Presented by

Dr. Jekyll & Mr. Hyde, CHC: Physician Compliance Education, Quality, & Risk Reduction Partners

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- Richard E. Moses, DO, JD and D. Scott Jones, CHC do not have any financial conflicts to disclose.
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Presentation Goals
- EHR, friend or foe: A physician H&P of EHR risks, benefits, and complications
- Critical physician education in 2014: PPACA, patient utilization, ICD-10, social media, patient portals, and bad compliance
- When quality fails: Avoiding career ending compliance and professional liability concerns
INTRODUCTION

- Background
- Quality Reporting Measures Under PPACA
- About Physicians
- Guidelines: Risks & Reimbursement
- EHR Risks, Benefits, and Complications
- Critical Physician Education In 2014
- Quality Failure: Avoiding Career Ending Compliance & Professional Medical Liability Problems
- Summary & Conclusions

BACKGROUND
Healthcare Reform

President Obama Signs PPACA
March 23, 2010

Healthcare Reform

- Healthcare Reform Goals
  - Improve Access
  - Universal Coverage
  - Increase quality reporting to include outcomes
  - Increase integration of care through partnerships of physician networks and hospitals
  - Cost control and cost reduction

- What this means to Physicians and Compliance Officers....
  - Over 70% of healthcare executives surveyed believed that physicians performed inappropriate procedures for monetary benefit
  - Congress is focused on reducing "unnecessary" medical costs

Source: Physician Compliance Network

Healthcare Reform

- Patient Protection and Affordable Care Act (PPACA 2010) amended by the Health Care and Education Affordability Reconciliation Act (HCERA 2012)
  - 21.3% scheduled reduction in Medicare physician pay (postponed by the Continuing Extension Act of 2010)
  - Quality and Cost Payment (Title III, §§ 3002, 3003, 3007) – Adjusts physician payments based on quality and cost through a value-based modifier, beginning January 1, 2015
  - PQRS – possible penalties for not reporting beginning in 2015 up to 2% of the prevailing fee schedule
  - Fee-for-service → value based reimbursement ("quality")
Healthcare Reform

- Fee-for-service → Value-based/Quality-based reimbursement system
  - Goal is to reward doctors & hospitals for improving quality of care
- Subsequent trends:
  - Outcome-based payments
  - Lower demand for hospitals
  - Increased number of insured patients
  - Improving patient experience
  - Hospital competition on outcomes and total value
  - Increased physician employment

QUALITY REPORTING MEASURES UNDER PPACA

Hospital Value-Based Purchasing

- PPACA Title III, Subtitle A: Transforming the Health Care Delivery System
  - Incentive Payments to Hospitals meeting performance standards in
    - MI, Heart Failure, Pneumonia, Surgery, Infections
    - ED, Readmissions, Children’s Asthma
  - Performance Scores increase/decrease DRG payments
  - Incentives up to 2% of the Medicare FS by 2017
  - Data and Scores on Hospital Compare Internet Site
  - GAO reports October 2015 and January 2016
Hospital Acquired Conditions Payment Reductions

- PPACA Section 3008
  - FS Payments for Hospital Acquired Conditions will equal 99% of the FS
  - The Secretary will determine a list of "hospital acquired conditions"
  - Confidential reports to hospitals tracking conditions
  - This program will be expanded to all other types of providers
  - Possible CMS reports on Hospital Compare Internet Site
  - Effective FY 2015

Long Term Care, Rehabilitation, Hospice, PPS Exempt Cancer Hospitals, SNF, HHA

- PPACA Sections 3304-3006
- Quality Reports required 2014 for all types of facilities
- CMS "Compare" Internet sites to post data
- Reduction in the "increase factor" of payments, up to 2%
- Increase Factor can = 0%, resulting in a 2% reduction

Integrated Care Demonstration Project

- PPACA Section 2704
- Project continues through December 31, 2016
- Goal: Establish bundled payments for services and providers involving an episode of care and hospitalization
- Severity of illness adjusted payment
- Data collection monitors outcome, cost, quality
- Report to Congress: December 31, 2017
Medicaid Global Payment System Demonstration Project

- 2010-2013 Demonstration Project
- Five States
- Establish a Global Capitated Payment Model to replace the Fee for Service (FFS) system
- Safety Net Hospitals and Networks serving Medicaid beneficiaries
- Center for Medicare and Medicaid Innovation (CMI) to issue full report in December 2013

Physician Compare Website

- PPACA § 10331(a)(1)
  - PQRS Measures Reported
  - Assessment of Patient Health Outcomes
  - Assessment of continuity and coordination of care
  - Assessment of efficiency and cost
  - Assessment of patient experience
  - Assessment of safety, effectiveness, and timeliness of care
  - 2014: User Interface; reports published online
  - January 1, 2015: CMS Report to Congress

Physician Compare Website

- Website required by Affordable Care Act
  - § 10331(a)(1)
- Provides information regarding
  - Physicians enrolled in Medicare Program
  - Other eligible professionals participating in PQRS
- Information is publically displayed
Physician Compare Website

- Site Must Include:
  - Measures collected under PQRS
  - Assessment of patient health outcomes & functional status of patients
  - Assessment of continuity & coordination of care & care transitions
  - Assessment of efficiency
  - Assessment of patient experience & patient, caregiver, & family engagement
  - Assessment of safety, effectiveness, & timeliness of care

Physician Compare Website

- CMS must allow physicians & other professionals to have reasonable opportunity to review their results before posting
  - 30 day preview period for all measurement data
- CMS will provide details of review process
  - www.cms.gov

PPACA Section 10331(a)(2): CG-CAHPS

- Clinician and Group Consumer Assessment of Healthcare Providers and Systems (CG-CAHPS)
  - Patient surveys begin 2014...individual physician surveys by 2015
  - Timely care, appointments, information
  - How well doctors communicate
  - Patient ratings of doctors
  - Health promotion and education
  - Shared decision making
  - Health status / functional status as a result of care rendered
- “Certified Survey Vendor” created
PPACA Rule CMS-1600-P
Quality Reporting Measures

- Physician Quality Reporting System (PQRS) 2014:
  - 9 Measures must be reported
  - 3 from National Quality Strategy domains
  - For 50% of the entire Medicare-eligible patient population
- Effect of not reporting PQRS occurs in 2016
- Failure to report a selection of the measures = up to 2% reduction in prevailing Medicare Fee Schedule (FS)
- Qualified Clinical Data Registries created for sub-specialists dealing with specific diagnoses, conditions (§ 1848(m)(3)(E)(ii))

Value Based Modifier (VBS)

- How quality data reported under PQRS equals modification to payments under the Fee Schedule
- VBS use begins 2015; full implementation 2017
- Physician groups of 10 or more must report beginning 2016; expect all physicians to report by 2017
- Quality tier system results in FS reductions of up to 2%
- QRUR (Quality and Resource Use Reports) will report how the value based modifier will impact individual physician reimbursement, beginning 2014

National Strategy for Quality Improvement in Health Care

- PPACA Part S, Subpart I, Section 399HH(2)(B)(i-iii)
- Establishes Priorities that will:
  - Have the greatest potential for improving health outcomes, efficiency, and patient-centeredness...
  - Identify areas...that have the potential for rapid improvement in the quality and efficiency of patient care...
  - Address gaps in quality...
National Strategy for Quality Improvement

- HHS Annual Report to Congress, 2012
- “Key Measures and Long Term Goals”
  - “…reducing the harm caused in the delivery of care…reduce harm from inappropriate or unnecessary care…”
  - CDC: 5% of hospital patients acquire health care associated infections
  - 145 Health Care Acquired Conditions (HACs) occur per 1,000 admissions
  - AHRQ: Hospital Readmissions occur at a rate of 14.4%
  - Compliance Officers are now Quality Officers

ABOUT PHYSICIANS

“No college junior studies organic chemistry and takes the MCAT planning to devote 4 years to medical school and 3 plus years to residency and fellowship just to cheat Medicare and Medicaid.”

Julie K. Taitsman, M.D., J.D.
CMO for the OIG, Department of HHS
About Doctors in General
- Main Goal: Deliver quality care in effective safe manner
- Competitive, OCD, delayed gratification & clinical
- Tend to be detailed overachievers and/or survivors
- Clueless about Compliance...do not “get” it
- Think in terms of medical malpractice avoidance
- No prior training about fraud, abuse, & medical malpractice
- Inherently do not like or trust administrators
- Some people are just crooks...doctors included!

Approaching Physician Education
- One size does not fit all programs
- Each organization has unique needs
- One teaching method alone is not enough
- Areas of malpractice & compliance risks evolve and change with time
- A “check off” approach to physician education does not work
- You catch more flies with honey that you do with vinegar...PARTNER WITH YOUR DOCS!

Things to Consider
- Size of practice to be educated
- Physical location of practices
- Method(s) & venue of physician education
- Education is perpetual; not a one shot deal!
- Relevant & necessary topics
  - Provide education required by law first; then everything else
  - OIG Work Plan
  - Areas of risk that have internally or externally surfaced
- Allowable time - Time is money to physicians
- Budget
Teaching Principles

- Positive attitude – Compliment & encourage
- Explain topic background & reference
- Engage physicians to share experiences
- Avoid confrontation with physicians
- Helpful & supportive approach
- Teamwork philosophy
- Avoid intimidation
- Request feedback, review it, act on it!

Teaching Principles: An Administrator and Compliance Officer’s Perspective

- Physicians are taught to assess, diagnose, implement correct treatment action, and be responsible for outcomes
- Little tolerance for ambiguity
- As scientists, respect facts and data that can be supported by research
- Understand but often dislike Peer Review
- Dislike being outliers
- Dislike being embarrassed before peers
- Generally want to do the right thing...What is it?

Educational Resources

- "A Roadmap for New Physicians: Avoiding Medicare & Medicaid Fraud & Abuse"
  - Booklet & companion slide presentation
  - www.oig.hhs.gov/fraud/PhysicianEducation
- Internally Produced v. Commercial CME Programs
- Agency for Healthcare Research & Quality
- Medscape Education
- GOOGLE!
GUIDELINES: RISKS & REIMBURSEMENT

New Nomenclature

- Community Based Standard/Standard of Care
- Clinical Practice Guidelines = CPG
- Evidence Based Medicine = EBM

Evidence Based Medicine

- Institute of Medicine (IOM)
- EBM Defined:

  “The conscientious, explicit, and judicious use of current best evidence in making decisions about the care of individual patients.”
Clinical Practice Guidelines

- Institute of Medicine (IOM)
- CPGs Defined:
  
  "Systematically developed statements to assist the practitioner with patient decisions about appropriate health care for specific clinical circumstances."

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The Law & CPGs

- Evidence of customary medical practice
- Act as authoritative expert
- Used as well accepted review article
- Used by PLAINTIFF
- Used by DEFENDANT

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CPGs in Medical Malpractice Cases

- Already affecting settlement patterns according to survey of malpractice lawyers¹
- Plaintiffs have used guidelines to their advantage²
- ACOG Guidelines MOST used!!!
- EXPERT TESTIMONY STILL NEEDED!

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CPG: Quality & Reimbursement

- Measures collected under PQRS → "Quality Measures"
- Assessment of patient health outcomes & functional status of patients
- Assessment of continuity & coordination of care & care transitions
- Assessment of efficiency
- Assessment of patient experience & patient, caregiver, & family engagement
- Assessment of safety, effectiveness, & timeliness of care

EHR RISKS, BENEFITS, & COMPLICATIONS

OIG EHR VULNERABILITY REPORT

- January 2014
- Objective:
  - Describe how CMS & its contractors implemented program integrity practices in light of EHR adoption
  - Concerned that EHRs may make it easier to commit fraud
- 2 Major areas where EHRs c/b used to commit fraud:
  - Copy/Pasting
  - Over documentation
EHR Liability Issues

- Cloning/Cut & Paste
- Did/did not perform
  - Dropdowns, templates, defaults, macros
- Pre-populated templates
- Voice recognition issues


EHR Liability Issues

- Failure to check all areas of program for results
  - Scanned data v. direct drop
- Improper scanning by support staff
- Failure to check “paper chart” or “scanned chart”
- Changing the note
- Locking the note

EHR Liability Issues

- Chart inconsistencies
  - History
  - Exam
- Failure to read office visit notes created
- Automatic acceptance of coding engine recommendation
- Automatic acceptance of modifier recommendation
EHR Liability Issues
Reasons for RAC Overbilling

- 17%
- 6%
- 40%
- 33%

AHA November 2010 RAC TRAC Survey

EHR Liability Issues
Breach Notification Highlights

- Logs
- Other
- Internet Browser
- Portable E-Systems Device
- Desktop Computer

HHS Office for Civil Rights (2010)

Surgical Mystery

WWW.HPIX-INS.COM
Where’s the HPI?

Where’s the appropriate exam?

To Tattoo or Not to Tattoo
Voice Recognition Error

Risk Protection Strategies

- Develop a process to use EHRs to evaluate patients
- Be careful
- Take your time
- Read what you typed, dictated &/or clicked

Risk Protection Strategies

- Stay in contact with administration & leadership re: time demands and necessary support
- Stay in contact with IT and trainers &/or super users
- Cooperate and support the Compliance Team
- Offer and take constructive criticism
- DO NOT FORGET THE PATIENT
CRITICAL PHYSICIAN EDUCATION IN 2014

Areas of Risk Exposure
- Medical Record Documentation
- Informed Consent Deficiencies
- Inadequate Patient Education
- Poor Physician-Patient Communication
- Poor Physician-Physician-Nurse Communication
- Lack of Medical Necessity for Performed Medical Services
- Improper Performance of Medical Services/Care

Areas of Risk Exposure
- Overutilization or Unusual Utilization Triggers Investigation
- Investigation Leads to Publicity
- Investigations Lead to Medical Malpractice Suits
- Hospital/Physician Arrangements At Risk
- Hospital Survival At Risk
- Physician License At Risk
Quality Failures That Could Be Improved Through Education

1) Inadequate informed consent: What is your doctor’s process? Who delivers it?
2) Missed abnormal lab results: What is the system to ensure this does not occur?
3) Incomplete H&P – pre-surgical workup: How is adverse patient managed?
4) Medication management errors: How does the practice develop medication data and check for contraindications?
5) Patient handoff: What is the process to avoid failure to communicate with other providers?

Social Media

- Embraced by many Healthcare Organizations
- Legal, compliance, & ethical issues
  - HITECH → Created EHR standards + financial incentives for adoption of EHR
  - Future possible False Claims cases
  - HIPAA → Compliance essential due to risks HIPAA creates
    - Enf
    - Litigation
    - Medical student, house officers, & young physician perspective
    - Adverse employment actions

- Thousands of social media websites exist
- Sites frequently used by medical professionals
  - LinkedIn
  - Facebook
  - MySpace
  - Twitter
  - Flickr
  - Google Plus
  - YouTube
  - Vimeo
  - Instagram
Social Media

- Social media risk prevention strategies in health care
- 5 Key position policy statements developed re: online medical professionalism
  - Collaborative effort:
    - ACP Council of Associates
    - ACP Ethics, Professionalism, & Human Rights Committee
    - Federation of State Medical Boards Special Committee on Ethics & Professionalism
- Published 2013

1) Use of online media can bring significant educational benefits to patients and physicians, but may also pose ethical challenges. Maintaining trust in the profession and in patient–physician relationships requires that physicians consistently apply ethical principles for preserving the relationship, confidentiality, privacy, and respect for persons to online settings and communications.

2) The boundaries between professional and social spheres can blur online. Physicians should keep the 2 spheres separate and comport themselves professionally in both.

3) E-mail or other electronic communications should only be used by physicians in an established patient–physician relationship and with patient consent. Documentation about patient care communications should be included in the patient's medical record.

4) Physicians should consider periodically “self-auditing” to assess the accuracy of information available about them on physician-ranking Web sites and other sources online.

5) The reach of the Internet and online communications is far and often permanent. Physicians, trainees, and medical students should be aware that online postings may have future implications for their professional lives.
Patient Portals

- Required by HITECH
- Part of Meaningful Use requirement
- Developing area of liability
- Areas of risk
  - HIPAA
  - Many other potential areas or risk exposure
  - For example...

Patient Portals

- Phoenix Cardiac Surgery, P.C., of Phoenix and Prescott, Arizona
- Extensive investigation by the HHS Office for Civil Rights (OCR) for potential violations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules
- Incident giving rise to OCR's investigation was a report that the physician practice was posting clinical and surgical appointments for its patients on an Internet-based calendar that was publicly accessible. On further investigation, OCR found that Phoenix Cardiac Surgery had implemented few policies and procedures to comply with the HIPAA Privacy and Security Rules, and had limited safeguards in place to protect patients' electronic protected health information (ePHI).

Patient Portal

- OCR's investigation also revealed the following issues:
  - Phoenix Cardiac Surgery failed to implement adequate policies and procedures to appropriately safeguard patient information;
  - Phoenix Cardiac Surgery failed to document that it trained any employees on its policies and procedures on the Privacy and Security Rules;
  - Phoenix Cardiac Surgery failed to identify a security official and conduct a risk analysis; and
  - Phoenix Cardiac Surgery failed to obtain business associate agreements with Internet-based email and calendar services where the provision of the service included storage of and access to its ePHI.
Patient Portals

- Under the HHS resolution agreement, Phoenix Cardiac Surgery has agreed to pay a $100,000 settlement amount and a corrective action plan that includes a review of recently developed policies and other actions taken to come into full compliance with the Privacy and Security Rules.
- Leon Rodriguez, director of OCR: “We hope that health care providers pay careful attention to this resolution agreement and understand that the HIPAA Privacy and Security Rules have been in place for many years, and OCR expects full compliance no matter the size of a covered entity.”

HIPAA

- HIPAA Privacy, Security, Enforcement and Breach Notification Rules - The HITECH Mandate:
  - The Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of ARRA 2009, promotes the widespread adoption and standardization of health information technology, requires HHS to modify the HIPAA Rules to strengthen the privacy and security protections for health information.

- Informing and Educating Doctors:
  - Fines and penalties for data breaches and loss of patient health information (PHI)
  - Procedures for remediation are more onerous
  - Under the Act, negligent compliance practices may result in fines up to $1.5 million per year

ICD-10

- Deadline October 1, 2014
- CMS training: Provider Resources Internet Page at CMS.Gov (www.cms.gov/Medicare/Coding/ICD10/ProviderResources.html)
  - Physician training
  - Vendor information
  - FAQS
  - Medical Practice Tips
  - Checklists and Implementation Guides
And Then...ICD-10 = 141,000 Codes

- Hurt at the opera Y92253
- Stabbed while crouching Y9301
- Walked into a lamppost W2202XA
  - Lamppost, subsequent encounter W2202XD
- Submersion due to falling or jumping from crushed water skis V9037XA
- Struck by a duck (W6162XA)
- Bitten by a duck (W6161XA)
- Spacecraft crash injuring occupant
  - V95.41 (not billable)
- Spacecraft fire injuring occupant, initial encounter
  - V95.44XA

WHEN QUALITY FAILS

Compliance and Quality Investigations
St. Joseph’s Medical Center
Townson, MD

- St. Joseph’s Medical Center, Baltimore MD, opens new state of the art Cardiac Catheterization Lab
- Retains leading NE area Interventional Cardiologist, Mark Midei, MD, as Director
- Cath Lab quickly becomes “go to” facility for difficult cases & stent placement
- Stent utilization exceeds all manufacturer’s prior records (according to e-mail messages by manufacturer later discovered during investigation)

St. Joseph’s Medical Center
Townson, MD

- As stent use increases, an employee who had a stent placed files a qui tam complaint with the OIG complaining he had a coronary artery stent inserted that was not medically necessary
- The OIG analyzes stent utilization and conducts an investigation of stent billing and medical records
- 658 stent placements are questioned as “not medically necessary”
- Fines and penalties are assessed against the hospital

St. Joseph’s Medical Center
Townson, MD

- Hospital conducts its own investigation → relieves Dr. Midei and sends letters to all 600+ patients advising them to consult with their Cardiologist
- Hospital settles the OIG charges for $22M for alleged violations of Anti-Kickback and Stark Laws
- Dr. Midei is subjected to a highly publicized U.S. Senate Finance Committee investigation
- Dr. Midei’s license to practice medicine is revoked by State Board of Medicine
A media frenzy is ignited with repetitive negative news stories about Dr. Midei, the hospital and the parent company, Catholic Health Initiatives.

Hundreds of medical malpractice lawsuits are filed against Dr. Midei and his cardiology group.

St. Joseph’s Hospital closes the Cath Lab due to lack of utilization.

Hospital is sold!

Never Events

- §5001(c) of the Deficit Reduction Act of 2005 (DRA)
  - Never events are not reimbursable by CMS
  - Hospital acquired conditions are not reimbursable
  - Implementation Timeline
    - Medicare 2008
    - Medicaid 2011
    - States July 2012

Office of Evaluations & Inspections (OEI)

- July 19, 2012
  - “...hospitals reported only 1% of (never) events. Most of the events...were not identified by internal hospital incident reporting systems.”

- Compliance Officer responsibilities
  - Monitor frequency of reports & quality of data
  - Educate staff members on reporting
  - Monitor billing for all adverse medical events

- National Academy for State Health Policy (NASHP)
  - List of never event reporting requirements
PPACA Repayment Obligation Rule

- PPACA: Provider must report & repay Medicare overpayment within 60 days after the overpayment is identified...or by the date a corresponding cost report is due
- Overpayment is identified “when the provider has actual knowledge...or acts in deliberate indifference or reckless disregard of the existence of an overpayment”
- Look back provision: providers must report any overpayment that occurred within the past 10 years

PPACA Reportable Overpayments

- Medicare payments for non-covered services
- Medicare payments in excess of allowable amount
- Errors in cost reports
- Duplicate payments
- Receipt of Medicare payment when another payer has the primary responsibility for payment
  - Medicare Secondary Payer Act (MSP)

Duties of Overpayment Contractors

- Preventing fraud
- Identifying potential fraud
- Investigating fraud allegations: beneficiaries, providers, CMS, OIG, MFCU, & corporate anti-fraud unit
- Deny or suspend payments
- Refer case to OIG for civil & criminal prosecution
- Refer providers to OIG for exclusion from program
- Recommend prospective review of claims
CONCLUSIONS & SUMMARY

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- Practicing Gastroenterologist for over 25 years
- Board Certified:
  - Gastroenterology
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Thank You