Our Patients Are Our Best Referral Source

- A successful LASIK practice decides to combine public relations with marketing. It wants to thank its patients who have had successful surgery and hopes to encourage them to promote the Practice to their friends. Their marketing director proposes the following programs:
  - Give each new LASIK patient a coupon for a $25 discount on a pair of sunglasses at the Practice optical shop following surgery.
  - Offer each LASIK patient a coupon good for a pair of sunglasses valued at up to $150 for every 2 patients referred to the Practice who eventually have surgery.
Our Patients Are Our Best Referral Source

- Discount on sunglasses for new LASIK patients
  - is it a kickback?
  - is it a prohibited patient inducement?
  - is there anything wrong with providing a discount on one good when purchasing another?
- Free sunglasses up to $150 value for 2 successful LASIK referrals
  - is it a kickback?
  - is it a prohibited patient inducement?
  - does it matter that LASIK is not a Medicare covered service?
  - would it matter if the offer were not limited to prior LASIK patients?

Holiday Gifts and other Perks

- Each year a practice sends holiday baskets to optometrists who refer to the practice.
- The practice keeps detailed records of the number of referrals from each OD.
- The practice sends out 3 sizes of gift baskets, the smallest to those who referred the least, and the largest to those who referred the most.
- But the practice makes at least one big mistake:
  - IT DOES NOT SEND ANYTHING TO ITS LAWYERS!
- Any other mistake?

What is a “Cataract Package?”

- Remember that your audience includes patients, auditors, regulators and competitors
- Two-Aspect Rule versus Non Covered Services versus Not Medically Necessary
- Paying for Services versus Paying for Outcomes
- Marketing materials, informed consent, fee information, and staff explanations that are not consistent and difficult to understand

Cataract Packages

- Review your packages critically to assure patients are paying only for items that fit into the two-aspect rule carve-out, or that are not covered by Medicare, or that are not medically necessary for a patient undergoing cataract surgery.
- Be clear in your discussions with patients and in any written materials for what services the patient is paying and to whom (physician or facility).
- Have a third-party (preferably someone without extensive ophthalmology background) review all of your related materials and explain to you what they understood them to say.
- Consider a video, slide deck or at least a standardized script for staff to use when speaking with patients. Audit what is being told to patients.
No Such Thing as a Free Lunch

- CMS has always had the regulatory authority to deny or revoke a physician’s Medicare billing privileges for a felony conviction.
- New regulations that went into effect the first of February now permit CMS to:
  - Deny enrollment to a physician or a previous owner of a provider or supplier who has an unpaid Medicare debt.
  - Revoke enrollment of a physician that demonstrates a “pattern or practice of submitting claims that fail to meet Medicare requirements”
- No clear definition of “pattern or practice.” Decision will be based on a case-by-case review of factors such as:
  - Percentage of submitted claims denied
  - Reasons for denials
  - Length of time over which the pattern or practice has continued
  - Length of time the physician has been enrolled in Medicare
  - History of adverse final actions

Don’t avoid dealing with overpayments or other debts to the Medicare program. If you have an ownership interest in any provider or supplier enrolled in Medicare, be sure you are aware of any such debts.

Be sure your practice has a defined process and policy for addressing denials that includes a requirement that the billing department report regularly to the compliance officer and senior management trends in denials and the specifics about any situation where payment for a service is being denied regularly.

Seek input from billing expert related to repeated denials.

Challenge denials of services through proper administrative channels.

A Not So Firm Foundation

- A Practice decides to set up a Foundation for the benefit of patients suffering from eye-related disorders. All the paperwork is drafted properly and approved by the IRS. The Board of Directors is comprised of the 4 partners in the Practice plus the Practice’s marketing director. The Foundation solicits contributions from the local community as well as several of the vendors from whom the Practice purchases equipment and supplies.
- Thanks to the efforts of the marketing director, the Foundation is very successful at fund-raising and is able to use the funds to promote quality eye care for the local community. Specifically, the funds are used as follows:
  - To support the local chapter of the Lion’s Club
  - To sponsor a free educational seminar under the Practice’s name for all of the local ODs, where the Practice’s physicians present the latest developments in treatment
  - To subsidize the care of patients who have no insurance. Payments are made to the physicians who provide the service, principally those in the Practice

Any Problem with:
- Supporting the local chapter of the Lion’s Club?
- Sponsoring a free educational seminar for local ODs under the Practice’s name?
- Subsidizing care for patients using funds to pay the Practice physicians who provide services?
- Any other problem with the structure of the Foundation?
To Talk, or Not to Talk, That Is the Question

A Practice is visited by a team of agents from several federal and state agencies. The agents are wearing jackets with various letters of the alphabet on the back... like F B I and O I G. The sharp Practice Administrator figures that these guys are not visiting to sell raffle tickets or to get their eyes checked. He instructs the staff not to speak to the agents under any circumstances. He is quite sure that the visit was prompted by the fact that the Practice was billing for a new physician under the senior physician’s billing number because Medicare is so slow to enroll new docs that they had to do it to get paid. Since Medicare paid the same amount it would have paid anyway, he figures he can explain everything to the agents and that they will go away. So, no harm no foul.

Good to the Last Drop

- Many physicians are exploring ways to decrease the number of medicines patients must administer post-cataract surgery
- Currently, options limited to compounded and off-label products
- Injection and drug are covered and bundled into the payment for cataract surgery
  - Compounded drug combinations described above and similar drug combinations should be reported with HCPCS code J3490 (Unclassified drugs), regardless of the site of service of the surgery, and are packaged as surgical supplies in both the HOPD and the ASC.
  - Physicians or facilities cannot circumvent packaged payment in the HOPD or ASC for these drugs by instructing beneficiaries to purchase and bring these drugs to the facility for administration or by incorporating a charge into payment packages for ATIOLs

Other Drug Issues

- Omidria (phenylephrine and ketorolac injection) added to BSS irrigation solution utilized during cataract surgery
  - Is it also bundled? Why not?
  - Does pass-through status have any impact on facility or physician reimbursement?
  - What about the future?
Marketing Can Backfire

- Earlier this year, a jury awarded a plaintiff $8.5M against a primary care physician, the management company overseeing the physician’s practice and an orthopedic specialist to whom the primary care physician referred the patient. Case alleged negligence associated with a BKA necessary due to complications from an undetected blood clot.
- Among other claims, the plaintiff argued that his wife did not get the “guaranteed exceptional outcomes” promised in the marketing materials of the management company and the primary care physician.
- Another example of how aggressive marketing materials can backfire.
- Complicates the question of who is responsible for a medical mistake.

It May Not Be So Good to Be the King

- When Medicare published the list of payments to physicians, one proud physician studied the data closely and was pleased to see that he performed more cataract surgery than any other ophthalmologist in his state. Immediately he contacted his marketing director to place a full page ad in the largest newspaper in the state to promote his significant accomplishment. His marketing director, generally eager to develop any new promotion, thought that might not be the best idea.
- What do you think?

Marketing Can Backfire

- Review your marketing materials critically, and please squelch the urge for superlatives.
- If you work with a MSO, do not leave decisions regarding marketing solely in the hands of MSO employees. The physician will be held to meet the claims made.

Or, For that Matter, the Prince

- Another ophthalmologist, an active clinician with a busy practice who is a highly respected KOL for 34 device and pharmaceutical companies, wanted to prepare himself for the potential scrutiny he will get when the Sunshine Act list is published again, this time with a full year’s payment data. He made sure that all of his contracts were current, that his hourly rate was no more than $500, and that he was paid no more than $50,000 annually under any agreement. Last year his total consulting compensation was $1.1 million.
- What issues do you see?
Or, For That Matter, the Prince

- What else do the contracts have to reflect?
- Does he have to limit his compensation to $500/hour?
- Does it help to limit a single contract to $50,000/year?
- How many hours does it take to generate $1.1 million at a rate of $500/hour?
- How many hours does he work in his busy practice?
- How many hours can you work in a year?

Keep Your Eye on Stark

- Ophthalmology generally has been less impacted by the Stark Law since few services are on the list of Designated Health Services
  - But the list is updated every year (e.g., OCT was added in 2012)
- Productivity bonuses based on individual physician productivity may be paid, including “incident to” services
  - Diagnostic tests are not incident to services
  - Bonuses may not include services performed by someone else in the practice
- Review physician compensation plans if you are unsure as to whether your bonus structure meets this standard