Disclaimer:
This presentation is not a substitute for the advice of an attorney. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.
Overview

- Headlines and Settlements and the OIG Work Plan … Oh My!
- Creating a Compliance Action Plan
- Case Study: Confidentiality and Risk Management Discussion
- Q & A
Identity Potential Risks

From sources such as:
• Headlines and settlements
• Current OIG work plan
• Leadership involvement

... to use in your Compliance Action Plan!

Headlines/Settlements

New Haven behavioral health provider suspended, pays $100,000 settlement
By News Staff  Updated 11:40 am EST, Friday, January 18, 2019

Former behavioral health counselor sentenced for Medicaid fraud

Six indicted for roles in $48 million health care fraud

Eastern Carolina Behavioral Health CEO Sentenced to Eight Years in Prison for Expansive Multistate Healthcare Fraud
Find Headlines

Dedicated news and press release sections:
- The Department of Justice: https://www.justice.gov/news
- Office of Inspector General: https://oig.hhs.gov/fraud/enforcement/criminal/

2018 Settlements

- North Carolina CEO Sentenced to Eight Years in Prison and nearly $6 Million for Multistate Fraud
- Maryland Treatment Centers Agrees to Pay $500,000 to Resolve Allegations That It Submitted Claims for Services that were Undocumented or Not Provided

2018 Settlements

- Connecticut Psychiatrist and Mental Health Clinic Pay Over $800,000 to Settle False Claims Act Allegations


Current OIG Work Plan

- **Active items**:
  - **Telehealth**: OIG will determine whether selected State Medicaid payments for services delivered using telecommunication systems were allowable in accordance with Medicaid requirements.
  - **Psychotherapy**: OIG will review Part B payments for psychotherapy services to determine whether they were allowable in accordance with Medicare documentation requirements.
  - **Opioid Treatment Program**: OIG will determine whether selected State agencies complied with certain Federal and State requirements when claiming Medicaid reimbursement for OTP services.
Leadership Involvement

- **Leadership interviews:**
  - What keeps you up at night?
  - Examples:
    - High volume services (urine screens, therapy)
    - Patient safety
    - Employee safety
    - Patient Information—Privacy/Security
    - Etc.

Include managers/leaders across the organization in the development of your Compliance Action Plan or Risk Assessment

Creating a compliance action plan
Sort and Prioritize Potential Risks

1. Make a list of your identified risks and assign risk levels (low, medium, high, very high)
2. Can be based on frequency, cost, and penalties
3. The Joint Commission and CMS have looked at:
   - High risk
   - High volume
   - Low volume
   - Problem prone

Risk Management matrix

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<thead>
<tr>
<th></th>
<th>Low Severity</th>
<th>Medium Severity</th>
<th>High Severity</th>
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<tbody>
<tr>
<td>High Frequency</td>
<td>Medium Risk</td>
<td>High Risk</td>
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<td>Medium Frequency</td>
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Identify Root Causes and Create Action Steps

• Suggest using an Excel format
• This is a living document

<table>
<thead>
<tr>
<th>Name</th>
<th>Source</th>
<th>Service</th>
<th>Location(s)</th>
<th>Issue</th>
<th>Action Items</th>
<th>Due Date</th>
<th>Risk Level</th>
<th>Status</th>
</tr>
</thead>
</table>
| Psychotherapy| OIG Work Plan | Mental Health Psych or QHP | Site A and Site B | Does documentation of services meet Medicare requirements? | 1. Train all psychiatrists and QHPs on psychotherapy documentation  
2. No claim if psychotherapy service is <16 minutes  
3. Audit 10% of all psychotherapy services in August, 2019, and determine monthly rechecks | 1. 5/1/19  
2. 7/1/19  
3. 10/1/19 | High       | Open            |

Identify Root Causes and Create Action Steps

• Telehealth: Determine state Medicaid telehealth requirements.
  • Is a staff member at the originating site required to be with the patient? Certain credentials?
  • Billable mode of communication (video conferencing, telephone, text)? Compliant with HIPAA Security?
  • Is documentation clear?

• Psychotherapy: Medicare Psychotherapy Documentation
  • Time element
    o Are all claims billed >16 minutes? Appropriate code selected?
  • Is the treatment modality (DBT, CPT, EMDR) used documented?
Identify Root Causes and Create Action Steps

- **Opioid Treatment Program**: Broad category
  - Examine patient admitting criteria
    - Does the patient meet Diagnostic and Statistical Manual for Mental Disorders (DSM-IV) criteria?
  - Detoxification
    - Federal and State limits on detox treatment episodes
  - Refer to: https://store.samhsa.gov/system/files/pep15-fedguideotp.pdf and state Medicaid regulations

Suggested Action Steps

- Interviewing staff
  - What is the root cause of the issue?
    - Equipment
    - Resources—adequate staffing
    - Competency
    - Knowing the regulations/policies
Suggested Action Steps

- Baseline audits
- Training
- Targeted audits
- EHR hard stops
- Creating resource “cheat sheets”

Create Action Steps

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Case Study

Case Study—Characters

- Client: Jordan (17 years old)
- Primary care doctor: Dr. Linda Cox
- Hospital: Sacred Heart Hospital
- Therapist: Elliot Reid
- Psychiatrist: Dr. Christine Turk
- Rehab: North Hollywood Addiction Treatment Center
- Insurance Company: Acme
Case Study—Before You Start

Know your legal landscape

Case Study—Minors

- Jordan presents for admission at treatment center
- Covered by mom’s insurance: Acme
- Consent:
  - 42 CFR § 2.14 – minors
  - State law
- Sharing information with parents:
  - HIPAA
  - 42 CFR Part 2
  - State law
Case Study—Payment

- Jordan signs release of information to Acme
  - No release to parents
  - What about financial forms?
- Acme uses subcontractors for utilization review
- Sharing Information with Acme and subcontractors:
  - HIPAA
  - 42 CFR § 2.31(a)(4) – To whom requirements
    - (iii)(A) – name of the entity

Case Study—Care Coordination

- Jordan is admitted to treatment center
- Jordan sees Psychiatrist, Dr. Turk
  - Dr. Turk – Sacred Heart Hospital employee
- Care coordination:
  - HIPAA
  - 42 CFR § 2.12(c)(4) – Qualified service organizations
  - 42 CFR § 2.11 – Definitions
Case Study—Care Coordination

• Jordan is admitted to treatment center
• Jordan see Psychiatrist, Dr. Turk
  ▪ Jordan’s PCP, Dr. Cox, asks Dr. Turk about Jordan
  ▪ Dr. Cox and Dr. Turk – both Sacred Heart employees
• Redisclosure:
  ▪ 42 CFR § 2.32 – Prohibition on redisclosure
  ▪ 42 CFR § 2.12 – Applicability
    o (d)(2)(i) – Restrictions on disclosures

Case Study—Mandated Reporting

• Jordan reports sexual abuse to her counselor, Elliot
  ▪ Perpetrator is not revealed
• Child abuse and neglect:
  ▪ 42 CFR § 2.12 – Applicability
    o (c)(6) Reports of suspected child abuse and neglect
• Jordan reports substance use in her house
  ▪ Research state law definition of “abuse and neglect”
Case Study—Duty to Warn

- Jordan reports homicidal ideation and threatens to kill the person who sexually abused her
- Duty to warn:
  - Expressed homicidal ideation with intent and plan
  - Danger of overdose to self
- Privacy laws:
  - HIPAA
  - No exception for duty to warn in Part 2
- Ethical considerations

Case Study—Law Enforcement

- Police arrive in lobby with a warrant for Jordan’s arrest
- Privacy laws:
  - HIPAA
  - No exception for warrants in Part 2
- Pragmatic considerations
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