

Choosing Consultants Without Compromising Compliance

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by Cheryl Hammen, RHIT

Auditing coding and DRG accuracy has become an important component in the daily operation of the HIM department. Many providers are choosing to contract with external coding consultants to perform this task. This can be an appropriate solution as long as the vendor meets the necessary criteria to ensure high-quality services. If not, the vendor and provider could hear from the federal government.

Recently, the Department of Health and Human Services (HHS) Office of Inspector General (OIG) released a Special Advisory Bulletin regarding certain consulting practices.¹ The bulletin addressed certain questionable practices that have been identified in healthcare consulting. These include:

- **illegal or misleading representations:** some consultants have made claims that they have "special" relationships with the Centers for Medicare and Medicaid Services (CMS, formerly HCFA) or the OIG, including statements that they are "endorsed" by one of these agencies. Neither of these agencies endorses consulting companies
- **promises and guarantees:** consultants may make financial promises or guarantees that cannot be met. This may include a promise that consulting services will result in a certain dollar or percentage increase in reimbursement. The practices used to keep these promises may be fraudulent
- **encouraging abusive practices:** healthcare consulting companies may educate providers to use inappropriate codes to increase reimbursement or to misinterpret coding rules and regulations to maximize reimbursement. The provider may not question the vendor and, in fact, trust the information provided as part of the vendor education
- **discouraging compliance efforts:** certain consultants discourage certain compliance efforts, such as coding compliance reviews. Compliance reviews are a recommended component of the OIG's Compliance Guidance. Should problems remain undetected, the provider may be at risk for potential fraud and abuse violations

According to the advisory bulletin, the OIG believes that most consultants, like most providers, are honest, and that the vast majority of relationships between providers and consultants are legitimate. Responsible consultants play an integral role in developing and maintaining practices that enhance a client's business objectives, as well as in improving the overall integrity of the healthcare system.

Unfortunately, a small minority of unscrupulous consultants engage in improper practices or encourage abuse of the Medicare and Medicaid systems. Depending on the circumstances, these practices may expose both the consultants and their clients to potential legal liability. Hiring a consultant does not relieve a provider of responsibility for ensuring the integrity of its dealings with the federal healthcare programs.

Take a Closer Look

A recent report by the General Accounting Office (GAO) provided instances of inappropriate or fraudulent advice given by a consulting company.² This advice could result in violations of both civil and criminal statutes. During the course of the education, advice was provided regarding:

- avoidance of reporting and refunding overpayments
- creation of documentation to support higher level evaluation and management (E/M) code assignments when a lower level code is appropriate
- limitation of services to Medicaid patients to avoid the lower payments usually associated with Medicaid

The GAO suggested to the OIG that workshops and seminars should be monitored to identify advice that could result in improper or excessive claims for reimbursement.

Healthcare providers need to be vigilant and exercise prudence when selecting and relying on consultants. The following criteria are provided as tools for providers to use in selecting external coding consulting companies. It is important to make certain the vendor:

- **follows the Cooperating Parties' (AHIMA, American Hospital Association, CMS, and National Center for Health Statistics) official ICD-9-CM guidelines for coding and reporting.** These guidelines have been approved for use in coding Medicare, Medicaid, and CHAMPUS claims. You may want to review the vendor's internal coding guidelines to ensure consistency with the official coding guidelines. Additionally, if a physician coding quality review is conducted, the vendor should be well versed in the application of E/M documentation guidelines that have been approved by CMS in assigning the appropriate level of CPT evaluation and management codes
- **reports overcoding, undercoding, and coding quality errors that do not affect the DRG assignment.** The primary goals should be to assess and improve coding accuracy. High-quality coded data depends on complete and accurate coding that reflects the documented diagnoses and procedures. The provider can then be assured that the billing is accurate and that its healthcare statistics will provide an accurate view of the case mix for determining future services, managed care contracting, and profiling
- **charges fixed fees instead of contingency fees.** The OIG compliance program guidance advises that compensation for billing consultants should not provide any financial incentive to improperly upcode claims. By charging the healthcare provider a fixed fee for coding quality reviews rather than a percentage of the money "found," the incentive for upcoding is eliminated
- **employs only AHIMA-credentialed coding staff** and is willing to provide proof of the credential status of each employee providing services. These credentials include RHIA, RHIT, CCS, or CCS-P. These credentials indicate that the individual has met AHIMA competencies for the particular credential and participates in ongoing continuing education
- **justifies recommendations for changes to coding or DRG assignment through the use of appropriate references.** Appropriate references would include the use of the official coding guidelines, E/M documentation guidelines, Coding Clinic for ICD-9-CM, or CPT Assistant. If the consultant cannot justify a recommended change, the healthcare provider may want to contact an official source (the Central Office on ICD-9-CM for ICD-9-CM questions or the American Medical Association for CPT questions) prior to agreeing with the consultant's recommendation
- **educates consulting staff on consistent application of official coding guidelines.** The vendor should be able to produce documentation indicating the provision of at least annual or semi-annual educational programs for its consulting staff. This may represent an educational session developed and presented by the company itself or sending the consulting staff to external programs
- **has its own compliance program and will provide you with a copy.** If a coding compliance vendor does not have a compliance program in place, how can it assist you in ensuring your compliance? The vendor's compliance program should reflect the steps outlined in the HHS' OIG compliance program guidance models as they can be applied to an external coding quality review vendor. Make sure that the coding philosophy of the vendor reflects your own philosophy in ensuring complete and accurate coding
- **monitors the quality of work performed by its consulting staff** and institutes corrective action to address unacceptable levels of coding accuracy. The vendor should be able to provide assurance that its work meets certain quality standards
- **educates provider staff as a component of its services.** A good external coding quality review should include education related to findings of upcoding, undercoding, and data quality as a component of its services. Technical or clinical education related to trends identified during the audit process should be included in the educational component
- **has never been convicted of fraudulent practices.** In keeping with the regulations for providers in the Balanced Budget Act of 1997, vendors who have been convicted of fraudulent practices should be avoided. It is in the best interest of the healthcare provider to ensure that they are receiving high-quality, ethical services
- **provides services under attorney-client privilege.** When an attorney representing a provider requests auditing services under attorney-client privilege, the vendor will work with and report only to the attorney. There will be no communication between the vendor and the healthcare provider. This protects the results of the coding compliance audit from future "discovery"
- **has credible client references.** Don't settle for a prepared list of references-this list will only give you the names of individuals with which the vendor wants you to speak. Request a list of and contact the five clients most recently served by the vendor. Ensure that they were satisfied with the coding philosophy of the vendor, the fees, and the quality of service

Although government investigations have been focused on healthcare providers, increased investigations of vendors are now occurring along with investigations of their clients. As a healthcare provider, protect yourself from investigation by ensuring that the coding consulting company you select provides high-quality, ethical services and adheres to all applicable federal and state laws and regulations. As the OIG notes in the conclusion of its advisory bulletin, "if a consultant's advice seems to be too good to be true, it probably is."

Notes

1. "Practices of Business Consultants." Office of the Inspector General Special Advisory Bulletin, June 2001. Available online at www.hhs.gov/oig/frdalrt/consultants.htm.
2. "Health Care: Consultants' Billing Advice May Lead to Improperly Paid Insurance Claims." United States General Accounting Office, June 27, 2001. Available online at www.gao.gov, under "GAO Reports."

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