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Physicians Learn How to Negotiate Employment Contracts

Combining a national perspective with Colorado specific experience, attorneys Wes Cleveland, JD, of the AMA Advocacy Resource Center and Kari Hershey, JD, of Hershey Decker, a Colorado healthcare law practice, presented *Negotiate With Confidence: Know What's in Your Contract* to an audience of Denver physicians at the Wellshire Inn on February 13. With the changing healthcare landscape, many physicians find themselves negotiating their own employment contracts with hospitals, healthcare systems, or large practices; or, negotiating with potential physician employees. Cleveland and Hershey provided pointers for both sides and some cautionary tales as well.

Cleveland encouraged physicians to begin their employment process by thoroughly exploring a potential employer's economic and organizational viability. Physicians should push for as much

access to financial data as possible and may want to engage a professional to assist them in a review. Governance and organizational structure, along with the organization's strategic plan, can have significant impact on both viability and the nature of the work environment a physician



Wes Cleveland, JD, AMA attorney, discusses employment contracts

may find themselves in and warrant close consideration. Is leadership stable or are key physicians/administrators about to move on? How many employed physicians have rotated through the organization in recent years

and what were their experiences?

Both speakers emphasized the importance of retaining professional expertise that knows the local market, may have experience with a particular organization, and can advise on what can and cannot be negotiated. Even when negotiating with a large system that insists it only uses a "standard contract" it is worthwhile to review it with an attorney. Hershey noted that it is not unusual to find "standard contracts" from systems with a presence in multiple states that are not in compliance with all aspects of Colorado law. Some supposed standard terms also turn out to be negotiable when challenged. All terms and understandings need to be obtained in writing to ensure clear understanding by both parties down the road such as when different individuals may be responsible for interpreting and implementing a contract.

Compensation terms may



Edward Leary, MD, and A. Jason Richter, MD

involve significantly more than just salary and should be carefully defined and understood. Terms may include a signing bonus (which may vary widely based on local market conditions), relocation expenses, and a variety of fringe benefits including insurance coverages, paid time off, professional fees and time and money for professional development, call schedules and administrative time.

Physicians need to understand the compensation formula to be applied. Market salaries can be obtained from several sources by specialty and geographical area. Will compensation be based on straight salary or will there be an increasingly common productivity component applied? How will productivity be defined? Possible options include a percent of collections—what is the organization's record on collections? Another option

might be a percent of gross charges or work RVUs, which is becoming more popular. In addition to productivity, increasingly organizations are adding a “quality” component to compensation, incorporating such elements as national or specialty quality measures, patient satisfaction surveys, peer evaluations, etc.

If an equity opportunity is offered, ask for specific, objective terms and how the buy-in price will be determined. An annual review should be performed to avoid any misunderstanding about potential equity status. Duties such as extended hours, on call, administrative, and supervision should be clearly spelled out and any impacts on compensation agreed upon. Termination triggers and rights, along with issues such as which party will notify patients and whether there will be access to patient lists and records, need to be addressed. Finally, covenants not to compete are common, but local statutes and enforcement can vary widely. Physicians should carefully evaluate the

impact of these covenants on their future plans.

Wes Cleveland can be contacted at wes.cleveland@ama-assn.org or 312-464-4503 and Kari Hershey can be contacted at kari@hersheydecker.com or 303-226-1669.

For additional resources, you can find an Annotated Model Physician-Hospital Employment Agreement and an Annotated Model Physician-Group Practice Employment Agreement at www.ama-assn.org/go/employmentagreement. Colorado Medical Society members can also access a Physician-Hospital Employment Contract Handbook and Checklist at www.cms.org/resources/category/legal-and-ethics and take advantage of a member benefit offering flat-fee and discounted legal services.



Aris Sophocles, Jr., MD, JD, DMS President; Michael Drewek, MD; Nathan Hamburger, MD

Denver Medical Bulletin: Aris M. Sophocles, Jr., MD, JD, DMS President and Publisher / Curtis L. Hagedorn, MD, Chair of the Board / Aaron J. Burrows, MD, President Elect / Stephen V. Sherick, MD, Treasurer / Kathy Lindquist-Kleissler, Executive Director. The **Bulletin** is the official publication of the Denver Medical Society, established April 11, 1871, as the first medical society in the Rocky Mountain West. Published articles represent the opinions of the authors and do not necessarily represent the official policy of the Denver Medical Society. All correspondence concerning editorial content, news items, advertising and subscriptions should be sent to: The Editor, **Denver Medical Bulletin**, 1850 Williams Street, Denver, CO 80218. Phone (303) 377-1850. Fax (303) 331-9839. Web www.denvermedsociety.org. Email info@denvermedsociety.org. Postmaster: Send address changes to 1850 Williams Street.

Seminar and Dinner

Wednesday, April 9, 2014 6-7:30 pm

When Patient Turns Plaintiff - Lessons from a Defense Attorney in Reducing the Risk of a Malpractice Claim

Speaker: Bruce Montoya, Esq. of Messner Reeves, LLP
Michelle Swift, BSN, RN, JD, Risk Manager Patient Safety, TDC
HIPAA Omnibus Update

1.5 CME credits

All Denver Medical Society members are invited

Cool River Café
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To RSVP call 303-377-1850 or email info@denvermedsociety.org.

Avoid Being Put on the RAC: Be Prepared for a Recovery Audit Contractor Audit

What is a RAC Audit?

Any medical practice submitting claims to a government program, such as Medicare, may contend with a Recovery Audit Contractor (RAC). RAC audits are not one-time or intermittent reviews; they are a systematic and concurrent operating process for ensuring compliance with Medicare's clinical payment criteria, documentation, and billing requirements.

The RAC program was signed into law by the Medicare Prescription Drug Improvement and Modernization Act of 2003 and made permanent by the Tax Relief and Health Care Act of 2006. Its purpose is to identify improper Medicare payments—both overpayments and underpayments. The RACs use proprietary software programs to identify potential payment errors in such areas as duplicate payments, fiscal intermediaries' mistakes, medical necessity, and coding. RACs also conduct medical record reviews. In fiscal years 2010 and 2011, RACs identified half of all claims they reviewed as having resulted in improper payments.

The program's mission is to detect and correct past improper payments so that the Center for Medicare and Medicaid Services (CMS) can implement actions that will prevent future improper payments:

- Providers can avoid submitting claims that do not comply with Medicare rules.
- CMS can lower its error rate.
- Taxpayers and future Medicare beneficiaries are protected.

Who Is Subject to a RAC Audit?

- Hospitals
- Physician practice
- Nursing homes
- Home health agencies
- Durable medical equipment suppliers
- Any provider or supplier that submits claims to Medicare

Who is the RAC Auditor?

CMS has contracted with RAC auditors for each region in the United States. It is important to know who the RAC auditor is in your region. ***Never ignore a letter from one of these organizations.*** The United States is divided into four regions. Each region has a designated recovery audit contractor. Colorado is in Region C.

- **Region A RAC Auditors:** *Performant Recovery, Inc., and subcontractor, PRG-Schultz USA, Inc.*
- **Region B RAC Auditors:** *CGI Technologies and Solutions, Inc., and subcontractor, PRG-Schultz USA, Inc.*
- **Region C RAC Auditors:** *Connolly Consulting Associates, Inc., and subcontractor, Viant Payment Systems, Inc.*
- **Region D RAC Auditors:** *HealthDataInsights, Inc. Las Vegas, Nevada, and subcontractor, PRG-Schultz USA, Inc.*

What Does the RAC Review?

The recovery audit looks back three years from the date the claim was paid. RACs are required to employ a staff consisting of nurses, therapists, certified coders, and a physician. The RAC reviews claims on a post-payment basis. There are three types of review:

- Automated—no medical record needed
- Semi-automated—claims review using data and potential human review of a medical record or other documentation
- Complex—medical record required

What Can You Do to Prepare for a RAC Audit?

Assess your risk for billing issues by performing a risk analysis of your billing practices. Assign a knowledgeable member of your staff to review your billing processes and to develop a billing compliance plan. Consider hiring a contractor for this task. Identify billing issues, keep

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track of denied claims, and look for patterns and determine what corrective actions you need to take to avoid improper payments. Common billing errors include:

- Inadequately trained staff
- Lack of time
- Did not follow recommendations in Federal Register bulletins
- Did not consult Health and Human Service bulletins
- Misinterpretation of rules
- New staff/New billing company

The person responsible for implementing the billing compliance plan should regularly monitor RAC progress in your region. Each RAC must maintain a website with information on new audit focus areas and the status of a provider's audits. Areas to include in your assessment and monitoring plan include:

- Review denied claims categories by RAC audit
- Keep abreast of notifications on CMS website
- Review annual Office of Inspector General (OIG) work plan to identify audit areas
- Monitor RAC progress at regional RAC (their web postings)
- Perform audit of your billing practices

Potential Issues with Electronic Medical Records

The OIG is studying the link between electronic medical record (EMR) systems and coding for billing. There is a concern that some EMR systems may upcode billing through automatically generated detailed patient histories, cloning (when you cut and paste the same examination findings), and templates filled in to reflect a more thorough or complex examination/visit. Review these issues with your EMR company and determine if your EMR program has the potential to automatically upcode billing based on EMR documentation.

Fundamentals for Compliance

Establish compliance and practice standards

and conduct internal monitoring and auditing to evaluate compliance. Conduct appropriate training and education for staff and respond to deficiencies identified during internal audits. Establish corrective action plans and enforce disciplinary standards when necessary.

Medical billing is complex. Billers and coders must be knowledgeable about many areas pertaining to billing/reimbursement. Be sure your billing staff understands local medical review policies and is knowledgeable of practice jurisdictions. Billing personnel must stay current on coding requirements and keep up with industry changes, understand denial and appeal processes, and be able to identify resources for support.

What to Do if You Are Audited

Do not ignore a letter from the RAC auditor. It is recommended you have an attorney assist you with your response to a RAC audit. Check with your insurance company to determine if you can get help with the audit. The Doctors Company, for example, provides RAC audit legal assistance for all members as part of its MediGuard® coverage. Before you send records to the auditor, be sure to review them in a "self-review." Are there common themes? Are you coding with the correct documentation? Make copies of everything you send to the RAC auditor and be sure to keep a copy of all documentation. Send medical records via certified mail.

Staying on top of the RAC audit process is important as there are multiple policies and procedures governing RAC audits. The RAC can request a maximum of 10 medical records from a provider in a 45-day period. The time period that may be reviewed has changed from four years to three years.

Responses are time-sensitive, and significant penalties may result if they are not handled properly. RACs are paid on a contingency basis for overpayments and underpayments. If you agree with the RAC demand letter you have the choice of paying by check or recoupment from future payments, or you may request an extended payment plan.

If a recoupment demand is issued, you may

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pay by check within 30 days with no appeal, allow recoupment from future payments, or request or apply for an extended payment plan. There is an appeal process if you do not agree with the audit findings.

Do not confuse the RAC Discussion Period with the appeals process. If you disagree with the RAC determination, do not stop with sending the discussion letter detailing why you disagree with the findings. File an appeal before the 120th day after the demand letter. Send correspondence to RAC via certified mail. It is recommended you have legal representation to advise you in the response to a recoupment demand, to determine if you should appeal, and to ensure you meet the required regulatory requirements of the appeal process.

CMGMA 2014 Salary Survey

The Denver Medical Society has partnered with Colorado Medical Society and Colorado Medical Group Management Association (CMGMA) again this year to bring you the *2014 Colorado Healthcare Staff Salary Survey*. This survey is a continuation of the previous *Salary Survey* that has been conducted by the CMGMA, CMS, and component medical societies across the state for over nine years and will be produced this year by CheckPoint. Continued financial support of the surveys is provided by COPIC Insurance and Colorado Business Bank.

These surveys are designed specifically for Colorado medical practices, and your participation is key to our success. Our goal is to accumulate data from all the geographical regions in Colorado and then report the data based on these regions.

The Salary Survey tool is online at <https://checkpoint.cmgma.com>. This link will take you to a login page, but please note that the survey is open to everyone. CMGMA members can log in as usual and complete the survey. Non-

Where to Get More Information on Government Audits

More information on the growing risk of government investigations and audits can be obtained through five short videos featuring tips from Kevin R. Warren, Esq., of Michelman & Robinson LLP's Healthcare Practice at <http://ow.ly/rP02n>. The videos address how to create an effective compliance program, why it's important to train staff to avoid improper and exaggerated coding, what steps to take if your practice receives a subpoena, and how to properly protect electronically stored information.

Contributed by By Kathleen Stillwell, MPA/HSA, RN, CPHRM, Patient Safety Risk Manager II, The Doctors Company. For more patient safety articles and practice tips, visit www.thedoctors.com/patientsafety.

CMGMA members can click on the New User link below Member login to sign up to take the survey.

The objective of this survey is to provide Colorado physicians, administrators, and managers with a useful resource that is representative of their local area to set salary and benefit levels within their practices. Having reports at your fingertips that contain salary and benefit benchmarks are critical tools to help practices be effective and competitive in the market place.

The completed questionnaires are due by Friday, April 18, 2014, and the report will be available in June 2014.

There will be a couple drawings again this year from all respondents received as of that date for a Visa Gift Card, so be sure to return your questionnaire early and have more chances to win!

All participating member practices of CMS will receive a FREE copy of the *2014 Staff Salary Survey Report*. This report is also available for purchase.

If you have any questions about the survey content itself, please call Eric Speer, Chair CMGMA Survey Committee, (719) 265-3737, email espeer@DublinPrimaryCare.com.



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 **School of Medicine**
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MEDICAL SPANISH and CULTURAL COMPETENCY

Friday, May 2 - Monday, May 5, 2014

8:00 AM to 5:00 PM

Denver Medical Society, 1850 Williams Street, Denver

Colorado has one of the highest proportions of Hispanic and Latino populations in the country. Denver counts over 31% of its population in this category! To enhance physician communication capabilities, Denver Medical Society in conjunction with the Community Health Association of Mountain/Plains States (CHAMPS) is offering a 4 day intensive, total-immersion learning experience in conversational and medical Spanish for physicians, nurses, PAs, NPs and other medical staff. Class levels are targeted to each student's needs and abilities. This is the 18th offering of this lively, rewarding, and highly popular class conducted by Rios Associates.

Four day class offers a ton of CMEs! Plan now to attend.

45 CME credits through AAFP or AANP, or
43 Category I CMEs through the AMA, or
45 Category I CMEs through ACEP

The cost of the class is \$499 for DMS members, \$599 for non-members, including text book. Optional cost: A Flash Drive containing the entire content of the text book—\$35.

To register, go to <http://medspanish.org> and click on the registration tab at the top. You will be able to register, pay and complete a brief Self Assessment Form at this site. On the registration form scroll down to "United States": DMS members select the \$499 "Students" rate; non-members select the \$599 "Residents, PAs, and RNs" rate. By completing the Assessment Form, the instructors will be able to determine whether you belong in the Beginner, the Intermediate, or the Advanced class.

Morning and afternoon snacks are provided.

If you have any questions, please call Tamara Rios, PhD, (520) 907-3318, or email convesp@aol.com for additional information.