

HEALTH LAW

ALERT

April 2011



Ruskin Moscou Faltiscek's Health Law Capabilities:

- Strategic Planning
- Corporate Reorganizations, Mergers and Joint Ventures
- Federal and State Regulation Compliance, including HIPAA
- Purchases/Sales of Hospitals and Practices
- Intellectual Property Issues
- Contracts - Managed Care, Insurance, Management and Employment
- Equipment Acquisitions
- Certificates of Need
- Professional Licensing and Disciplinary Proceedings
- Hospital and Physician Privilege Disputes
- Creation of Compliance Plans and Fraud Detection Systems
- Anti-Referral Law Counseling
- Formation at PCs, LLCs and Shareholder Agreements
- Defense of Medicare/Medicaid Investigations

For additional information on this or any health law related issue, please contact RMF's Health Law Department co-chairs: Alexander G. Bateman, who can be reached at 516-663-6589 or abateman@rmfpc.com or Jay B. Silverman, who can be reached at 516-663-6606 or jsilverman@rmfpc.com

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CAN THEY REALLY DO THAT?

Insurance companies have been using computer technology to target providers with greater effect, but not always with the correct result. If you are a specialist who utilizes a set of medical codes more than any other codes, or more than anyone else in your area, your practice may be at risk for being targeted for an audit or worse, a demand for overpayment. An overpayment demand will not likely occur until after you fail an audit. The best ways to pass an audit are: (a) ensure that your coding is compliant with all third party payor regulations and policies, and (b) maintain patient charts that accurately and completely reflect the medical necessity for any professional services performed, that the services were actually performed and that the services align correctly with the CPT codes billed.

MEDICAL OFFICE EMBEZZLEMENT – COULD IT BE HAPPENING IN YOUR PRACTICE?

In November 2010, the Medical Group Management Association (MGMA) reported the results of a survey concerning employee embezzlement from medical practices (see *Medical Group Management Association, Medical Practice Employee Theft and Embezzlement - 2009, November 5, 2010*). The findings of the survey reveal that the most likely culprits are female, work as receptionists, administrators or billing office staff and have been employed in the same place for an average of three years. While the aggregate amounts stolen can be as much as \$100,000, the thefts are often in small increments and go on for months before being detected.

Deterrence starts with segregation of financial duties. For example, the person who collects payments should not reconcile the books at day's end. Employee vacations should be mandatory, allowing for other employees to cover certain positions in order to allow the practice to unearth problems that were not apparent. Be familiar with your practice, its finances, vendors and books. Encourage employees to report suspicious activities. Being proactive can save you money and grief in the long run.

DON'T FORGET ABOUT EMPLOYMENT RELATED CLAIMS...

In addition to all the other compliance "to do's" on your list for 2011, don't forget about employee-related compliance issues. Make sure that your exempt employees are properly classified and paid for all time worked (including overtime) to avoid violations under the Fair Labor Standards Act. Evaluate independent contractors to ensure that they are properly classified in order to avoid violations under applicable tax, workers compensation and unemployment insurance withholding requirements. Develop and enforce policies concerning employee use of social media to avoid defamatory or offensive content about your practice and secure your network from any potential security breaches, including disclosures of protected health information.

Finally, evaluate whether your personnel records are in order. Properly maintained personnel records can be the best defense in a wrongful termination claim. Now might also be a good time for a check-up of your employee manual to make sure that it is current and reflects recent changes in legislation and case law that could affect your practice.

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