Most oral and maxillofacial surgeons believe that the Medicare and Stark Regulations generally do not apply to them. After all, most oral and maxillofacial surgeons do not provide many Medicare covered services or Designated Health Services, two of which are radiology and clinical laboratory services, and few oral and maxillofacial surgeons accept Medicaid. However, this does not mean that you should not have a Compliance Plan in place.

Fraud allegations against oral and maxillofacial surgeons have included Medicaid fraud, basic insurance fraud, steering of business, and payment for referrals. How does this occur? There are the obvious instances in which the surgeon’s office bills for services not performed, up-codes services that were performed, generates patient charges in excess of the amount submitted to insurance, diagnoses and performs services of questionable need, separately bills anesthesia to a Medicaid patient, bills under a different provider’s name or makes direct or indirect payments to induce referrals.

It is true that if you do not participate in Medicaid, it is highly unlikely that Medicaid would bring action against you. So, why the concern? In part because of the dramatically increased funding allotted for investigating and prosecuting fraud, screening claims, and oversight in commercial payer investigations. Having and using a compliance plan is an effective tool for helping you to know your obligations, protect yourself and promote a culture of compliance in your practice.

Consider that the US Department of Health and Human Services (DHS) just announced that for fiscal year 2010 the government’s healthcare fraud prevention and enforcement activities recovered more than $4 billion in taxpayer dollars. This was through efforts across government agencies such as data sharing, enhanced screening and enrollment, and greater oversight of private insurance abuses.

Also, do not overlook the fact that a number of states have mini-fraud statutes that make it a false claim to submit a bill for a payment greater than that to which you are otherwise entitled from a private insurance carrier. This would happen in an up-coding or fragmented billing situation, or simply when the practice does not know the policies of their insurance plan(s). Such statutes have been used in the past by commercial insurers to protect themselves from the cost of unnecessary services rendered by providers. Now, the federal and state governments coordinate their efforts with these commercial payers and look for billing patterns, not unlike credit card companies use your pattern of expenditures to look for signs of fraud.

Many states also have fee-splitting statutes, so that if any portion of a fee is paid to another provider that he is not otherwise entitled to receive, this may be considered fee-splitting. Remember, too, that a state statute will apply to all situations, not just those involving Medicaid.

Lastly, many state boards of licensure consider an established pattern of inappropriate billing to be unprofessional conduct, potentially warranting a suspension or a loss of licensure, as the licensing board deems appropriate.
So, what to do? It is a good idea to have a compliance plan in place. Periodically review your coding. Review your relationships with other providers. For example, if you routinely entertain your referring dentists with tickets to the hottest games in town, is this a payment for referral? After all, you have four seats and like to entertain your friends. These tickets are expensive and can be very difficult to obtain. Is this a disguised payment? What if the person is your best friend? What if this is someone who does not currently refer to you, and you decide to invite him to a game? Obviously, the hope is that he will refer patients to you. If the tickets are expensive, hard to get in a great location and you gave him all four seats to take his family/friends, does this change your thinking? What if someone in the office decides that this does not look right? What is your position on these actions?

Having a compliance plan that forces your office to periodically review the codes under which you bill and collect, your practice policies on collections of deductibles and co-pays (as applicable), collection fees, and relationships with other doctors leads to a culture of compliance. A culture of compliance not only is a mitigating factor if an allegation of fraud is raised, but it also has other benefits. Practices that have and use effective compliance plans find that they are more compliant in other regards as well. For example, while the Red Flag Rules may not currently apply, there are many state and federal laws that would potentially snag your practice if it disclosed patient information without the patient’s prior authorization. In practices that have cultures of compliance, they very often have a heightened awareness of and sensitivity to these types of breaches.

The government takes this area of enforcement extremely seriously. The Office of the Inspector General wants to be sure that all healthcare providers: (1) understand the fraud and abuse laws and that there will be consequences for violating them; (2) create a culture of compliance; and, (3) understand what to do if/when non-compliance is discovered.

For additional information concerning fraud and abuse and compliance with federal regulations visit the AAOMS Web site at http://www.aaoms.org/docs/practice_mgmt/fraud_and_abuse.pdf to retrieve the article “A Review of Healthcare Fraud and Abuse in America” written by the AAOMS Committee on Healthcare and Advocacy. Coding and billing decisions are personal choices to be made by individual oral and maxillofacial surgeons exercising their own professional judgment in each situation. The information provided to you in this article is intended for educational purposes only. In no event shall AAOMS be liable for any decision made or action taken or not taken by you or anyone else in reliance on the information contained in this article. For practice, financial, accounting, legal or other professional advice, you need to consult your own professional advisers.