

# Socioeconomic tips of the month

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## Complying with anti-fraud and abuse requirements

**Q.** At the College's recent Clinical Congress, I attended a program entitled "Medicare in Transition: The Implications for Surgery" and heard Larry Goldberg from the Office of Inspector General speak about the Medicare program's fraud and abuse initiatives. He allayed many of my fears related to Medicare audits and spoke about the benefits of developing a compliance plan for my practice. What can I do to develop such a plan?

**A.** A compliance plan is a set of specific steps that are taken to help ensure that a physician's practice complies with statutory, regulatory, and other policies aimed at preventing health care fraud and abuse. M. Ray Painter, MD, FACS, president of Physician Reimbursement Systems, Inc., of Denver, CO, and the College's consultant for its coding hotline, terms such a compliance plan a surgeon's insurance policy against fraud and fines. There are three categories included under Medicare's definition of fraud and abuse: criminal, civil, and administrative. Fortunately, most wrongful billing cases are categorized as civil. Criminal is reserved for the very few who are proven "beyond reasonable doubt" to have willfully and knowingly defrauded the government.

However, in cases of civil and administrative fraud and abuse, even ignorance is no excuse. The law specifically states that if the physician "knew" or "should have known," guilt is determined by "the preponderance of the evidence." In essence, if you did not code it correctly, you are guilty. However, your "intent" and the magnitude of the offense determine your punishment.

June Gibbs Brown, Inspector General for the Department of Health and Human Services, recently issued an open letter to physicians. This letter emphasizes that the existence of an effective compliance plan provides evidence that an individual physician is making a good faith effort "to avoid and detect [fraudulent or abusive] behavior." Physicians who have compliance programs in place but who

make inadvertent mistakes have to pay back only the overpayment. The compliance plan is your insurance policy against charges of reckless disregard of the rules and corresponding heavy fines.

A compliance plan has to be a *working* compliance plan—meaning that you have to incorporate the principles of the plan into your daily practice. It is not that difficult. You start with a three-ring binder and seven tabs. The Office of the Inspector General has identified seven fundamental elements for the development of an effective compliance program, which were outlined in a December 1998 guideline issued to medical billing companies. These seven steps can be used as a template to individualize a plan for your practice and are as follows:

1. Implementing written policies, procedures, and standards of conduct, which include a mission statement, goals, and objectives and your ethical code of business.

2. Designating a compliance officer and compliance committee (in larger practices) with a job description and the authority to make changes as necessary.

3. Conducting effective training and education for new, as well as existing, employees who are involved with coding and billing activities.

4. Developing effective lines of communication.

5. Enforcing standards through well-published disciplinary guidelines.

6. Conducting internal monitoring and auditing by double-checking codes selected and documentation by periodic, random audit of patients' medical records.

7. Responding promptly to detected offenses and developing corrective action.

All of these steps need to be included, along with a firm and financial commitment by the practice's board of directors. Compliance must be acknowledged via signature of all relevant employees.

Take the initial steps today—appoint a compliance officer (for example, a physician, administrator, or manager of the coding and billing functions)

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# The *Journal* page

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## Message from the Editor

by Seymour I. Schwartz, MD, FACS, Rochester, NY

The January issue of the *Journal of the American College of Surgeons (JACS)* brings into focus Janus, the God for whom the month was named. The mythologic Janus was characterized with two heads, one looking back and the other looking forward. The lead article of millennial memories is a tribute to the past of the *Journal* nee *Surgery Gynecology & Obstetrics*. The editorial staff that initiated the journal were the men who planted the seed that would grow into the American College of Surgeons. As has been true of many significant cultural movements, the College developed, in part, as a consequence of a document, in this case a periodical. The relatively recent formal enfolded of *JACS* into the ACS (1994) emphasizes that the Fellowship can

claim complete ownership and sponsorship of the *Journal*. Therefore, as we look toward the future, the editorial board regards as its prime goal the production of a periodical that will be of interest to the broad spectrum of Fellows within the College. It is hoped that this attitude will, in turn, stimulate members of the diverse specialties encompassed by the College to contribute to the editorial material and consequently to benefit from the publication.

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*Dr. Schwartz is Distinguished Alumni Professor, University of Rochester (NY) School of Medicine and Dentistry. He is also Editor-in-Chief of the Journal of the American College of Surgeons and a Past-President of the College.*

### INTRODUCTORY ABSTRACT from the January lead article

**Special review: Millennial memories, *Surgery, Gynecology & Obstetrics* and *Journal of the American College of Surgeons*.** Seymour I. Schwartz, MD, FACS, Rochester, NY.

The year 2000 is upon us. Although some argue that the new millennium actually dates from 2001, the focus has been on the year 2000, fueled in part by its implication in our current age of the computer. We are bombarded on all fronts by reflections of the past two millennia and it seems reasonable to participate in the mass reaction. The *Journal of the Ameri-*

*can College of Surgeons*, initially *Surgery, Gynecology & Obstetrics*, lacks but five years of achieving centennial status. Therefore, in keeping with society's current theme, it might be of interest to reacquaint the readership with some of the focal issues published in the *Journal* since its inception. The years 1975, 1950, 1925, and 1905 will be considered in that order so that we can more dramatically provide a time capsule of representative contributions to the *Journal* during the past century.

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and set up a workable timetable to implement a comprehensive and functional compliance plan in your practice. Most hospitals have compliance plans. It has been suggested that your hospital plan be used as a template in tailor-making one to your specific practice. There are no off-the-shelf plans. In fact, if you purchase one of the many available guides and simply put it on your shelf without making it functional for your practice, it could work against you in an audit. Every practice plan needs to be individu-

alized to the needs of your practice.

Through its Regental Professional Liability Committee, the American College of Surgeons is working on the development of a guide on compliance plans to assist your practice. We understand that many professional liability companies offer or will offer insurance against fraud and abuse. We also understand that the OIG is developing a "guideline" for physician compliance that is expected to be released next spring. 