Hidden Risk Area: Patient Grievances - Are you Prepared for a Survey?

HCCA Compliance Institute
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Objectives

- Define CMS expectations for a patient grievance process and how to use the guidance as a compliance work plan auditing tool
- Discuss what state auditors review when they come onsite to assess your patient grievance process
- Consider the role of compliance in the patient grievance process

Audience Poll

- How many of you have knowledge of the patient grievance process at your facility?
Complaints vs. Grievances

- CMS Definition of Complaints
  - Patient issues that can be resolved promptly or within 24 hours and involve staff who are present (e.g., nursing, administration, patient advocates) at the time of the complaint.
    - Complaints typically involve minor issues, such as room housekeeping or food preferences.
    - Most complaints will not require that the facility send a written response to the patient.
  
  Even if a patient's complaint is addressed quickly and informally, the facility should document the complaint and the actions taken to resolve it and maintain the records for quality improvement activities.

Complaints vs. Grievances

- Common complaints of hospitalized patients include:
  - Difficulty sleeping due to overnight noise, blood draws, and vital sign assessments
  - Poor communication—staff who do not listen or explain, whiteboards that are not updated
  - Environmental concerns such as messy rooms and lost personal belongings
  - Lack of courtesy such as staff who do not knock before entering a room and staff who act unprofessionally
  - Small issues, such as these, can escalate, and patients (or their family members) who feel that their complaints have not been resolved or who have a more in-depth concern may file a formal grievance.
Complaints vs. Grievances

- CMS Definition of a Grievance
  - A formal or informal written or verbal complaint that is made to the hospital by a patient or the patient's representative regarding:
    - The patient's care (when the complaint is not resolved at the time of the complaint by staff present)
    - Abuse or neglect
    - Issues related to the hospital's compliance with the CMS CoPs
    - A Medicare beneficiary billing complaint related to rights and limitations provided by 42 CFR 489 (CMS Provider Agreements and Supplier Approval)

Complaints vs. Grievances

- Grievances may be submitted in the course of care or after the patient is discharged, and may occur by virtue of a patient's request for response.
  - All written complaints are considered grievances.
  - Many patient concerns may fall into the category of grievances due to the broad language of the CMS Interpretive Guidance
  - The patient’s “perception” may legitimize the grievance
  - Best practice is to err on the side of caution and label a complaint a grievance if in doubt
  - An organization that defines “grievance” too narrowly not only risks regulatory sanction for failing to respond in accordance with CoPs but may also miss an opportunity to investigate, identify, and address underlying systems issues.
Complaints vs. Grievances

- Examples of grievances include:
  - Failure to meet the patient's care expectations
  - Failure to notify the physician of the patient's concern
  - Failure to protect patient confidentiality
  - Failure to obtain informed consent
  - Premature discharge
  - Allegations of abuse, neglect, or other unethical behavior

U.S. Code of Federal Regulations

- Centers for Medicare & Medicaid Services (CMS) Conditions of Participation (CoP) mandate health care providers have an established patient grievance process in order to participate in the Medicare and Medicaid program. See 42 C.F.R. Section 482.13.

- At a minimum:
  - Hospital must establish a clearly explained procedure for the submission of a patient’s written or verbal grievance to the hospital.
  - Must specify time frames for review and response
  - Must provide written notice of decision with name of hospital contact person
CMS Guidance for Grievance Process

The hospital’s governing body must approve and be responsible for the **EFFECTIVE** operation of the grievance process.

Governing body may delegate this process to a grievance committee. The delegation for review and resolution of grievances must be in **WRITING**.

In its resolution of the grievance, the hospital must provide the patient with written notice of its decision that contains:

- Name of the hospital contact person
- Steps taken on behalf of the patient to investigate the grievance
- Results of the grievance process
- Date of completion

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Joint Commission Also Sets Expectations

**RL01.07.01**: The patient and his or her family have the right to have complaints reviewed by the hospital.

<table>
<thead>
<tr>
<th>Program: Hospital</th>
<th>Chapter: Rights and Responsibilities of the Individual</th>
<th>Introduction: N/A</th>
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</table>

**Elements of Performance**:

1. The hospital establishes a complaint resolution process and informs the patient and his or her family about it. (See also LC.04.01.07, EP 1; MS.09.01.01, EP 1)
2. The hospital reviews and, when possible, resolves complaints from the patient and his or her family. (See also MS.09.01.01, EP 1)
3. The hospital acknowledges receipt of a complaint that the hospital cannot resolve immediately and notifies the patient of follow-up to the complaint. (See also MS.09.01.01, EP 1)
4. The hospital provides the patient with the phone number and address needed to file a complaint with the relevant state authority. (See also MS.09.01.01, EP 1)
5. For hospitals that use Joint Commission accreditation for deemed status purposes: In its resolution of complaints, the hospital provides the individual with a written notice of its decision, which contains the following:
   - The name of the hospital contact person
   - The steps taken on behalf of the individual to investigate the complaint
   - The results of the process
   - The date of completion of the complaint process
6. For hospitals that use Joint Commission accreditation for deemed status purposes: The hospital determines time frames for complaint review and response.
7. For hospitals that use Joint Commission accreditation for deemed status purposes: The process for resolving complaints includes a mechanism for timely referral of patient concerns regarding quality of care or premature discharge to the quality improvement organization (QIO).
## Survey Conducted by Alabama Department of Public Health

**2 RN Surveyors Across 2 Days**

- Medical Records Reviews
- Random Staff Interviews
- Random Patient Interviews and Observations
- Review of Policies and Procedures
- Review of Minutes

## Surveyor Findings

### Top Compliance Issues

- Prompt Resolution of Grievances Not Met
- Failure to Follow Internal Policy
- Root Cause Analysis Not Documented
- No Minutes from Grievance Committee
- Unrelated Clinical Findings
Is Your Facility Compliant? What Should You Audit?

- Patient grievance process
  - Operational considerations
    - Have you implemented policies, procedures, and processes for investigation and resolution of patient complaints and grievances?
    - Do you have dedicated staff to solve small problems before they escalate?
    - Do you employ a proactive approach to customer service?
    - Is frontline staff empowered to act as the first line of defense against complaints?
    - Have you verified that the grievance process is effective?
      - Regular monitoring of data
      - Applying lessons learned
Is Your Facility Compliant? What Should You Audit?

- Patient grievance process (cont’d)
  - How do patients know you have a grievance process?
    - How do you inform each patient whom to contact to file a grievance?
    - Do you include how the patient may lodge a grievance with the state agency?
    - Does this include a phone number and an address?
    - Are patients aware of their right to seek review by the QIO for quality of care issues, coverage decisions, and to appeal a premature discharge?

- Patient grievance process (cont’d)
  - How many FTEs are devoted to working grievances and complaints?
    - What is their background?
    - What is their job description?
    - What is the process for weekend coverage?
  - How do you capture patient grievances and complaints?
    - Do you use specialized software?
    - What happens if patient communicates a grievance to clinical and non-clinical staff? How is this information captured for resolution?
Is Your Facility Compliant? What Should You Audit?

- **Grievance committee**
  - How often does the committee meet?
  - What metrics are reviewed?
  - Who sits on the committee?
  - Does the committee have a formal charter?

Is Your Facility Compliant? What Should You Audit?

- **Grievance committee (cont’d)**
  - Has the governing body (your Board) provided written proof that they have delegated the process to the committee?
  - Is the data collected and reviewed by the committee regarding patient grievances, as well as other complaints that are not defined as grievances, incorporated into the hospital’s Quality Assessment and Performance Improvement Program?
  - Do the minutes of the committee reflect the review of the data and recommendations or action plans?
Is Your Facility Compliant? What Should You Audit?

- Sample of metrics reviewed by grievance committee

### Complaints/Grievances

#### Qtr 1 ‘18

<table>
<thead>
<tr>
<th>Total Complaints</th>
<th>Total Grievances</th>
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<tbody>
<tr>
<td>Jan ‘18 148</td>
<td>Feb ‘18 189</td>
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<tr>
<td>Feb ‘18 196</td>
<td>Mar ‘18 39</td>
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Is Your Facility Compliant? What Should You Audit?

- Sample of metrics reviewed by grievance committee (cont’d)

### GRIEVANCES BY TYPE

- Feb ‘18: 52
- Mar ‘18: 65
Is Your Facility Compliant? What Should You Audit?

- Sample of metrics reviewed by grievance committee (cont’d)

### GRIEVANCES BY LOCATION

#### Feb ’18 (52 total)
- ED: 13
- NURS: 5
- LAB: 4
- SE: 3

#### Mar ‘18 (65 total)
- ED: 7
- NURS: 7
- LAB: 6
- SE: 5
- CN: 4
- NICU: 3
- NMOC: 3

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Is Your Facility Compliant? What Should You Audit?

- **Training**
  - Do all employees know the definition of a grievance?
  - Do all employees know how to communicate a patient grievance to appropriate personnel?
  - Who is responsible for root cause analysis and is documentation sufficient?
  - Does training involve escalation procedures if allegation of harm, abuse, or neglect?
  - Does training involve the HIPAA Privacy Rule when someone other than the patient wants to file a grievance?
  - Is evidence of training captured and documented?
Is Your Facility Compliant? What Should You Audit?

- Documentation
  - Are dates and times captured for conversations surrounding resolution of a patient grievance?
  - Does documentation support that you are ACTIVELY working the grievance?
  - Does the facility adhere to its documented grievance policies and procedures?
  - Does your facility have documented time frames for investigation and resolution of a grievance?
    - CMS guidance recommends “on average, a time frame of 7 days for the provision of the response would be considered appropriate.”
  - Are reasons for exceeding established time frames documented?

Response to Alabama Department of Public Health

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<th>Hear</th>
<th>Timely review and revision of policies and procedures</th>
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<td>E</td>
<td>Empathize</td>
<td>Process flow charts to visually support the function</td>
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<tr>
<td>A</td>
<td>Apologize</td>
<td>Re-establishment of Grievance Committee with 10 meetings/year</td>
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<tr>
<td>T</td>
<td>Take Action</td>
<td>Quarterly reporting to Governing Body through the Patient Safety &amp; Quality Improvement Committee</td>
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<tr>
<td>T</td>
<td>Track and Trend</td>
<td>Development of a service recovery process called HEATT to ensure that complaints are resolved as soon as possible</td>
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<tr>
<td></td>
<td></td>
<td>Competencies developed for managers/leaders to document evidence of the skills necessary for management and resolution of complaints and grievances</td>
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</table>
Response to Alabama Department of Public Health

- Software system utilized by Patient Liaisons for tracking and trending of patient complaints and grievance
- Patient Liaisons responsible for mailing written response to the patient in accordance with established time frames
- Patient grievances incorporated into Leadership Patient Safety Huddles conducted daily Monday through Friday
- Training conducted and documented; both live and computer based training for all levels of employees

Compliance Risk Areas Within The Grievance Process

- Privacy
  - Are responses to patients e-mailed and does that e-mail include protected health information?
  - Are grievances involving privacy routed to the Privacy Officer?
    - What is the process?
    - Who documents the investigation?
    - Where is the documentation maintained?
  - Are employees trained to transfer calls to the appropriate person to prevent the patient from relaying PHI to numerous employees?
  - If friends or distant family complain on behalf of the patient, is PHI protected from unauthorized disclosure?
Compliance Risk Areas Within The Grievance Process

- Co-pay waivers
  - Verify that Medicare co-pays are not written off as a method of resolving a patient grievance.
  - HHS' Office of the Inspector General (OIG) makes clear in "A Roadmap for New Physicians, Fraud & Abuse Laws" that routinely failing to collect patient copays in any instance other than for individual determination of patient hardship is illegal:

  "The kickback prohibition applies to all sources of referrals, even patients. For example, where the Medicare and Medicaid programs require patients to pay copays for services, you are generally required to collect that money from your patients. Routinely waiving these copays could implicate the AKS and you may not advertise that you will forgive copayments."


- Attorney engaged by patient
  - Verify how grievances are handled when the patient states that they have retained an attorney.
    - Is there a process for escalation to hospital counsel?
    - Is this documented as part of the grievance intake process?
    - Discuss immediately with the Risk Management Department
    - Have a process in place to handle these situations BEFORE a state surveyor arrives at your institution.
Compliance Considerations

- Corporate Compliance Perspective
  - Effective management of patient complaints and grievances is imperative from a regulatory compliance standpoint:
    - CMS CoPs
    - Private accreditation standards
  - Often individual patient concerns often bring to light larger systems issues:
    - Quality of care
    - Medicare billing
    - Research compliance
    - Physician and staff behaviors
  - Additionally, before instituting well-intentioned responses to patient grievances, such as giving gifts or writing off copays, organizations should consult with Compliance to determine whether doing so would violate federal or state fraud or abuse law.

Compliance Considerations

- Opportunities for Compliance Involvement
  - Compliance Officer participation on the Grievance Committee
  - Review metrics and related handouts from Grievance Committee if unable to attend meetings
  - Interview personnel who handle grievance process

Do you have a grievance?
Speak up!
Here’s how...
Compliance: Review of Actual Grievances and Complaints

- Based on metrics reported to Grievance Committee, take a deep dive into actual grievances and/or or complaints.
  - Example: Dr. X routinely has the most complaints about his bedside manner. A deep dive into details: Doctor X called me by (another patient’s full name) and asked if I was in pain from (name of surgical procedure performed on the other patient).
    - Do you have an opportunity to educate on HIPAA?
    - Is your Privacy Officer receiving these types of grievances?

Compliance: Review of Actual Grievances and Complaints

- Based on metrics reported to Grievance Committee, take a deep dive into actual grievances and/or or complaints.
  - Example: Nursing Unit X routinely has the most patient complaints that patients are not satisfied that their pain is being managed. A deep dive shows the majority of complaints occur during the 11pm to 7am shift.
    - Do you have a drug diversion issue?
    - Should you review narcotics reports for this area?
    - Could this trend lead to a drug diversion audit?
Compliance: Review of Actual Grievances and Complaints

- Based on metrics reported to Grievance Committee, take a deep dive into actual grievances and/or or complaints.
  - Example: Patient does not say anything while in the hospital but files a grievance with the state upon discharge. Patient states that she is blind and was not assisted with activities of daily living to include orientation to room and meal tray.
    - Is this a mistake or is this an indication of discrimination based on a disability?
    - Is there an opportunity to educate employees?
    - Should the medical record be audited to determine if patient rights were met?

Compliance: Review of Actual Grievances and Complaints

- Based on metrics reported to Grievance Committee, take a deep dive into actual grievances and/or or complaints.
  - Example: Patient complaints about never seeing a doctor in the emergency room spikes across more than one period.
    - Are patients seeing a NPP instead?
    - How was the visit billed?
    - Was the visit billed under the physician’s provider number?
Conclusion

- Risk affects all aspects of healthcare organizations.
- Patient grievance process is one area of risk to be assessed in your organization.
- Trust but verify the process is working at your facility.
- Routinely review patient grievance documentation.
- Find out if your Quality Department has performed a mock survey in this area. If not, perform your own.
- Review metrics and attend Grievance Committee meeting.

Thank You!

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