

Preventing Fraud in Your Practice

Jayme R. Matchinski

AADSM
ANNUAL
MEETING

SAN ANTONIO
JUNE 7-9, 2019



CONFLICT OF INTEREST DISCLOSURES FOR SPEAKERS

1. I do not have any potential conflicts to disclose.

2. I wish to disclose the following potential conflicts of interest:

Type of Potential Conflict	Details of Potential Conflict
Grant/Research Support	
Consultant	
Speakers' Bureaus	
Financial support	
Other	

3. The material presented in this lecture has no relationship with any of these potential conflicts, **OR**

4. This talk presents material that is related to one or more of these potential conflicts, and the following objective references are provided as support for this lecture:

- 1.
- 2.
- 3.

RISK MANAGEMENT

“Activities directed at reducing the possibility of adverse financial and other consequences from both foreseen and unforeseen events.”

*Source: Black's Law Dictionary,
Sixth Edition (1990)*

HOT TOPICS - PREVENTING FRAUD IN YOUR PRACTICE

Recent Factors that Impact the Bottom Line for Dental Practices and Dental Sleep Medicine:

- Health Care Reform
- New Regulations
- Cuts in Reimbursement
- New Care Delivery Models
- Social Media
- Expanding Government Enforcement Efforts related to Medicare/Medicaid Fraud and Abuse Issues
- Litigation
- Increasing Number of Audits and Investigations
- Whistleblower Cases → Qui Tam Actions
- OIG Advisory Opinions
- OIG Work Plans

CURRENT KEY ISSUES IN DENTAL SLEEP MEDICINE

- Unbundling bundled codes.
- Billing Medicare for E/M codes.
- Dentists Referring to Themselves as Oral Surgeons.
- Scope of Practice and Licensure.
- Embezzlement in Dental Sleep Medicine Practices.
- Arrangements and Agreements with other Providers.

OIG BILLING ISSUES

The OIG has identified certain areas of concern for DMEPOS suppliers including, but not limited to:

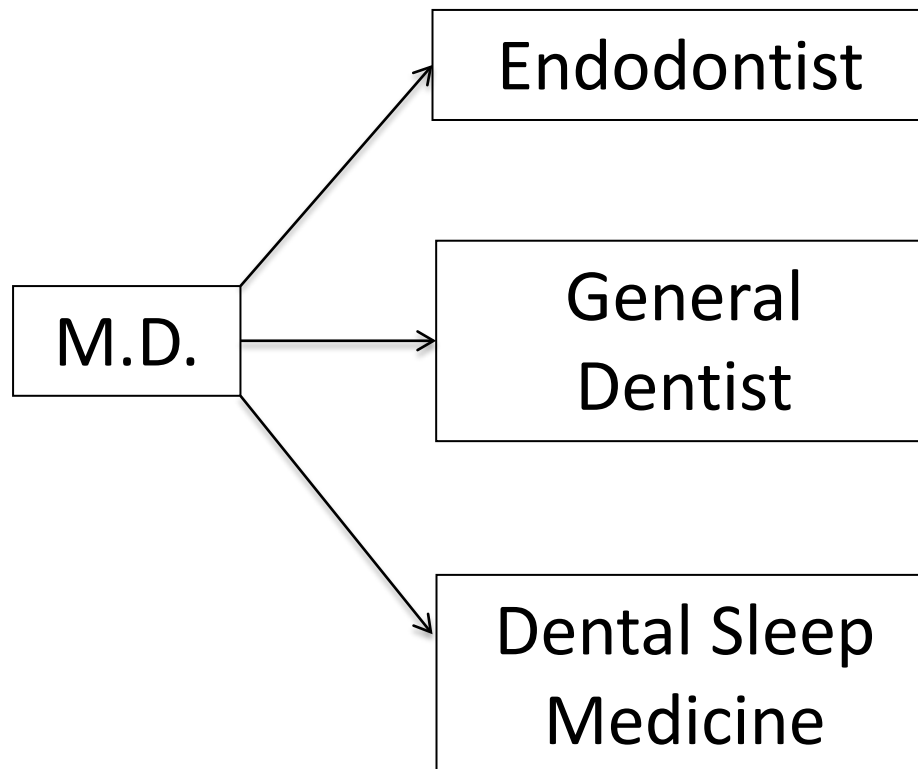
- Billing for items or services not provided;
- Billing for services that the DMEPOS supplier believes may be denied;
- Billing patients for denied charges without a signed written notice;
- Duplicate billing which occurs when more than one claim for payment is submitted for the same patient for the same service, for the same date of service;
- Billing for items or services not ordered;
- Upcoding, which involves selecting a code to maximize reimbursement when such code is not the most appropriate descriptor of the service;
- Unbundling items or supplies, which involves billing for individual components when a specific HCFA Common Procedure Coding System (HCPCS) code provides for the components to be billed as a unit;

OIG BILLING ISSUES (continued)

- Billing for new equipment and providing used equipment;
- Resubmission of denied claims with different information in an attempt to be improperly reimbursed;
- Refusing to submit a claim to the Center for Medicare & Medicaid Services (CMS) for which payment is made on a reasonable charge or fee schedule basis;
- Providing or billing for substantially excessive amounts of DMEPOS items or supplies;
- Failure to monitor medical necessity on an ongoing basis;
- Delivering or billing for certain items or supplies prior to receiving a physician's order and/or appropriate Certificate of Medical Necessity (CMN); and
- Falsifying information on the claim form, CMN, and/or accompanying documentation. (64 FR 36373).

OFFICE SHARING ARRANGEMENTS

Provision of Oral Appliances



Key Issues and Considerations:

- FMV
- Fee Splitting
- Collections v. Percentage Arrangement
- Payor Mix
- Per Diem v. Monthly Amount
- Office Sharing Agreement
- Regulatory Compliance
 - Stark Law
 - AKS
 - State Regulations

KEY REGULATIONS WHICH IMPACT DENTISTS AND DENTAL SLEEP MEDICINE PRACTICES

- Stark Law
- Anti-Kickback Statute
- HIPAA
- Anti-Markup Rule
- 2019 Physician Fee Schedule (PFS)

Key Compliance Issues

- ✓ Medicare Coverage and Payment
- ✓ Billing and Reimbursement
- ✓ National Coverage Determination (NCD)
- ✓ Local Coverage Determination (LCD)
- ✓ OIG Work Plan for FY 2019
- ✓ Expanded Enforcement Activities

EXPANDED ENFORCEMENT ACTIVITIES → FRAUD & ABUSE

- HEAT (Health Care Fraud Prevention and Enforcement Action Team)
- OIG Work Plan for 2019
- Medicare Integrity Program
- RACs (Recovery Audit Contractors)
- SIU - Commercial Insurance Carriers → Audits and Investigations

COMPLIANCE PROGRAM

Dental Sleep Medicine practices should consider implementing a Compliance Program.

Compliance Program = a system to ensure continuous compliance with all applicable laws, regulations, industry standards, organizational standards, governance principles, and community and ethical standards.

Compliance Programs may be required by law or contract.

Corporate Compliance = a term that is used to indicate that a provider runs a clean operation and does not commit fraud, waste or abuse of health care funds.

COMPLIANCE PROGRAM

Compliance Programs → Increases staff awareness, demonstrates commitment to regulatory compliance, and may be a mitigating factor during an audit or investigation.

Compliance Programs should be designed, implemented, and enforced so that the program is effective in preventing and detecting fraud, and abuse and criminal conduct.

Health care providers should ask:

- Is the Compliance Program “effective”?
- Is the Compliance Program well designed?
- Is the Compliance Program being applied earnestly and in good faith?
- Does the Compliance Program work?

SURVIVAL TIPS TO AVOID REGULATORY PITFALLS

- Don't Stick Out of the Crowd or Become "Low Hanging Fruit."
 - Avoid too many recruitments, medical directorships, etc.
- Cease and Desist All Personal Favors to Referral Sources.
 - Key message from pharmaceutical cases
 - No free vacations, computers, tickets
 - No unrestricted educational grants, etc.

SURVIVAL TIPS TO AVOID REGULATORY PITFALLS

- Make Compliance a Priority And a Part of Everyone's Job Description.
 - Educate and train all staff about regulatory compliance and the associated risk areas.
 - Monitor compliance on an ongoing basis.
 - Frequently check documentation to ensure compliance, confidentiality, and accurate records.

SURVIVAL TIPS TO AVOID REGULATORY PITFALLS

- Use Fair Market Value As a Benchmark For All Deals.
 - Overall protection if FMV is established:
 - For necessary services, expenditures and investments.
 - By independent and reliable source.
 - Using recognized and legitimate methodology.
- Ask: Does the deal/transaction/contract pass the “smell test?”

SURVIVAL TIPS TO AVOID REGULATORY PITFALLS

- Run a Tight Ship.
- Do not facilitate any alteration of documentation, e.g., shredding, backdating or altering.
- Do not withhold information from the government or produce incomplete information (half truth).
- Do not ask for numeric “odds” on being detected or being prosecuted when communicating with government agencies or officials.

SURVIVAL TIPS TO AVOID REGULATORY PITFALLS

- Create and Maintain Good Documents
 - Document FMV, business purposes, and services to be provided and time spent providing such services.
 - Good documentation is evidence of good faith and may block an investigation and/or audit.
 - Documentation can be a pitfall if records are inaccurate or incomplete.

SURVIVAL TIPS TO AVOID REGULATORY PITFALLS

- Do Not Create or Raise Any “Red Flags.”
 - E-mail can and will be used as evidence of wrongdoing and bad intentions.
 - Any communication (verbal and written) regarding referrals, money and physicians will be scrutinized.
 - Carefully review business planning document regarding statements or guarantees about anticipated referrals.

SURVIVAL TIPS TO AVOID REGULATORY PITFALLS

- Do Not Be Greedy.
- Investigators will target any investment or any compensation arrangement that appears excessive.

THE OIG'S SEVEN CORE ELEMENTS OF AN EFFECTIVE COMPLIANCE PLAN

1. Development and distribution of written standards of conduct.
2. Designation of a compliance officer and committee.
3. Screening employees and contractors.
4. Effective training and education of physicians and staff.
5. Development and enforcement of disciplinary procedures.
6. Auditing, monitoring, and reporting on a practice's operations.
7. Investigations and corrective action.

A COMPLIANCE PLAN SHOULD INCLUDE:

- Mission Statement/Vision Statement/Treatment Philosophy.
- Designation of a compliance officer and key responsibilities.
- Code of ethics.
- Objectives.
- Identification of internal communication system.
- Policies and procedures related to: standards of conduct, billing practices, mandatory staff education and training, disciplinary action, corrective action and reporting structure.
- Quality Improvement techniques used for investigation and corrective action
- Auditing, monitoring and reporting procedures.

TAKEAWAYS

- Reform and health care in general is a multi-faceted, complex issue. This does not lend well to mass-media analysis.
- Health Care Providers are still exploring the potential impacts on themselves, let alone on others.
- Stay tuned —→ there will be changes to Health Care Reform which will impact Dental Sleep Medicine.

THE IMPACT OF HEALTH CARE REFORM ON DENTAL SLEEP MEDICINE

- Reimbursement
- Care delivery models
- Measurement of patient care outcomes
- Coverage/pre-existing conditions
- Cost containment
- Shared savings programs
- Patient-centered model
- ACOs
- Co-management of patients by specialists and primary care physicians
- Quality of care measurements
- Transparency among providers

BEST PRACTICES TO AVOID AND PREVENT FRAUD IN YOUR PRACTICE:

- Understand and comply with Health Care Laws and Regulations.
- Maintain Updated and Proper Documentation.
- Ensure Accurate Billing.
- Avoid Prohibited Referrals and Arrangements with Other Providers and Facilities.
- Create and Follow a Compliance Plan.
- Stay Involved and Informed of New Regulations and Enforcement Trends.
- Use Your Resources:
 - AADSM
 - *Dental Sleep Practice*
 - Local and Regional Associations
 - Peers
 - Education and Training
 - Legal Counsel

Jayme R. Matchinski

(312) 345-5014

jmatchinski@greensfelder.com

[Linkedin.com/in/jaymematchinski](https://www.linkedin.com/in/jaymematchinski)