# BEST PRACTICES

Vol 8

Connected to your reimbursement...
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## 2014 Medicare Deadlines

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CERINI & ASSOCIATES LLP
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# From the Editor - Ken Cerini

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Welcome to the Spring/Summer edition of Best Practices, the newsletter designed to help you run your practice more effectively. We understand that your job is to make people better, ours is to make physician practices like yours better.

In this issue of Best Practices, we have included articles on medicare deadlines; new regulations regarding HIPAA compliance, with a special emphasis on business associate agreements; healthcare marketing, focused on DME marketing, but the concepts apply to anyone; and finally the business of medicine; which looks at center metrics to help you drive better results in this era of shrinking margins.

Let's face it, running a physician practice is getting harder and harder. New regulations such as Obamacare and ICD-10 are adding layers of work and complexity, while managed care and increased capitation is decreasing reimbursement. Many of your fellow practitioners have either joined larger groups or signed on with area hospitals. In order to be successful, it is no longer possible to go it alone. You need to surround yourself with a strong team including a good practice administrator, a healthcare attorney, and an accounting firm that understands healthcare. That's where we come in.

Give us a call and give us an opportunity to help you run your practice more effectively … and have a great summer!

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# 2014

# MEDICARE DEADLINES

Meaningful use has been a complicated issue for many physician practices and with approaching deadlines looming, staying focused and developing an action plan is required. Coupled with the desire of many practices to choose and implement Electronic Health Records ("EHRs"), it is important to remember that an Eligible Professional ("EP") can register for Meaningful Use prior to specifying an EHR. Since this option exists, it is a good idea to register for Meaningful Use as soon as practical, and then certify an EHR at a later date.

There is a very important reason to register for Meaningful Use sooner rather than later and that is the penalty assessed to your 2015 Medicare payments if you miss certain deadlines. For those EPs who have not successfully attested to the Meaningful Use of a certified EHR by October 1, 2014, they can expect a 1% reduction in their Medicare payments for services rendered in 2015. To avoid this reduction it is important to heed the October 1, 2014 deadline. Keep in mind that this deadline also means that the last possible beginning date for the reporting period is July 1, 2014. Of course, if you have everything in order, EPs can attest earlier than October 1, 2014.

Preserving Medicare payments is vital to your practice. In 2014, the maximum Medicare incentive for first time attesters is $11,760 ($12,000 less $240 for sequestration). This maximum amount will be achieved when $16,000 of Medicare allowable charges for covered services are rendered by an EP. The Medicare incentive is capped at 75% ($12,000 divided by $16,000) of the EPs Medicare allowable charges for covered services. Failing to attest to Stage 1 by October 1, 2104 will cost an EP the 2014 incentive payment and the 2015 Medicare penalty. The dollar amount of the potential loss in 2014 incentive and the 2015 penalty is dependent upon the EPs Medicare volume.

Improper planning and execution of an EHR can wreak havoc on your practice. Discuss with your practice management team a full strategic plan outlining each phase and estimated cost for each step. These steps should include IT, infrastructure, human resources, training, anticipated productivity loss, debt service, etc. Relying on the advice of outside professionals is essential. We strongly advise purchasing superior hardware, communication infrastructure, and increase your storage capacity. Purchasing a little more than you need now will increase your opportunity to grow and decrease any negative impact to your practice. A successful practice should run like a business.

# The Expanded Breadth of HIPAA

## Is Your Practice Doing What it Needs to do to be Compliant?

By: Claudia Hinrichsen, Esq. & Reema Sultan

### *The New Rule*

The HIPAA Omnibus Rule, which became effective September 23, 2013, (the "Rule") embodies a hub and spokes-like approach to HIPAA compliance. Through the Rule, the federal government has expanded its reach for HIPAA compliance beyond the traditional "Covered Entities" (including medical providers and insurance companies) at the hub of the wheel, to businesses that obtain, store or transmit patient protected health information (or "PHI") in connection with rendering services to the Covered Entities. These "spokes" are referred to in the HIPAA regulations as "business associates" or "BAs." In designing the regulations in this hub and spokes manner, the reach of HIPAA has expanded exponentially to subcontractors of the Covered Entities and other downstream subcontractors of the BAs.

If your business is either a "Covered Entity" under HIPAA or a BA, you must make sure that you have addressed the new and expanding obligations under the new HIPAA Omnibus Rule listed below. Most Covered Entity medical providers will need to amend their Notice of Privacy Practices and other HIPAA policies to reflect these changes. BAs will need to adopt new HIPAA policies and conduct staff training.

Non-compliance can lead to increased penalties for violations, up to a new maximum penalty of $1.5 million per violation.

The bulleted points below reflect some of the areas of change under the new Rule that must be addressed in medical provider and BA policies (as applicable):

- Authorizations- Patient authorization is required for most uses and disclosures of psychotherapy notes, use and disclosure for marketing purposes, and use and disclosure involving the sale of PHI;
- Requesting Restriction- Patients may restrict certain disclosures of PHI to a health plan where he/she pays out of pocket in full for a healthcare service or item. Providers and BAs must have policies and processes in place so that inadvertent disclosure to a health plan does not occur;
- Access to PHI- Patients have the right to obtain a copy of PHI in an agreed-upon electronic format;
- Right to Amend- Patients have the right to have a medical provider amend PHI in a designated record set;

- Breach Notification- Breaches are now presumed reportable to the United States Department of Health and Human Services unless, after completing a risk analysis of four factors, the entity determines that there is a "low probability of PHI compromise." Medical providers and BAs will need to ensure their breach policies are consistent with the new breach rules.

The new Rule extends many of the HIPAA requirements directly to BAs and subcontractors, and BAs are now directly liable for any violations. That being said, medical providers should review their relationships with their BAs to ensure that the necessary Business Associate Agreements ("BAAs") are in place to contractually mandate protection of the PHI as required by HIPAA. Similarly, BAs are also responsible for their own downstream subcontractors and, like providers, must review all vendor relationships to determine if a subcontractor BAA should be in place. Only after obtaining satisfactory written assurances through a BAA may the BA disclose PHI to its subcontractors.

## *The Provider's New Role in Overseeing BA Compliance*

BAs are, in essence, an extension of the medical providers and providers must take on a vigilant role to ensure that PHI is protected. It is imperative for providers to have an open line of communication with their BAs. Regular monitoring of BAs is recommended as it may not be enough to simply have a BAA in place with the BA. A HIPAA breach can result in not only the unauthorized use and disclosure of PHI but severe financial consequences for the Covered Entity and the BA. To mitigate such consequences, medical providers have a new responsibility to ask important questions of their BAs:

- When was the last time you provided HIPAA training to all staff members?
- Can we see your training logs?
- Do you have a HIPAA compliance program in place?
- Are you aware of what to do and the time limitations in case of a breach?
- Do you have breach insurance?
- Who from your entity will be our point person regarding any HIPAA compliance questions?
- Do you have subcontractor BAAs in place with appropriate vendors as required by HIPAA?

Providers and their BAs must also review security measures and address any gaps in privacy and security that are identified. In conducting a thorough assessment, medical providers may find that is it necessary to work with BAs to ensure that reasonable and appropriate security safeguards are in place.

## *Conclusion*

The new Rule has made several changes to HIPAA and has created new responsibilities for both providers and their BAs. In order to protect their patients, as well as the reputation of their medical businesses, providers must do more to monitor their BAs to ensure that they are HIPAA compliant. BAs must initiate and follow HIPAA compliance plans in their own operations. Ultimately, the PHI involved in all transactions is that of the providers' patients and both providers and BAs have the responsibility to take a more active role in how this PHI is protected.

# Public Relations and Healthcare Marketing *Tips and Tricks*

By Pauline T. Mayer, President
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Medical device companies looking to build their brand and presence can succeed with a well thought out intelligent marketing plan.

***Research, research, and more research:*** When developing a healthcare marketing plan, list your immediate short and long-term goals, and a reasonable execution timeline. Look at what your competition is doing, including placement of advertisements, social media marketing, product launches at relevant industry related trade shows, etc. Review titles of presentations being delivered by medical specialists promoting your competition. Take a ton of notes. Then factor those trade shows, including exhibit fees, hotel/air costs and a non-CME industry activity.

***Tools***: List all tools available to you and learn how to use them. Tools can include intelligent presentations, social media marketing, direct marketing solutions, (including brochures, postcards and email marketing). Animated videos or b-roll can generate great rewards. Design the best possible website that includes a clear understanding of what you are selling; list your senior leadership team, content web forms, animated videos, etc. Search engine optimization is a must.

***Build Support and Enthusiasm:*** Develop timely and intelligent press releases, and remember to include quotes from experts working with your medical devices. Utilize the wires to generate your news but this can be tricky. They must be willing to support your marketing efforts. Pitch your news to trade and consumer publications and remember to monitor the results.

***Develop a Budget:*** Seek assistance from an accountant who can build a budget around your marketing campaign. Stick to the plan. Many medical device companies go off plan and begin to burn money fast. Be careful. Save costs by executing your marketing plan in-house but when in doubt, seek the expert advice from a healthcare marketing agency willing to grow with you.

***Campaign Kick Off:*** Plan your rollout to maximize exposure. Avoid marketplace "clutter" and down times, such as holidays.

***Measure and evaluate:*** Track leads from new customers from your website, press releases, etc.

***Customer Relation Management:*** (CRM): Invest in a software program to record all your customer data and information that allows everyone in your organization to utilize and contribute.

# The Business of Medicine

In working with physician practices, we find that while most physicians do a great job in the practice of medicine, they often fall short in the "business" of medicine. The business of medicine is built off fairly simple formulas:

**Units of Service (x) rate per unit (which is dependent on complexity and payer) = Revenue**

**Revenue – expenses (inclusive of labor, materials, and overhead) = Net Income or Practice Profitability**

So the goal becomes a rather simple one … provide the highest quality of patient care while looking to maximize revenue and minimize expenses. So if the concept is so simple, why do so many physician practices have difficulty making it work?

There are probably many reasons, but the main reason is a lack of operating information and more timely analysis to drive meaningful results. When we work with physicians, there are certain basic areas we analyze to try to help them to create a bigger bottom line while still maintaining the expected high level of patient care.

***Physician Productivity:*** As outlined in the above formulas, units of service drives revenue. When was the last time you evaluated the productivity of your doctors? If you look at how your practice is structured, you can determine how many patients a doctor should be able to see per hour per day. How effective are each of your physicians in meeting those thresholds? If the physicians are low producers, understand why. Are they spending too much time with patients (this may be fine depending on the scenario, but does the reimbursement reflect this)? Do they have a low case load?

If the practice isn't homogeneous in the services provided by each physician, you can also consider reviewing gross charges per physician. The goal here is to see if everyone is pulling their weight, and if not, what can be done to improve productivity levels. In looking at productivity levels, consider how supporting staff such as physician assistants, nurse practitioners, and nurses are used. Leveraging these staff can potentially increase your physician productivity. For low producing physicians, consider consolidating office hours until their patient volume increases. This will reduce practice costs, without impacting revenue.

***CPT Coding:*** You should establish consistent coding within your practice. Too often we see coding left to the interpretation of each doctor. As a result, some doctors up-code (subjecting you to potential audit), while others down-code (leaving money on the table). Look at your practices most common CPT codes and develop criteria for coding these cases. You should look to have a system in place where you can analyze the CPT coding on a regular basis and make sure that it is appropriate – whether this is done internally with your staff or with the use of consultants. Often we find that the input costs are quickly recovered by the increased output.

***Consider a Merger or Affiliation:*** It is becoming increasingly more difficult for smaller practices to compete in a managed care environment. Without strength in numbers, you have minimal negotiating power and limited ability to generate cost savings with economies of scale. One way to combat this is to consider joining a larger network or affiliating with a hospital. Recently, we consulted with a physician practice, which had entered into an agreement to partner with an area hospital. The practice projected a 30% increase in rates reflecting the enhanced bargaining position it now had through the hosptial in dealing with managed care companies. These networks are aggressively looking to add resources so the timing might be right for your practice.

***Review Payer Mix and Referral Sources:*** Not all payers are created equal. Take the time to analyze your payer mix and determine the rates you are receiving from each payer. Are the rates sufficient to cover your costs? It's amazing how often we find practices accepting rates that are below their costs and then wondering why they aren't making any money. Also, understand where your volume by payer is coming from, as this may help you to modify your marketing to drive more profit generating patients to your practice. This can lead to an increase on both sides of the revenue equation referenced earlier.

***Patient Satisfaction:*** It's rare to see a physician practice do surveys of their patients to find out how the practice is meeting the healthcare needs of the patient. Healthcare is becoming more and more patient directed, so understanding and maximizing patient satisfaction is important. By surveying your patients, you can learn what you need to do to enhance the patient experience and potentially increase the number of referrals from your current patients. Don't be afraid to ask for referrals as part of the survey.

***Resources Utilized:*** When you are analyzing your practice, you can't just focus on top line, you have to consider expenditures also. Look at the flow of your business. Understand what your staff members do and determine if more of your activities can be automated. The use of EMRs should greatly reduce or eliminate the need for transcription services. The practice should also determine who is using what resources. One doctor can look like a superstar, but when you drill down, that doctor can be monopolizing nursing and support staff capabilities within the practice, and overall be dragging down the bottom line. You may also notice a doctor that is underperforming in terms of his revenue generated and has high staffing costs, which hurt you in every facet of the business. Consider having prepared a revenue and expense analysis by physician to determine how much profit each physician is really bringing to the bottom line. This will help you to determine if physician compensation levels are appropriate and the strengths and weaknesses of your business.

These are just some of the areas that you should consider when looking at the business effectiveness of your practice. With physicians making less and less, it is important to find ways to make your practice more profitable. By not just practicing medicine, but instead being in the business of medicine, it will help you to drive greater economic results to you and your practice.

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