

Practice management: Legal, risk management, and financial basics

Carolyn Buppert, MSN, JD

Law Office of Carolyn Buppert
Portland, OR
www.buppert.com
buppertcarolyn@gmail.com
410-570-0058
© Carolyn Buppert 2020

Disclosure

- The speaker has no financial relationships to disclose

Objectives

- Describe the process of business planning to identify the business risks.
- Discuss what the law requires of you as a practitioner and business owner.
- Explain how to prevent legal problems by complying with payer rules, federal laws on kickbacks, and opioid prescribing guidelines.

This talk

- Identifies pitfalls of practice management
- Provides strategies for avoiding those pitfalls

Issues

- Fundamentals of business for practitioners
- Malpractice insurance
- Board of Nursing - scope of practice
- Billing in compliance with payer rules
- Anti-kickback laws
- Opioid prescribing

Success of a practice related to

- The need for the services in the community
- Community interest in the services
- Size of the potential patient pool
- Community openness to NP provider
- Payer willingness to reimburse NPs
- Efficiency of the NP/practice at seeing patients and billing
- Personalities of the providers and staff
- Marketing

Practice opportunities for NPs

- Home visits
- SNF visits
- Student health
- Employee health
- Psychotherapy for psych-mental health NPs
- Office based primary care
- Women's health
- Cosmetic/med spa

Practice opportunities for NPs

- Specialty/consultation practices
 - Non-surgical incontinence treatments
 - Palliative care
 - Pediatric enuresis
 - Pediatric ADHD
 - Bariatric surgery follow-up
 - Cancer survivor follow-up
 - Geriatric evaluation

Analysis: What's right for you?

- What interests you?
- Where is your expertise?
- Who do you want to work with?
- Where can you get patients and referrals?
- What will the licensing boards allow?
- What are the start-up costs?
- How soon can you become financially viable?

Write a business plan!

- A business plan helps you predict whether the business will be successful, before you actually go through with it
- In it, you project income and expenses each month for years 1-5
- Monthly income = #visits/day x reimbursement/visit x days working/month

Common practice expenses

Rent
Payroll
Quarterly state and IRA taxes
Office equipment, furniture
Utilities
Answering service
Supplies
Hazardous waste disposal
Payment on start-up loan
Professional dues and subscriptions

Expenses

Fee to register lab with Federal and state governments
Accounting fees
Attorney fees
Business travel--to nursing home, to patients' homes, to educational seminars
Gifts to staff
Cleaning
Insurance

- Professional liability
- Worker's compensation
- Fire
- Premises
- Auto

Questions to answer in your business plan

- 1) What is your business – in one sentence?
- 2) What is your reason for starting your own business?
- 3) What services are you offering?
- 4) Can you list 3 unique benefits of your service?

Questions

- 5) Can you list the top 3 objections to buying your services immediately?
- 6) When will your services be available?
- 7) Who are your customers/clients/patients?
- 8) Who is your competition?
- 9) How are your services differentiated from those of your competition?

Questions

- 10) What is the pricing of your services?
- 11) How does your pricing compare with your competition?
- 12) What plans do you have for marketing?
- 13) How will you finance start-up costs?
- 14) Do you have the management team/expertise needed to achieve your goals?

Information to be gathered before starting a practice

- Check the Nurse Practice Act and the Medical Practice Act for any requirements regarding
 - Physician collaboration
 - Having an office where no physician is on-site
 - What a NP can and cannot do
 - Forming a professional corporation or LLC
 - Business name

Information to be gathered

- What malpractice insurance is available and what is the cost?
 - Individual policy vs corporate policy
 - Occurrence vs claims made policy
 - Will you need extended coverage – tail?

Information to be gathered

- Determine who will pay for your service
 - Individuals, out of pocket?
 - Medicare?
 - Medicaid?
 - Commercial health plans?

Information to be gathered

- Which commercial payers are prevalent in your geographic area?
- Query each insurer about
 - Coverage of the service you plan to provide
 - Reimbursement of NPs
 - Procedures for becoming credentialed and obtaining reimbursement

Information to be gathered

- What will each payer pay for each CPT code you will be billing?
- Run the numbers
- Plot out projected income and projected expenses for 5 years
 - Visits per day x reimbursement per visit x work days per week = Enough to support your expenses?

Information to be gathered

- What does the law require of you?
 - Medicare, Medicaid, State law regarding reimbursement
 - HIPPA and CLIA regulations
 - Collaborating physician
 - Law governing the setting or service
 - Example: Federal and state laws governing SNFs

Decisions to be made

- Who will I practice with?
- Where will reimbursement come from?
- Will reimbursement cover expenses?
- How will we get patients to come?
- Where will the practice be located? Lease?
- How will the physician collaboration be handled?
- What sort of quality measures will we institute?
- Which electronic medical record will we use?

Decisions to be made

- What systems need to be set up for
 - Getting supplies, equipment and repairs
 - Depositing cash
 - Disposing of hazardous waste
 - Complying with HIPAA regulations
 - Running lab tests (CLIA)
 - Getting translation services
 - Getting chaperones
 - Taking after-hours call?

Decisions to be made

- Do you need to hire people?
 - If so you'll have employer responsibilities
 - Vetting for criminal records, licensing
 - Making sure employee provider's credentials match with what they will be doing
 - Payroll taxes
 - Workers compensation insurance
 - Unemployment insurance
 - Health insurance

Decisions to be made

- What form will the business take?
 - Sole proprietorship, partnership, LLC?

Business forms

- Sole proprietor
 - Partnership
 - Limited Liability Company
 - Professional Corporation
- Talk with your attorney or accountant before deciding on a form

Major decisions for business partners (Danger zones)

- What happens if one partner wants out?
- What if one partner is working harder?
- Who inherits if one partner dies?
- What contribution to start-up expenses will each partner make?
- Who will carry out specific duties?
- How will decisions be made?
- How will disputes be settled?

Advantages of a partnership

- Risk is shared
- Success and failure are shared
- Losses can be deducted from individual partners' taxable income
- Back-up for individuals

Disadvantages of partnership

- Debts incurred by one partner are the debts of both partners
- One partner may be liable for another partner's mistakes
- Many opportunities for dispute among partners
- Less-productive partner will affect all other partners

Ways to avoid partnership dangers

- Don't form a legal "partnership" but a limited liability company (LLC)
 - Agree on how the business will be run in the company's Operating Agreement
- Have 2 separate companies rather than a LLC or partnership, but agree to share space/rent and staff

OK, you've answered the questions and you are starting

- Billing compliance
- Anti-kickback laws
- Opioid prescribing pitfalls

Billing NP Services - Medicare

- Bill for medically necessary physician services within NP scope of practice
- Reimbursement is 85% of physician rate, when billed under an NP's name
- Bill under the NP's name, unless following incident-to or shared visit rules
 - Incident-to rules are for Medicare and, in some states, Medicaid

“Incident-to” rules apply when MD employs NP

- Incident-to billing
 - Only in office setting
 - POS 11
 - Bill NP work under MD provider number
 - Get 100% of MD fee schedule
 - MD must be in the suite
 - MD must perform initial service
- Shared billing
 - In hospital
 - POS 19, 21-23
 - May bill NP and MD work under MD's provider number
 - MD must have had face-to-face visit with the patient that day
 - Applies to evaluation & management only

Billing compliance

- Every service billed must have documentation to support it
 - Signed and dated
 - Written within 48 hours of the service
- Documentation must support
 - Medical necessity of the service
 - Level of service billed

Documentation

- CMS makes the rules
- CMS and commercial payers audit, using CMS rules
- Fine the rules here:
Evaluation and Management Services Guide
<https://www.cms.gov/outreach-and-education/medicare-learning-network-mln/mlnproducts/downloads/eval-mgmt-serv-guide-icn006764.pdf>

Case: Improper billing

- NP owned practice in Merced, CA
- Justice Department documents (2018) say she billed Medicare, Medi-Cal for services she knew were not reimbursable, and not medically necessary, and profited by \$3.7M
- NP falsified services, including claiming some patients had been seen by physicians when they instead were given a prescription in the parking lot of McDonalds
- Sentenced to 5 years in prison

Laws against kickbacks

- Health care providers cannot offer or receive anything of value in return for a referral

Kickbacks

- What is a kickback?
 - To knowingly and willfully pay, solicit, or receive remuneration (anything of value) in order to induce the referral of business reimbursable by a federal healthcare program
- Criminal and or civil penalties
- Applies to all healthcare providers

Source: 42 U.S.C. § 1320a-7b

Example case: Kickback

- NP in the case previously cited for billing inappropriately also took thousands of dollars in kickbacks in cash from an account executive at a laboratory in exchange for using the lab for testing
- She pleaded guilty to violation of anti-kickback law
- Sentenced to 5 years and ordered to pay \$6 million in restitution

Opioid prescribing pitfalls

- Choose a guideline
 - State health department or med society or CDC
 - CDC Guidelines for Prescribing Opioids for Chronic Pain at <https://www.cdc.gov/drugoverdose/prescribing/guideline.html>
 - Many states now have guidelines for treating acute pain
- Stick to the guideline you have chosen

Guideline elements

- Examine patient, evaluate underlying problem
- Assess for addiction risk
- Obtain old records
- Check with state PDMP
- Set goals and monitor progress
- Contract with patient – “This is a trial”
- Urine screening at 2x/year
- If dose is more than 80 morphine milligram equivalents, ordering consultation

Example case: NP sentenced to 4 years (2019)

- Oregon NP (now former NP) ran a wellness clinic
- Expert’s review of patient files found NP regularly wrote prescriptions for opioids without a documented medical purpose and outside the usual course of professional practice, at times ignoring or disregarding medical histories that indicated a patient’s propensity for addiction.

- NP pleaded guilty to 2 counts of illegal opioid distribution and 1 count each of filing a false tax return and lying to a federal agent from the U.S. Drug Enforcement Administration.
- NP received 4-year prison sentence, followed by 3 years of supervised release. Prosecutors seeking \$43K in restitution to the IRS

Keys to protecting your career

- Understand, through business planning, the business risks before you start
- Understand what the law requires of you as a practitioner and business owner
- Prevent legal problems by complying with payer rules, federal laws on kickbacks, and opioid prescribing guidelines

Want to know more? Additional resources

Buppert, C. *How to start a health care practice: For nurse practitioners* (includes example agreements for independent contractors and physician collaborators), www.buppert.com

CMS rules at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals>

IRS, Tax Information for Businesses at www.irs.gov