Emergency Health Services Federation – EMS Innovation Conference 2019

WHAT'S HOT FOR 2019… AND BEYOND?

6 CRITICAL ISSUES FOR RENEWED LEADERSHIP FOCUS

Steve Wirth, Esq., EMT-P
swirth@pwwemslaw.com

Page Wolfberg & Wirth
The National EMS Industry Law Firm

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WARNING

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The Top 6 Issues

- Accurately Identifying Your Costs of Doing Business
- Taking Heed of the #MeToo Movement
- Managing the Risks to Patient Data

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The Top 6 Issues

- Maintaining Stafffing, Certification, Enrollment and Other Requirements
- Effectively Managing Distractions and Staying Focused on the Mission
- Creating a Culture of Compliance

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Issue #1

Accurately Identifying Your Costs of Doing Business

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Why Know Our Costs?

- *Determine fair pricing* – reduce public backlash and cost shifting issues
- *Develop compliant pricing* – avoid AKS and other issues
- *CMS will require it* – to re-evaluate payment methodology

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Why Know Our Costs?

- More *local agencies* demanding cost information in evaluating 911 contracts and RFPs
- *Makes good business sense*

2. Expense Structure (7 points): This factor provides points for the lowest realistic and responsible expense structure. The points for expense structure will be computed by dividing the amount of the lowest realistic and responsible total expenses in the Total Expenses in Annual Expense Reporting of Budget Compliance Form (Exhibit A – Proposal Form: Financial Bid) by each Bidder's total expenses. The Bidder with the lowest realistic and responsible total expenses shall be awarded 7 points. Other Bidders shall be awarded points based on the pro-rata difference in total expenses, in which the Bidder with the lowest responsible total expenses (numerator) is divided by the Bidder's total expenses (denominator), yielding a percentage. The Bidder's percentage shall be multiplied by 7 points to yield the Bidder's points for cost structure, rounded to the nearest whole number.	15 Points

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Shifting Payment Systems

- From *Fee for Service* to *Managed Care*
- From *Reasonable Charge* to *Fee Schedule*
- From *Occasions of Service* to *Value of Service*
- From *Transportation Service* to *Mobile Integrated Healthcare*

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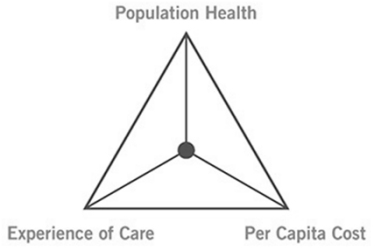
The IHI Triple Aim



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Determine Fair Pricing

Reduce public backlash and cost-shifting

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Develop Compliant Pricing

Avoid AKS risks

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Pricing Imperative

The price you charge for your services must be based on a calculation of your fully-loaded costs of providing that service

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Discounts Can Be "Kickbacks"

- Part A discounts given to facilities that refer Part B business to the ambulance service can violate the anti-kickback statute
  - OIG Advisory Opinion 99-2
  - OIG Advisory Opinion 10-26

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AKS Violations = FCA Violations

- The Federal False Claims Act amended to allow whistleblowers to bring FCA claims alleging AKS violations
  - Competitors and anyone with a beef can now come after you for improperly discounted facility arrangements!

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Discounting Dangers

- The DOJ and other Federal enforcement agencies are adopting a more aggressive posture in AKS enforcement in ambulance service-facility arrangements

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May 11, 2015 01:00 AM

Feds put hospitals on notice with Florida settlements over ambulance rides

Nine Florida hospitals have agreed to pay $6.2 million to settle allegations that they led ambulance companies to bill federal health programs for medically unnecessary rides, the U.S. Attorney's Office for the Middle District of Florida announced Friday.

It's a case government officials say could have implications for hospitals across the country.

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This means it is imperative that your agency regularly perform – and document – ongoing cost analysis

After the subpoena comes is too late!

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Approaches to EMS Cost Analysis

- There are a variety of approaches to analyze costs
  - Unit-hour cost
  - Marginal (incremental) costs
  - Fully-loaded average cost per transport

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Cost Collection

Required reporting to CMS

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Medicare - Ambulance

- Total Medicare expenditure: $ 709 Billion
- Total ambulance expenditure: $ 5.5 Billion

Ambulance is just .82% of all Medicare spending

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Current Medicare Payment System

- Conversion Factor, Relative Value Units, Geographic Practice Cost Index (GPCI) and Add-Ons
- Square peg in a round hole approach – based on physician practice model

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What About Costs?

- Cost of doing business NOT considered in developing the payment system
- Identification of costs NOT considered in maintaining the payment system
- Payment system does NOT address high cost patients

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The New Law

- Bipartisan Budget Act (BPA) of 2018 (HR 1892)– February 9, 2018
- Congress wanted cost information to evaluate extension of add-ons
- Add-ons secured for 5 more years, with cost collection requirement

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Timeline

- **12/31/2019:**
  - Specify data collection system
  - Identify agencies required to submit information for representative sample
- **2020 through 2024:** Collect data annually from representative sample

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Timeline

- **2022:** First year an agency asked to submit data but fails to do so would be subject to 10% payment reduction
- **March 15, 2023:** MedPAC report due
- **2025 and after:** Collect cost data as gov't determines but not less than every three years

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Collection vs. Reporting

- Cost Collection is better than Cost Reporting
- But there are many challenges…

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Many Cost Variables

- Organizational structure
- Volume
- Service mix
- Various delivery models
- Capital costs
- Geographic factors – urban vs. rural
- State and local regulations
- Personnel costs
- Volunteer staff

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Medicare's ambulance policies have remained mostly unchanged since 1965 – when the *ambulance ride* was all that mattered

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ET3

The CMS
Emergency Triage, Treat and Transport Model

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"It makes no sense to pay only for ambulance services that result in patients being transported to hospitals and other expensive health care facilities – when many conditions can be treated on-scene or in much more appropriate – and cost-effective – care settings"

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EMS Leader Lessons

- Get a handle on your costs
- Stay in touch with changing economic environment
- Consider alternate payment models/systems
- Be active in your ambulance associations – we need a unified voice!

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Issue # 2

Taking Heed of the #MeToo Movement

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What About the "EMS Culture"?

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Leadership Responsibilities

- Culture – foster a positive and respectful work environment that does not condone harassment, bullying or discrimination of any kind
- Prompt Action – take all complaints seriously, promptly investigate and take appropriate action

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Reinvigorate Your *Policies*

- Are they current?
- Are they practical and easy to understand?
- Do people know about them?
- Are they followed?

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Reinvigorate Your *Training*

- Leadership and supervisory staff – this stuff is serious and they can't tolerate it
- Front line staff – respect each other
- Be careful with "role play" scenarios – participants may be uncomfortable and joking behavior often occurs

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Reinvigorate Your *Reporting* Process

- Atmosphere that encourages reporting
- Multiple channels to report
- Anonymous reporting
- OK to not follow the chain of command

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Reinvigorate Your *Investigation* Process

- Investigation plan in place
- Excellent investigator – be careful of outside consultants and rely on your attorneys
- Prompt
- Objective and thorough
- Reporting and follow up

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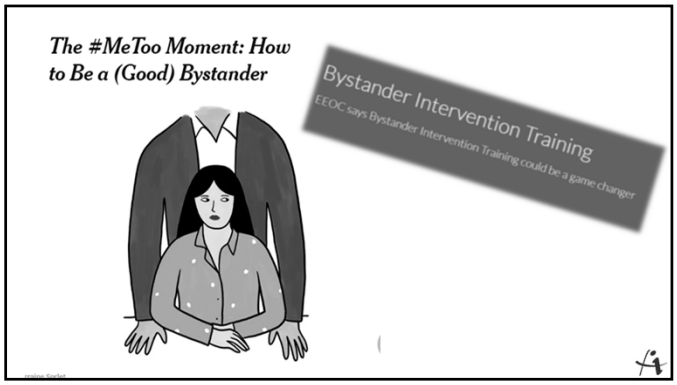

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The Law Requires…

- Prompt investigation of credible allegations
- Prompt action to stop any unlawful harassment
- Appropriate steps to prevent it from happening in the future

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<u>Must</u> You Fire the Accused if You Have a Credible *Allegation*?

- **NO.** Investigate - talk to both parties and others- and make credibility determinations to evaluate if you believe the allegations are true
- Disciplinary action – including termination – depends on severity and many other factors that must be objectively evaluated

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Issue # 3

Managing the Risks to Patient Data

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Big HIPAA Settlements

Feds Cap Banner Year For HIPAA Enforcement With $3M Pact

By Allison Grande

Law360 (February 8, 2019, 10:12 PM EST) -- The U.S. Department of Health and Human Services concluded a record year for enforcement under the Health Insurance Portability and Accountability Act in 2018 by securing a $3 million settlement with a California-based hospital network over alleged security failings stemming from a pair of data breaches, the agency said Thursday.

Cottage Health agreed in December to pay the monetary penalty and adopt "a substantial corrective action plan" to settle a HIPAA enforcement action brought by HHS' Office of Civil Rights after the hospital network's disclosure of separate breaches of unsecured electronic protected health information in December 2013 and December 2015 that impacted over 62,500 individuals, according to OCR, which revealed the settlement for the first time Thursday.

The resolution wrapped up an all-time record year in HIPAA enforcement activity for OCR in 2018, during which time the agency collected $28.7 million from 10 settlements and a summary judgment victory before an administrative law judge. That figure surpassed OCR's previous high-water mark of $23.5 million from 2016 and included a record-smashing $16 million deal announced in October with health insurer Anthem Inc. over a massive data breach involving 79 million people, the agency said.

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Provider	Violations	Fine
Presence Health	Presence Surgery discovered a breach of PHI information for 836 patients. Presence failed to notify these patients within 60 days of discovering the breach, nor did they notify the OCR. In order to avoid further violations, Presence agreed to a fine.	$475,000
Children's Medical Center of Dallas	Children's had an unencrypted, non-password protected BlackBerry that was lost and contained the ePHI of about 3,800 individuals. They also had an unencrypted laptop with ePHI of 2,642 individuals stolen. Despite this, Children's failed to encrypt laptops, mobile devices and workstations and continued to issue unencrypted BlackBerry's to nurses and use unencrypted laptops, workstations and mobile devices.	$3,200,000
Memorial Healthcare System	ePHI of 115,143 individuals was impermissibly disclosed to affiliated physician office staff. The login credentials of a former employee of the affiliated physician's office was used to access this ePHI on a daily basis. While Memorial had policies and procedures in place to prevent this, they failed to implement these procedures by not modifying/terminating users' rights of access.	$5,500,000

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Top Vulnerabilities

- What your people say and do
- What data is accessed and who gets the data
- Protecting your data from cyber and other attack
- How your data is used by your business partners

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What People Say and Do

- Verbal discussions
- Social media – comments and images
- Watch this video….

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What Is Accessed and Who Gets It

- Clearly defined access policies
- Role based access
- Current BA agreements
- Proper procedures for patient access
- Security protections when receiving and sending PHI

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Cyber Security

- Internal safeguards – protections, backups, contingency plans
- External safeguards – malware, ransomware, phishing and cyber attack protections
- Proper transmission of PHI with encryption
- Should be tested periodically

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How is Your Data Used?

- Do you need a BA agreement and is it current?
- Who should have your data?
- Are you giving them just what they need and no more?
- What are *they* doing with your data?

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- Ride-alongs and other arrangements can pose improper access issues
- Even if you have written consent

Million dollar fine: Boston Medical Center, Brigham and Women's Hospital and Massachusetts General Hospital pay to settle privacy cases for letting TV film crew in

Updated Sep 21; Posted Sep 21

Filming for the show (ABC/Lorenzo Bevilaqua)

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EMS Leader Lessons

- Always err on the side of protecting patient information
- Control who has access and why
- Data and IT system security audit is a must
- Comprehensive HIPAA policies and training
- Promptly investigate potential breaches

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Issue # 4

Maintaining Staffing, Certification,Enrollment and Other Requirements

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Where Have the Good Medics Gone?

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Some Solutions…

- Establish expectations and communicate them
- Train your leadership team
- Hold people accountable
- Foster a positive and respectful work environment

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Some Solutions…

- Provide good facilities and equipment
- Train them!
- Be flexible in schedules and work assignments
- Appreciate them while they are with you and include them in decision-making

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Legal Consequences

- Failure to meet the crew and vehicle requirements
- Overpayments when personnel not properly certified
- OIG self-disclosure and penalties
- Potential FCA lawsuits

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People Certifications

- EMS credentials and certifications
- CPR, ACLS, ATLS, PALS, etc. – keep evidence of expired certifications in case of audit
- Driver's license
- EMS continuing education requirements and monitoring progress

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OIG Exclusions

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OIG Exclusions

- Not limited to fraud convictions
- Drug convictions and other crimes of moral turpitude may lead to OIG exclusion

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Check the List!

- Need system to regularly check exclusions – every 30 days
- Need policies *requiring* staff to report convictions and administrative actions

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Medicare Enrollment Issues

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Failure to Revalidate

- Deactivation of Medicare billing privileges
- Lapse in ability to bill Medicare
- Can't bill for anything during deactivation
- Limited appeal rights

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Other Issues

- Vehicle licensure
- Agency EMS license
- DEA, OSHA and other fundamental requirements

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Issue # 5

Effectively Managing Distractions and Staying Focused on the Mission

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Two Types of Distractions

- *People* distractions – texting, social media, and other on-duty activities can lead to harm to patient and others
- *Leadership* distractions – being mired in emails, meetings, and operational details that lead to failure plan for the future

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People Distractions

- Laziness and apathy
- Second-guessing
- Electronic distractions – texting, social media
- Lack of sleep
- Lack of patient feedback

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Consequences We've Seen

- Vehicle crashes
- Dropped patients
- Drug administration errors
- Other medical mistakes
- Complaints from patients and the public

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Leadership Distractions

- Leaders mired in detail, e-mails and day-to-day *operational* issues and not spending time on the *strategic* issues that impact the future
- Running down "rabbit holes" that don't really positively impact our mission

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"Successful Leaders Work on the ***Way*** Work Gets Done"

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"In the long run, patient and workforce safety will not only be a moral imperative but will likely be critical to sustainability and essential to delivering on value."

Gary Kaplan, MD

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"The $3,600 Ambulance Ride"

- Are we explaining to our stakeholders that this is much more than a "ride"?
- Do we have good processes for dealing with collections and ability to pay issues?
- Are we visible in the community as advocates for EMS?

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Issue # 6

Creating a Culture of Compliance

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Whistleblowers Wreak Havoc

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THE UNITED STATES DEPARTMENT of JUSTICE

FOR IMMEDIATE RELEASE Tuesday, January 30, 2018

Tampa's Largest Ambulance Providers Agree To Pay $5.5 Million To Resolve False Claims Act Allegations Regarding Medically Unnecessary Ambulance Transports

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United States, et al. ex rel. Sharp v. AmeriCare Ambulance

Case No. 8:13-cv-1171-T-33AEP

- Whistleblower worked for 5 months
- Alleged a 10-year conspiracy
- Complaint got DISMISSED initially, then DOJ intervened
- $1.15 Million awarded to EMT whistleblower…

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21 weeks @ 40 hours = $1,369 per hour – not bad!

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Do your people feel welcome to report concerns?

If you're not feeling welcome, you're probably not.

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Government Aggression

- Increasing FCA lawsuits
- More creative government theories
- New contractor audits
- Increased penalties for FCA violations

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Internal Compliance

- Active compliance plan in place?
- Regular compliance education?
- Multiple methods to report concerns?
- Regular audits?
- Prompt investigation and action to correct?
- Follow up to prevent recurrence?

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External Compliance

- Do business partners such as data management and billing companies
  - Have compliance plans in place?
  - Internally audit and report promptly any compliance issues?
  - Conduct regular external audits?

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Whistleblower Suit Dismissed

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The Allegations

- Vassallo v. Rural Metro Corporation (D. Az. 1/10/19)
- Former billing employees brought whistleblower case for fraudulent billing practices
- Alleged claims were billed at the emergency level that did not meet the regulatory requirements

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When is a Claim False?

- ***Intentional fraud*** – actual knowledge – you know a claim is false and you submit it anyway
- ***Deliberate indifference or reckless disregard*** – for the truth or falsity of the information
- ***Specific intent*** to defraud is <u>not required</u>

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Defendant's Arguments

- Conducted training and oversight activities
- Solicited feedback on the billing process
- Instructed coders to err on the side of under-coding

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Defendant's Arguments

- Hired experts to monitor and improve coding practices
- Relied on staff certified in ambulance coding

CAC Certified Ambulance Coder

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Court Dismissed the Case

- No evidence of deliberate ignorance:

"The undisputed evidence shows that Defendants…instructed coders to err on the side of undercoding, limited coders to one or two markets, and relied on an account manager and project coordinators who had received ambulance billing certifications."

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Lessons Learned?

- Billing training
- Compliance programs
- Not pushing the envelope and communicating it
- Staff certifications

Can help show you did not commit intentional fraud

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Summary and Conclusion

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