Dangerous Traps We Face In Chiropractic Practice Today - And What it Takes to Avoid Them!

When I graduated from School many years ago, all we had to do was go out and build our practice. No thoughts were given to compliance issues, financial policies, etc. and we all thought we were doing the right thing as long as our colleagues were doing the same thing. In the past 15 years, we've seen our reality for chiropractic practice change dramatically- Particularly when it comes to our financial policies.

The ever-changing regulations and laws regarding your fees and collection policies are often confusing and conflicting. There are many rules to follow and many of us still think that as long as one of our colleagues are doing it, it must be OK.

They think that this "social validity" makes it OK, but.., what you don't know can burn you financially, legally, and otherwise!!

So how do you gain peace of mind with your balance of risk and reward?? How can we "cover our bases" providing a valuable service to our patients yet remain compliant under the scrutiny of the federal government, states, licensing boards, and third party insurers?

I realize demonstrating problems with compliance means nothing unless we can provide you a solution to the problems, so keep reading until the end.

One thing I want you to remember throughout this whole thing.... KISS- Keep It Simple Stupid!!!! If the solution to these problems is not simple, nobody will use it.

Dedicated to your success,
Dr. Douglas Luther

Trap #1: Dual Fee Schedules

Simply put, this is charging more to insurance companies that you do to cash paying patients. In most states, this is flat out illegal and against the law- even though there is an added expense and time it takes to collect money from an insurance company.

We have good intentions and want to charge people that truly need our services a fair amount by offering a discount, but we can get penalized for it and accused of violating false claims act and trigger investigations by insurance companies, state boards, attorneys and the OIG.

Why?

Many chiropractors do it, and it is increasing being discovered in audits leading to financially detrimental results. Fines are not only possible, but can be expected if you are caught. You can also have a cancellation of your preferred provider agreement(s), recoupment of the difference in fee schedules for all patients serviced during the audit period and reduced insurance fee schedules for the future for that plan.

Here's an example that we have all seen:

"$70 first visit including exam and all necessary x-rays"

Pick any local advertising book of deals and you will see something similar. If in reality, you charge insurance companies $127 for x-rays and $111 for an exam, you can be easily accused of having a dual fee schedule.

Here's another one: let's say a "shopper" calls your office and asks your receptionist how much you charge for an adjustment and the receptionist tells the caller $45, yet in reality, you charge insurance companies $65, then this is a dual fee schedule!

These scenarios happen every day, and chiropractors think that it's okay because they think "everyone's doing it." The truth is chiropractors can and DO get investigated all the time for these activities. Audits happen on a regular basis and we all know people who have been audited. Why make yourself a bigger target than you have to be and potentially face all the legal and financial issues associated with it?

It's important to remember all practices are required to have a fee schedule as a legal requirement. By not following a fee schedule that we follow, we can unknowingly set ourselves up for allegations of fraud and having to defend those allegations.

This is not a risk that any physician- chiropractor, dentist or other, should take. Keep reading to learn about a better, safer, and compliant option.

But first, let's get to another common practice that might be putting you at risk.

Trap #2: Time Of Service Discounts

Some States do allow you to offer "Time of Service" (TOS) discounts, however, you don't want to assume your state does. The best way to find out is to call your state board or state association and ask if it is against state law. Another thing to consider and ask them is what paperwork or forms are necessary to allow you to do it.

The big trap many of us do yet we aren't even aware of is that our time of service discounts are too unreasonable. The OIG (office of inspector general — the enforcement arm of Medicare) issued an opinion that the discount must reflect the "actual book keeping savings" we face as providers- typically 5-15%. Many of our TOS discounts, because they are substantially greater than this threshold, become less defendable. Ultimately, our vulnerability goes up and we can again be accused of having a "dual fee schedule."

Another thing to consider is that a time of service discount is a "time of service" discount- we can't go back and bill the patient for that service- they have to pay at the actual time of service.

A potential outcome of offering an improper TOS discount is the accusation of an inducement violation- which can become VERY expensive VERY fast. Read on....

Trap #3: Inducement Violations

You hear it everywhere....

"Free massage with your first visit" or "FREE exam and xrays for all new patients" In fact, I actually heard one of these advertisements today on my way to work. They are also in local magazines and common in many of our spinal screening offers. I've even seen these types of ads in Groupon or other types of social media.

Of course it makes sense in tough financial times to offer some type of offer to get people to come see you. We want to make it easier for people to patronize our business, but as healthcare providers, we are held to a higher bar.... And ultimately these poor decisions can be illegal and costly!!

Once again, we are lulled into thinking that because everybody else is doing it, it must be ok for me to do it, too, but that type of "stinking thinking" can get us into a lot of trouble.

It is flat out illega1 to offer a free or discounted service to a federally funded insurance patient as well as Medicare and Medicaid. This can be seen as an inducement and NOT legal to offer free or discounted service to any patient who has a federally funded insurance program, particularly Medicare and Medicaid patients. This can be seen as an inducement and can result in a $10,000 fine for each occurrence.

The OIG (office of inspector general) which is the long arm of the law for all federally funded healthcare programs (eg Medicare) states that any gifts must be cheap and of nominal value. They say the gifts cannot exceed $10 each and no more than $50 per year per patient.

Multiply $10,000 for each occurrence you are aware of and see how financially vulnerable you are. It's not hard to see how the sheer number of violations of this can potentially force you out of business.

Trap #4: Anti-Kickback Statutes Violations

It is not uncommon to see cases involving the Anti-Kickback Statute headlining hospital and health system news. This is affecting the smaller providers, too. This federal regulation prohibits the offering, solicitation or acceptance of any type of gift or remuneration in exchange for rewarding referrals for federal healthcare program business (Federal programs, Medicare and Medicaid)

Congress originally enacted the Anti-Kickback Statutes in 1972. Because the rampant fraud and abuse that continued to occur, they increased the penalty of violating the anti-kickback statute from a misdemeanor to a felony to further discourage this act.

To cut down on Medicare and Medicaid fraud and abuse, including Anti-Kickback violations, the department of health and human services (MIS) and the Department of Justice created the Health Care Fraud Prevention and Enforcement Action Team, referred to as HEAT, in 2009. Healthcare fraud became a higher priority with the creation of HEAT, as we are all aware.

Presently the consequences for violating the Anti-Kickback Statutes are steep. Criminal penalties can include fines up to $25,000 and a five-year prison term per kickback while civil monetary penalties can cost as much as $50,000 per kickback in addition to three times the amount of damages sustained by the government. Violators can also be excluded from federal healthcare programs.

Ultimately, we are being increasingly subjected to many different layers of regulations in which we are obligated to follow to remain legal in the new age. This makes us a target as providers on for several different violations. Recoupment of money by insurance companies and the Federal government is a very profitable endeavor, and we all have seen examples of this occurring to ourselves or with our colleagues. The Federal government recoups $8 for every dollar it spends on recoupment and that ratio is even higher for private insurers!!!! That is one reason recoupment efforts are going through the roof and keeping insurance payers busy (and some providers very nervous!)

Trap #5: False Claims Act Violations

This is also called the "Lincoln Law" and is adopted by virtually all states and the federal government as well. The law prohibits anyone knowingly presenting a claim for payment (to the government or any private insurer), in which they know is materially false. How does this present itself in your practice?? For example, incorrectly waiving deductibles or coinsurances and not reporting it to insurance companies and trigger a false claims investigations. Upcoding a certain service for a higher reimbursement may also create accusations of a false claims act.

A unique aspect of this law that many providers are unaware of is that it has a "whistleblower" provision that allows people (e.g. disgruntled employee) who report the violator to recover a portion of the damages recovered in a suit. To give you an idea of how serious this is, The government recovered $38.9 billion under the False Claims Act between 1987 and 2013 and of this amount, $27.2 billion or 70% was from whistleblower cases.

Ultimately, it comes down to documenting, coding and billing correctly for what you are doing.

All this means nothing for our profession if there are not solutions....

How do we navigate around these problems while remaining compliant and profitable. Even those who have good intentions may be unknowingly subjecting themselves to risk.

So what can you do?

Everything is practice (and business) is risk vs. reward. The goal is to remain compliant and legal yet remain profitable. One of the best moves you can make in a chiropractic practice is to affiliate yourself with a Managed Care Organization. You've heard of these before- HMOs, PPOs, DMPOs, MSOs, EPOs, etc. Not all are insurances, and some can be used to cover your bases on all the five "traps" listed above. It's also very simple and easy and is one of the most compliant manners in which to discount your services like you probably already do.

Our simple solution to the above issues is to use Patient Options, a discount managed care organization that eliminates the issues of dual fee schedules, improper TOS discounts and inducement violations. It also minimizes the likelihood of triggering a complaint related to dual fee schedules, time of service discounts, Inducement violations, illegal kick-backs, false claims acts, etc.

With Patient Options , you can help convert more calls to new patients because your staff will have the ability to let cash payers know the cost for the initial visit. This also makes it easier for patients to convert from insurance to private payment in a legal and cost-effective manner.

Want to learn more about Patient Options?

Contact us at 866-275-5633 and we'd be happy to assist you with any questions you might have.