Identifying Compliance Problems
Within Your Practice

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Forewarned is ForeArmed

- Follow the OIG compliance plan outline

- This process will bring potential compliance issues to the attention of the practice and make dealing with them more timely and forthright

- Knowing that all members of the practice are aware of compliance needs and tools will make the practice more compliant and less likely to become a target

- In the case of becoming a target, having an active and involved staff that is aware of and participates in the implementation and ongoing working of the compliance plan could allow some mitigation of damages
The OIG has Specific Recommended Program Guidance for Individual, Small and Large Group Practices

- Conduct internal monitoring and auditing
- Implement compliance and practice standards
- Designate a compliance officer or contact
- Conduct appropriate training and education
- Respond appropriately to detected offenses and develop corrective action
- Develop open lines of communication with employees
- Enforce standards through well-publicized guidelines

Conduct Internal Monitoring and Auditing

Some potential issues for RAC’s as posted on their websites

- CMS Medicare Overpayment Recoveries Related to Recommendations in OIG Audit Reports
- Medicare Part B Drug Payments
- Medicaid Services Provided by Telecommunication Systems
- Medicare Payments for Bariatric Surgeries

If you want to put these on your radar for review, the website is https://oig.hhs.gov/reports-and-publications/archives/workplan/index.asp
Implement Compliance and Practice Standards

• Prohibit bringing forward EHR information from prior encounters, including:
  o Prior diagnoses
  o Prior history
  o Prior exam
  o Prior test results
  o Prior vitals
• Ensure all documents are signed and dated
• Ensure no written records leave the office
• Ensure electronic communications are secure and private
• Develop and enforce security measures on who and when individuals can access medical records
• Other standards that may apply directly to your practice

Implement Compliance and Practice Standards

• Determine who will perform coding functions:
  o Certified Coder
  o Provider
• Determine how those codes will be reviewed and on what basis
• Develop a plan of action when errors are identified
• Action plan must include education of individuals involved in errors
• Develop a corrective action plan to improve outcomes
Designate a Compliance Officer

- Select an individual who you trust and would associate with “doing the right thing”
  - Not a physician
  - Not the practice administrator
  - An individual who reports to the practice committee or board on any compliance issues
- A plan must be put in place as to how the compliance officer operates and the duties as to practice compliance

Conduct Appropriate Training and Education

- As problems are identified and corrected:
  - Educate the appropriate personnel on the corrective action plan
  - Test after a six month period to determine if plan is addressing the problem appropriately
  - Provide update education in emails or articles that can support your corrective action plan
  - Demonstrate and communicate improvement and how the plan is working
Respond Appropriately to Detected Offenses and Provide Corrective Action

- A compliance plan cannot “wait” for offenses to occur and then correct them
- A compliance plan must proactively review potential areas for error, identify and correct them
- A compliance plan must include methods for maintaining knowledge and awareness of changes and adjustments to current rules and methodologies developed by government and commercial entities

Locating Potential Problem Areas

- Look at your high volume visits and procedures
- Compare those services to the OIG website and other documents listed earlier
- If there is a high volume of services that fall within a targeted area:
  - Perform a directed review of these types of services
  - A probe audit would be 30 – 50 claims, this would be enough to determine if there is a potential problem
  - If a problem is identified, get an independent review
Develop Open Lines of Communication with Employees

- Keep an open door policy (within reasonable limits)
- Have regular staff meetings where compliance is always on the agenda
- Develop relationships with employees and providers
- Keep your word
- Confidential means confidential (don't have those who are “in the know”)
How do I identify potential compliance problems?

• Subscribe to CMS Medlearn
  o The CMS Medlearn (MLN Matters) tool is an invaluable, constant source of information that comes directly to your inbox as adjustments and changes are made to CMS rules and regulations
• This tool is available for free at https://list.nih.gov/cgi-bin/wa.exe?A0=mlnmatters
  o Sign up for what specifically applies to your practice. You will be inundated with information if you sign up for too much
  o Review the information as soon as possible to ensure compliance with new rule changes
  o Many times this information comes out shortly before implementation and even after implementation has started. It is important to be as informed as possible

What does it look like?
How do I Identify Potential Compliance Problems?

• Identify multiple reference tools, in addition to Medlearn, that can help keep you updated on ongoing changes and challenges in your industry:
  o HCCA alerts, website newsletters and magazine
  o MGMA alerts, website newsletter and magazine
  o Department of Justice alerts
  o AHIMA coding alerts and magazine
  o Fraternal organizations for Provider Specialty, AAFP, AOP, AAA

How do I Identify Potential Compliance Problems?

• Look at your Medicare Administrative Contractor webpage to see their areas of concern. Currently, there are ten pages of concerns
• Look at the Work Plan for your Recovery Audit Contractor.
• They are required to post a list of CMS approved issues that they are investigating
• You can find your contractor and a link to their website at this website: https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Recovery-Audit-Program/
OK – I’ve Done All This – How Do I Monitor?

• Run a report on CPT or ICD-10 code.
  o Look specifically at areas of interest of the DOJ or the OIG
    • Primary Care
    • Specialty
    • Opioid addition treatment
    • Others
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Conduct Internal Monitoring and Auditing

• Develop a compliance plan that includes ongoing targets for monitoring, auditing and corrective action
  – Review Modifier 25 claims at least quarterly – these are among the most targeted areas of review
  – Review E & M levels (although this may be changing) quarterly as well.
  – Identify new targets through the OIG work plan that is changing monthly now
    • Most recent updates that may affect small practices:
      – HRSA’s Oversight of Funds for Access increases in MH/SA Services
      – Review of Post-Operative Services Provided in the Global Surgery Period
      – Medicare Part B Payments for ESRD
      – Denials and Appeals in Medicare Part C
      – Prescription Drug Monitoring Programs
Conduct Internal Monitoring and Auditing

• Check opioid prescribing habits and volume
• Check how many patients are being seen per day by any given provider. How much time are they spending with patients?
• Look at ordering volume of ancillary tests, especially ones that are performed within your practice

Conduct Internal Monitoring and Auditing

• Your physician should be performing all aspects of the history, exam and medical decision-making
  o A scribe is okay, but the scribe needs to detail her activity and sign and date the record as well as the provider
  o A nurse cannot perform the entire history and then the physician come in and perform the exam
  o Templates must be selected, not automatically appear
Conduct Internal Monitoring and Auditing

- Problems do not just occur in coding of claims
- Anti-kickback accusations and Stark violations can be just as damning and/or more expensive than False Claims
  - Review all contracts with referral sources, including:
    - Operating leases
    - Office space leases
    - Equipment leases
    - Medical director agreements
    - Service agreements
- If it smells bad, it probably is bad
- Make sure that all services required in the agreements are actually performed and that your providers are documenting their time for all service agreements together with service performed

Ok, I Think I Have A Problem, Now What?

- Inform the compliance officer
- Identify your population
  - What types of patients are involved?
    - Insurance
    - Gender
    - Age
    - Diagnosis
    - Procedure
- Select a probe sample of 30 – 50 claims from the entire population that meets the criteria for your problem
- You can select the probe sample by using the RAT-STATS software, as developed by the OIG. It is the only sampling software the government uses
Ok, I Think I Have A Problem, Now What?

• After the probe sample has been selected:
  o Review the sample according to the payer’s payment guidelines to determine if there is a potential problem
  o If there are no negative findings, then document the findings and keep it in a safe place
  o If there are negative findings, determine the error rate (add the overpayments and the underpayments, subtract from the original payment and divide by the original payment) and make a determination if you want to continue the investigation (it would be good to get a healthcare lawyer involved at this point)
  o If the decision is made to go forward to back the original rat-stats report and investigate more samples, don’t run another RAT-STATS report. You will have discard your original sample and lose that work

Ok, I Think I Have A Problem, Now What?

• Review the documents in the sample and determine any over or underpayments that were made from this payer
• Work with the compliance officer and the compliance committee continually to keep them informed of the process and outcome
• Work with the healthcare lawyer to maintain attorney client privilege doctrine
• If a compliance problem is researched and identified, work with the healthcare lawyer and the compliance committee to determine next steps
Ok, I Think I Have A Problem, Now What?

• Check your medical malpractice insurance policy to determine if you have coverage that would pay for outside investigations
  o Usually coverage will be paid for civil investigations but not criminal. However, an investigation can change from criminal to civil and then the payment mechanism would trigger
  o Cover for civil investigations would pay for your lawyer, any experts and other expenses that the practice might incur because of this investigation
  o Check your insurance policy before you need this coverage. If you don’t have it, ask your insurance agent about it

Ok, I Think I Have A Problem, Now What?

• Don’t do this:
  o Ignore the problem
  o Go off on an investigation without informing the compliance officer
  o Move forward without a healthcare attorney
  o Perform the investigation independently of your practice
Wrap-Up

Remember:
- If you have a strong compliance plan
- Follow OIG guidelines
- Understand the CMS contractor targets and issues related with those targets
- Continue to educate your staff and providers
- Stay vigilant and do regular billing and coding audits
- Repay overpayments as soon as you identify them

You will reduce your risk significantly of being the target of an investigation.

Questions?

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