRPs to LCDs

Local coverage determinations (LCDs) are replacing local medical review policies (LMRPs) as the way Medicare contractors—that is, carriers and fiscal intermediaries—tell providers whether and when they consider a service to be reasonable and necessary, explains health care attorney Jeff Micklos. LCDs give the same kind of coverage information as LMRPs but don't address other topics, such as coding and statutory exclusions from Medicare. You need to understand this change so you can find coverage information you need to bill appropriately for services.

The switch to LCDs was required by the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA). That law, which established a new way to challenge Medicare coverage decisions, also requires contractors to use LCDs, rather than LMRPs, to communicate those decisions. Unfortunately, as the *Insider* has learned, many practices and facilities are finding the switch somewhat confusing.

We'll explain what's different about LCDs and tell you what's happening to LMRPs. We'll also show you how to find the local coverage information you need to bill properly and get paid for your services. And we'll explain the various ways Medicare patients and you can seek revisions to or challenge LCDs they feel are inappropriate.

### What's Different About LCDs?

LCDs focus on one type of information—whether the service is reasonable and necessary and, therefore, reimbursed by Medicare, says Micklos.

LMRPs do this, too. But they also cover coding provisions, benefit categories, and statutory exclusions from

Medicare coverage—information that LCDs can't include, says health care attorney Leslie Goldsmith.

To explain when a service is reasonable and necessary, the LCD can list CPT and HCPCS codes for the services to which it applies, then list the ICD-9 CM codes for various diagnoses for which the service is or isn't reasonable and necessary.

### What's the Timetable for Replacing LMRPs?

Local Medicare contractors stopped issuing LMRPs on Dec. 7, 2003. Since then, they've been issuing LCDs instead. The *Medicare Program Integrity Manual* requires them to convert all existing LMRPs into LCDs by December 2005. When contractors convert LMRPs, they put any language addressing whether a service is reasonable or necessary into a new LCD. They must then take any remaining information in the LMRP—such as information about statutory exclusions, benefit categories, and how to code claims—and cover that in an article, says Goldsmith. These articles will appear in the local Medicare contractors' bulletins and/or on their Web sites, she explains.

### Where Can You Find Coverage Information?

In the past, you could search [www.lmrp.net](http://www.lmrp.net) to find out what services contractors considered reasonable and necessary. Now, you should instead use the Medicare Coverage Database Web site at [www.cms.hhs.gov/mcd/search.asp](http://www.cms.hhs.gov/mcd/search.asp), which allows you to search both national and local coverage determinations.

You can also gain helpful information from the Medicare Coverage Web page at [www.cms.hhs.gov/](http://www.cms.hhs.gov/)

coverage/, which includes a link to the Medicare Coverage Database. Finally, you may also want to search your local carrier's or intermediary's Web site, which can provide helpful information and educational articles about LCDs and LMRPs, suggests Goldsmith.

### How Do You Protest an LCD?

Providers and beneficiaries that don't agree with the coverage determinations in an LCD can question the validity or applicability of those coverage determinations through claims appeals, challenges, and reconsideration, says Micklos. A claim appeal relates to reimbursement of only one claim for services, and the outcome only affects that one claim, he explains. On the other hand, challenges and reconsiderations can affect the general application of an LCD to all claims, he says. Here's a short description of what challenges and reconsiderations involve.

**Challenges.** BIPA now makes it possible for a beneficiary to challenge a Medicare contractor's decision about whether a given service is reasonable or necessary in particular circumstances. The beneficiary can challenge the evidence the contractor relied on in making its coverage determination or present new evidence that would make a difference to the coverage decision. A beneficiary can make a challenge—in contrast to a claim appeal—even if he hasn't yet received the service that's the subject of his challenge.

To initiate a challenge, a beneficiary submits a complaint to an administrative law judge. Although only beneficiaries have the right to challenge whether an LCD is valid or not, providers can assist beneficiaries in

making such challenges, Micklos notes. Beneficiaries can also challenge the "reasonable and necessary" language in LMRPs that haven't yet been converted to LCDs. That's because during the conversion, CMS has said that "reasonable and necessary" language in the LMRP qualifies as an LCD for purposes of a challenge.

**Insider Says:** For more information about the LCD challenge process, see Ch. 13, sec. 13 of the *Medicare Program Integrity Manual*. You can access that manual at [www.cms.hhs.gov/manuals/cmsindex.asp](http://www.cms.hhs.gov/manuals/cmsindex.asp); click on Pub. 100-8m, scroll down to Ch. 13.

You can also access the final rule establishing the challenge process,

*Medicare Program: Review of National Coverage Determinations and Local Coverage Determinations; Final Rule*, on the Web at [www.access.gpo.gov/su\\_docs/fedreg/a031107c.html](http://www.access.gpo.gov/su_docs/fedreg/a031107c.html). Scroll down to "Centers for Medicare & Medicaid Services" and click on "National coverage and local coverage determinations; review" under "Rules." Note that the *Medicare Program Integrity Manual* refers to the process as a challenge, while the Final Rule refers to it as a review.

**Reconsideration.** Any interested party—such as a practice or facility or a beneficiary—can ask for reconsideration of a final LCD, says Micklos. All or any part of an LCD can be the subject of a reconsideration request. Interested parties initiate a reconsideration by following the

process detailed on their contractor's Web site. The reconsideration request must be supported by specific evidence, such as medical opinion and scientific evidence generally accepted within the medical community.

**Insider Says:** For more information about the reconsideration process, review Ch. 13, sec. 11 of the *Medicare Program Integrity Manual*. You can access that manual at [www.cms.hhs.gov/manuals/cmsindex.asp](http://www.cms.hhs.gov/manuals/cmsindex.asp); click on Pub. 100-8, scroll down to Ch 13. ■

#### Insider Resources

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## How to Prod Unresponsive Plan to Process Overdue Claim

If a plan doesn't respond at all to one of your claims within the deadline imposed by the contract or prompt pay law, getting it to act on the claim can be a slow and frustrating process and an administrative hassle. For instance, you may first have to call the plan to track down the claim, then resubmit the claim and wait weeks or months longer, hoping that the plan will finally process it.

But there's a tactic you can try when a plan hasn't responded to your claim by the payment deadline that may help to get your claim handled faster, insiders say. Send the plan a letter to say that you're assuming its nonresponse means the service isn't covered so you'll bill the member directly to get paid. Also, send a copy of the letter to the member. That will often get the plan to decide your claim quickly, says South Carolina

attorney Neil B. Caesar. We'll tell you what to do.

### Why Tactic Works

Plan contracts typically bar providers from billing plan members for services, usually in a "hold harmless" clause. But that restriction generally applies only to services covered by the plan. Most contracts allow—and in some cases, require—the provider to bill the member for any items the plan isn't obligated to pay, such as copayments, deductibles, and charges for noncovered services. You may even have members sign forms before treatment that they'll be financially responsible for paying you if the plan doesn't.

So if a plan hasn't responded to a claim in any way by the payment deadline, Caesar says, the provider may want to take the position that the

plan's inaction means that the services aren't covered and that the member must pay for them. "The strategy has worked as a wake-up call for the plan. While it also serves to notify the member that you'll seek payment from him, your real goal is to get the plan to pay you," he notes.

The tactic can succeed because most plans don't want members to be involved in payment issues or to get angry with the plan, says Caesar. They also don't expect most providers to challenge them this way. "Most providers believe that they can't draw the members into the dispute. Some would even prefer to terminate the contract rather than involve the member. But sometimes you have to involve members to protect your cash flow," Caesar explains.

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**OVERDUE CLAIM** (continued from p. 5)

For instance, one South Carolina medical group sent a similar letter to a plan after the group submitted several claims, amounting to \$20,000, and the plan didn't respond to any of them. The group's letter to the plan (with a copy to the members involved) said that it intended to bill the members for their treatment because it assumed the plan wasn't going to pay for the services. The plan, wanting to avoid a problem with the members, promptly paid all of the claims in full, according to Caesar, who's familiar with the situation.

**Take Two Steps**

To use this tactic, take these two steps:

**Step #1: Review contract.** Make sure your contract doesn't contain language that would bar you from using this tactic. For instance, confirm that the contract's hold harmless clause doesn't bar you from billing members for noncovered services. "Although

most hold harmless clauses bar you only from billing members for covered services, you should make sure that's the case for your contract. Otherwise, you can't interpret the contract to make this argument," says Caesar.

**Step #2: Send letter to plan, member.** If the contract doesn't stop you from billing members and the payment deadline has passed, notify the plan by letter that you assume the plan has failed to respond to your claim because the services aren't covered. Also, say that you'll bill the member directly for the services. Send the letter to your plan representative or to the head of the claims department. Send a copy of the letter to the member who received the services.

Here's Model Language you can use in your letter. It's based on language recommended by Caesar. It assumes that there's a payment deadline in the contract. If you're relying on a state law deadline, modify the language accordingly. **RACRI0021**

**Model Language**

I am writing regarding our claim submitted on May 11, 2004, for services provided to [insert member information]. A copy of the claim is attached for your convenience. As you may know, the deadline for payment for this claim was June 11, 2004. Per our contract, your unwillingness to assume responsibility for payment means that you contend that these services are not covered. Therefore, we are hereby notifying you that we intend to bill and collect our payments in full directly from the member.

In most cases, this will be enough to get the plan to act on your claim. If the plan still doesn't respond, your only choice may be to bill the member. But at least you haven't wasted months trying to elicit a response and some action from the plan. ■

**Insider Resource**

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## Set Employee Internet and E-Mail Use Policy for Your Radiology Practice

Many radiology practices allow their employees to use the Internet at work—it helps the practice communicate with vendors, patients, and other providers. And it plugs employees in to a wealth of clinical and compliance information. But some employees may abuse their Internet access, by spending a lot of time using the Internet for personal purposes, even using the Internet to send confidential or inappropriate material to friends, family, or professional contacts. And that can get your practice into trouble.

To help ensure that your employees don't use the Internet for anything other than legitimate business

purposes—and to help them use it properly—implement an Internet use policy in your office and have employees sign an agreement stating that they understand the terms of, and will abide by, the policy. We'll give you a Model Policy (see p. 7) and a Model Agreement (see p. 8) to adapt and use at your practice.

**How Employees Abuse Internet**

Giving your employees access to the Internet can cause the following problems:

**Decreased productivity.** A personal e-mail message from time to time is

to be expected, just like the occasional personal phone call. But given the opportunity, some employees will use the Web for personal reasons on practice time, and get and send personal e-mail at work, says Peter D. Lucash, a medical practice management consultant in South Carolina. The Internet is so convenient and such a great resource that sometimes people get carried away, he maintains. Lucash cautions that he has heard of employees running personal businesses from an office computer, on the practice's time.

**Injury to practice.** Inappropriate use of the Internet can be a serious problem, says Maryland health care

attorney Randi Kopf. For example, employees could use the Internet to:

- Download or send messages containing offensive text or pictures that violate sexual harassment or equal employment opportunity laws;
- Engage in illegal activity, like Internet gambling or ordering fraudulent prescriptions;
- Disparage your practice or its employees, patients, or referral sources; and
- Accidentally or purposefully transmit a patient's medical history or other confidential information that's governed by the HIPAA privacy regulations and HIPAA security regulations in a manner that isn't HIPAA compliant.

### Set Policy for Employee Internet and E-Mail Use

To solve these problems, implement a policy at your practice that sets out the rules for your employees' use of the Internet. Your policy, like our Model Policy, should do seven things:

#### 1) State that Internet and e-mail are for business purposes only.

Tell those employees who will have Internet access that the office has Internet access and e-mail for business purposes, not as a fringe benefit for them, advises Kopf [Policy, par. 1].

**2) State that Internet and e-mail hardware and software are your property.** Also, tell your employees that the Internet and e-mail hardware and software—and the messages they carry—are the property of your practice and that you will inspect them at any time [Policy, par. 2]. That way, employees can't claim that they thought they had a right to privacy when using the Internet at the office, Kopf notes.

**3) Bar sending of confidential information over Internet.** The Internet isn't a secure means of communication; it's easy for someone to

intercept e-mail messages. So don't let anyone use it to send nonapproved confidential information, cautions Kopf. [Policy, par. 3]. Sending such information could violate HIPAA privacy regulations and the security reg-

ulations, and lead to penalties as well as lawsuits for violating the patient's confidentiality, she asserts.

(continued on p. 8)

## MODEL POLICY

### Use Policy to Control Employee Internet and E-Mail Use

Here's a Model Policy that you can distribute to your employees regarding their use of the Internet and e-mail in the workplace. Attorney Randi Kopf cautions that this policy is in addition to the policies you must have that require HIPAA compliance to ensure that protected health informa-

tion (PHI) isn't improperly transmitted in your practice. This Model Policy is meant only to ensure that your employees remain productive and use the Internet to the advantage of your practice. Talk to your attorney about adapting this policy for your own use.

**RACRI0022**

#### INTERNET AND E-MAIL USE POLICY

- 1. Business purposes only.** ABC Radiology provides its management staff with Internet and e-mail access in order to assist and enhance patient care and the practice's business efforts. Designated employees may use the Internet and e-mail for business purposes only. Use for other purposes is not permitted.
- 2. Ownership and monitoring of use.** The hardware and software associated with the Internet and e-mail systems are practice property, as are any messages sent or received or records stored by these systems. ABC Radiology reserves the right to monitor the content of messages sent and received by employees and to review records of Web sites visited by employees. Employees have no expectation of, or right to, privacy in their use of the Internet or e-mail systems at ABC Radiology.
- 3. Confidential information.** Employees may not use the Internet or e-mail to transmit nonapproved confidential information about the practice, its employees, patients, or business activities or to transmit any information in violation of HIPAA or any other applicable laws.
- 4. Forbidden uses.** Employees may not use the Internet or e-mail systems for personal business purposes; to solicit funds or support for any commercial, political, religious, or charitable cause; or to express their views on these or other nonpractice-related subjects.
- 5. No offensive messages.** Employees may not transmit or receive via e-mail or the Internet any messages or images that are derogatory, obscene, sexually explicit, or offensive to anyone based on their gender, age, race, religion, ethnic background, or national origin. Also, employees may not view such messages on Web sites.
- 6. Unauthorized viewing of other employees' Internet and e-mail use.** Employees may not view e-mail messages sent or received, or records of Web sites visited, by other employees, unless authorized by ABC Radiology.
- 7. Enforcement.** Employees who violate any part or parts of this policy will be subject to disciplinary action, up to and including dismissal and possible referral to the appropriate law enforcement agency.

**EMPLOYEE INTERNET & E-MAIL USE**

(continued from p. 7)

**4) Ban use of Internet for non-practice-related purposes.** Employees may be using e-mail to solicit support for political causes, express their religious views, or make some money on the side. Such activities take employees away from their duties and may conflict with the practice's business goals. These solicitations may even be embarrassing if the employee's cause is inappropriate, such as soliciting support for a hate group or running a business scam. So ban the use of the Internet for such purposes [Policy, par. 4].

**5) Ban transmission of offensive or disruptive messages.** You could be held liable for an employee's sexual harassment or other offensive conduct committed over the Internet, warns Kopf. The Internet presents a greater opportunity for such conduct than any other form of communication, she says. So employees who wouldn't otherwise engage in offensive conduct in person, by mail, or by telephone may do so once they get Internet access. That's why you need to prohibit the transmission of such messages [Policy, par. 5].

**6) Ban employees from viewing other employees' Internet use and e-mail messages.** Though management will have the right to audit employees' use of the Internet, employees shouldn't be allowed to do it to each other, says Kopf [Policy, par. 6]. Lucash suggests that you designate one or two people who will have access to everyone's computer, and make it clear that everyone else's access is limited to their own computer.

**7) State consequences of violating these rules.** To emphasize the seriousness of your Internet and e-mail use policy, warn employees that

violating it could lead to discipline, up to and including dismissal [Policy, par. 7]. And Lucash suggests that if you determine an employee is conducting criminal activity through your practice's computer—say, by calling in fraudulent prescriptions, transmitting child pornography, or engaging in Internet gambling—you make it clear that you may refer the matter to law enforcement

**Get Employees' Consent to Monitor Use**

Monitoring employees' Internet use can be a sensitive issue, says Kopf. Some employees may argue that your doing so is an invasion of their privacy. Although it's well established that employees have no right to privacy when using your equipment on your

time, you can avoid the problem altogether by having employees sign, as a condition of their employment, an agreement that says you may view both the e-mails they send and receive as well as the records of the Web sites they visit, Kopf suggests. Have the agreement say that the employee has read, understands, and agrees to abide by all the rules in your Internet and e-mail use policy.

Put this agreement in a separate document and have employees sign it when you hire them or when you bring the Internet to your office. Policies and rules sometimes don't survive court challenges because the employees they're aimed at may successfully argue that they didn't know about them or that they didn't think

**MODEL AGREEMENT****Get Employees' Consent to Monitor Internet and E-Mail Use**

Our experts Peter D. Lucash and Randi Kopf suggest that you get your employees to acknowledge and agree that you may audit their Internet use. This Model Agreement has employees agree to abide by your Internet and E-Mail Use Policy (par. 1), acknowledge that you have the right

to monitor the Web sites they visit and their e-mail messages (par. 2), and acknowledge that they understand the consequences of violating the policy (par. 3). Talk to your attorney about adapting this agreement for your own use. **RACRI0023**

**INTERNET AND E-MAIL USE POLICY AGREEMENT**

As an employee of ABC Radiology:

1. I acknowledge that I have read and understand the practice's Internet and E-Mail Use Policy and that I have been given a copy of this policy. I agree to abide by this policy.
2. I acknowledge that I have no right to privacy in the Internet or e-mail messages or images that I send or receive or the records of Web sites that I visit on ABC Radiology's Internet system. I acknowledge that ABC Radiology has the right to inspect any and all messages or images that I send or receive via the Internet or e-mail and to monitor records of Web sites that I have visited.
3. I understand that adherence to the Internet and E-Mail Use Policy is a condition of my employment, and that I may face disciplinary action for violating it. This disciplinary action may include dismissal.

Employee's signature \_\_\_\_\_ Date \_\_\_\_\_

they were important. This signed agreement will help you avoid that problem, Kopf explains.

Your agreement, like our Model Agreement, should require employees to agree to three things:

**1) To abide by Internet and e-mail use policy.** Have employees acknowledge that they have read, understand, and agree to abide by the rules in your Internet and e-mail use policy [Agr., par. 1]. That way, they can't later claim that they didn't know these rules.

**2) That practice may review employees' e-mail messages and records of Web sites they visit.** "Don't let your employees claim that they have a right to privacy in their e-mail messages and the records of Web sites that they visit," urges Kopf. Explicitly warn them that you may read the text of messages that they send and receive, and that you will, in fact, do so periodically [Agr., par. 2].

**3) That employees understand that violating policy may lead to disciplinary action.** Many practices give their employees Internet access, but some of those employees abuse it,

Lucash notes. So your employees may think that violating your Internet and e-mail use policy isn't a big deal. But it is a big deal. To ensure that employees understand how serious you are about your policy, have them acknowledge that they may face disciplinary action, including dismissal and referral to law enforcement, if warranted, for violating the policy [Agr., par. 3]. ■

#### Insider Resources

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## ASK THE INSIDER

The INSIDER welcomes questions from subscribers. You can: 1) e-mail [jgormley@brownstone.com](mailto:jgormley@brownstone.com); 2) send your questions to Brownstone Publishers, Inc., "Ask the Insider," 149 Fifth Ave., 16th Fl., New York, NY 10010-6801; 3) fax (845) 331-0861; or 4) call (845) 331-0817, and speak with the editor.

### Giving Patient Copies of Paid Bills

**Q**A patient asked for copies of paid bills, indicating that she intended to submit them to her insurer. One of our billing/collections staff believes that providing the copies would be abetting insurance fraud because the patient revealed an intent to submit to her insurer claims for which we've already been paid. Can we legitimately deny her copies of her bills because we're afraid she'll misuse them? And if she misuses those copies that we provide, do we have any responsibility?

**A**No—to both questions, says Atlanta health care compliance consultant Jackie Miller. She says that you need to provide copies of bills to patients because:

- Some states require you to provide patients with copies of their bills upon request—whether the bills are paid or unpaid;
- Your contract with the patient's payor may require it;
- For Medicare patients, Medicare rules require you to provide this information to the patient; and
- It's good patient relations to provide patients with copies on request.

While it's possible the patient may want to use the copies for illegal purposes, it's far more likely she legitimately needs them. For example, some indemnity insur-

ance plans pay a patient for being sick, regardless of whether the patient had out-of-pocket expenses, Miller explains. And many supplemental insurers will apply the amount that the patient's primary insurer paid toward the patient's supplementary insurance deductible. So the patient may need to submit copies of paid claims to her insurer to take advantage of these insurance benefits. And there are other reasonable explanations for the patient's request that don't involve insurance fraud, she adds.

Regardless of her reason for wanting the copies, if you billed the procedures correctly, you have no reason to be concerned about providing the patient with copies of the bills. So if you don't have an intent to defraud, the patient's misuse of her own records isn't your responsibility and shouldn't cause you any problems, Miller says.

### Incentives for Referral Sources

**Q**My radiologists want to create a program in which we would offer rewards to referring physicians' office staff members as "thank-you" gifts for referrals to our MRI facility. The rewards are items like fruit baskets, sporting event tickets, and gift certificates to restaurants and day spas. My radiologists say that to avoid any compliance problems with this program, we won't offer

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**ASK THE INSIDER** (continued from p. 9)

rewards for referrals for Medicare services. And they add that as the individual rewards are of little value and are given to the office staff, not the physicians, there are no other compliance problems we should worry about. I think that the program is a no-no, even if there are no rewards for referrals for Medicare services. Am I paranoid?

**A** Not at all, says New Jersey health care attorney John D. Fanburg. Your radiologists are asking for trouble with a program like the one you describe.

The radiologists seem to be attempting to structure the program to comply with the federal antikickback law (which bars the payment of any remuneration in return for referrals—or to induce referrals—for services reimbursable under federally supported health insurance programs, such as Medicare) and the Stark law (which bars physicians from referring patients for certain designated health services to an entity in which the physician or his family member holds a financial interest). By structuring the program so that referrals for Medicare-reimbursed services are excluded, they may run less risk of violating those laws—although Medicaid and TRICARE services should be excluded, too (because they're also federally supported programs).

But, in fact, complying with the federal laws isn't the only issue here. Most states have their own antikickback laws, Fanburg says. And, typically, these laws are broader than the federal antikickback law. The laws often bar the payment of anything of value in return for a referral for medical services, regardless of payor. And keep in mind that both the federal antikickback law and most state antikickback laws bar rewarding *anyone* in return for referrals—your radiologists are mistaken if they think the laws are limited just to rewards to physicians.

Another worry is your state's medical practice law and/or medical licensing board rules, Fanburg says. Many states restrict the way that physicians may garner referrals—and many state laws prohibit referral incentive programs like the one you describe. This can be confusing because it's rarely a direct prohibition, Fanburg says. That is, there may be nothing in your state's laws or rules that specifically says you may not give gifts to a referring physician's staff members. But, for example, a state could apply its advertising rules in a manner that would bar "sales" incentives to referring physician staff. Or there may be a rule that bars "referral fees" or "fee splitting" that could be applied to this situation.

Finally, Fanburg points out that an incentive program like the one you describe may be counterproductive because it may offend the referring physicians whose staff you're trying to influence. Physicians often have to contend with labs, vendors, pharmaceutical reps, and others trying to "buy" the goodwill of their staff—and they generally don't appreciate it. A well-run physician practice is likely to have rules against staff accepting gratuities or gifts. So your program may have the opposite effect of what you're hoping for—you may get fewer referrals because of it, not more.

If your radiologists still believe that this program would be productive to your practice, your attorney should analyze your reward program and your state law to determine whether your program would violate your state's law. But Fanburg thinks a program like the one you describe would be problematic in most states. ■

**Insider Resources**

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