

# Four Critical Steps to Choosing an Auditor

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by Julie Knutson, MSW, JD

In this compliance-driven age, many organizations are seeking the services of outside firms or "auditors" to conduct record reviews. But the proper selection process is often short-circuited by time considerations. Given the cost of audits, however, even if you're short on time, take steps at the beginning of the process to ensure the result you want.

1. **Know what you want.** Think about the report you want to receive from your auditors. If you skip this step and talk with auditors before you know what you want, your audit will be largely defined by auditors' suggestions, rather than by what you need.

Also, consult with other people in your organization to clarify their goals before calling a prospective auditor. Talk with people who will use the results of the audit and those who have compliance expertise, such as your corporate compliance officer. You'll want to address questions like these:

- **What is the purpose of the audit?** If the audit is compliance-related, concurrent rather than retrospective audits are favored, except in particular circumstances. A concurrent audit of bills and clinical documentation will examine only records that have not yet been submitted for payment, so deficiencies may be corrected before the bills are sent. A retrospective audit reviews past records, including bills that have been previously submitted and paid. The concern with retrospective audits is that they could result in creation of a legal duty to report repayments that were not previously suspected. Therefore, it is highly advisable to consult with legal counsel in developing audit plans where retrospective audits of billing records and documentation are being considered.

Typically, where audits of billing records are concerned, retrospective audits are used only when it has been determined that repayment is likely and bills are being audited to determine the amount and reasons for repayment. Consult legal counsel regarding the retrospective time period that should be reviewed.

- **What questions does the audit need to answer?** List the exact issues or questions that you want to address. A key issue is the standard of review. In the case of billing records, are you interested in identification of claims that are deficient to the point that they should not be submitted, or do you also want to know about deficiencies for general improvement purposes? When a due diligence review is conducted, do you want to know only about deal-breakers or do you want to know about problems of any magnitude? In either case, be sure that the auditor commits to detailed explanations for each entry, so each finding is tied to a specific rationale consistent with the standard of review.
2. **Define what kind of an auditor you want.** Specifically defining the nature of the audit will lead to a selection of a "first cut" of potential auditors. Don't assume that large firms are qualified in all areas. You may require the highly technical expertise of a boutique firm or individual specializing in a particular service area. Consult industry groups and journals to identify potential auditors. Your compliance officer or a health lawyer who has experience in arranging audits may also have suggestions.  
  
Check references on all likely candidates using a standardized list of questions so that you gather consistent information. Ask your colleagues, too, for information about potential auditors so that you are not relying strictly on references provided by the auditor.
  3. **Negotiate agreements for auditor services.** A threshold question is whether you desire attorney-client privilege or privilege under the attorney work product doctrine, another protection against disclosure, for the results of the audit. If the results of the study will be released outside your organization, as in the case of repayment, no privilege is necessary.

If you wish to position your organization to assert a privilege over the report of an audit, you need to determine this before engaging auditors, and you should seek the assistance of legal counsel in the engagement process.

Whether or not you seek privilege, you also should consider some other points. Review the fine print closely to be sure that agreements drafted by the auditor are fair to and desirable for your organization. Don't hesitate to negotiate changes. Also, consider whether confidentiality agreements with the auditor are desirable.

4. **Prepare to receive the final report.** When you're making the arrangement for the audit, make sure your agreement provides for a right of review of a preliminary report before it is finalized. If you have the right to review a preliminary report, you can make any necessary factual corrections and identify inappropriate legal conclusions in the report. While it is true that most auditors are aware of the legal implications of their findings, some may inadvertently draw legal conclusions that should only be made by regulators or courts. An example of an inappropriate conclusion would be one that flatly stated "this practice violates the law." Such conclusions should be deleted.

When you approach an audit and selection of an auditor with a reasonable amount of advance planning, you will get results far superior to "audits by default." And you'll have a better chance of avoiding unintended adverse legal implications.

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