Hot Topics Round Table: Compliance
Seattle HCCA
June 10, 2016

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Agenda

- Introductions
- Background/Risk Discussion
- Hot Topics
  - Value Based & Risk Based Contracting
  - Social Media
  - Documentation/EHR integrity
  - Audit and investigation war stories
- Questions

Panel Introduction
Panel Introductions

- **Lori Laubach, CHC**
  Principal – Regulatory Compliance Practice
  Moss Adams LLP
- **Christie Moon**
  Director of Compliance
  UW Physicians
- **Erin Brown**
  Compliance Officer and Manager of Patient Access Services
  Jefferson Healthcare
- **Richard Meeks, CHC, CCEP, CHP**
  Corporate Compliance, Information Security & Internal Audit Officer
  EvergreenHealth
- **Molly Burns Herrmann, J.D., CPC**
  Vice President, General Counsel Corporate Compliance Official, HIPAA Privacy & Security Officer
  NW Permanente PC, Physicians and Surgeons

Background / Risks
Assessing Compliance Risks

* Identify and communicate the scope of the Compliance function
* Educate internally on the Compliance Risk Universe
* Stay on top of the ever-changing risk landscape
* Conduct risk assessments that lead to an auditing and monitoring work plan

### Enterprise-wide Compliance Risk Universe

<table>
<thead>
<tr>
<th>Culture/Governance</th>
<th>Institutional Compliance Program</th>
<th>Departmental Compliance Program</th>
<th>Contract Management</th>
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<tr>
<td>Culture/Tone at the Top</td>
<td>Code of Conduct</td>
<td>Emergency Department</td>
<td>Physician Contracts/Arrangements</td>
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<td>Roles and Responsibilities</td>
<td>Disciplinary Action</td>
<td>Laboratory</td>
<td>Joint Ventures</td>
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<td>Compliance Function</td>
<td>Policies and Procedures</td>
<td>Imaging</td>
<td>Vendor Agreements</td>
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<td>Board structure and education</td>
<td>Reporting Issues and Concerns</td>
<td>Home Health</td>
<td>Business Assoc Agreements</td>
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<td>Succession Planning</td>
<td>Auditing and Monitoring</td>
<td>Hospice</td>
<td>Contract Repository</td>
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<td>Compliance education</td>
<td>Response and Prevention</td>
<td>Durable Medical Equipment</td>
<td>Lease arrangements</td>
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<td>Human Resources</td>
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<td>Finance</td>
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<td>Other operating departments</td>
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<thead>
<tr>
<th>Conflict of Interest</th>
<th>Clinical Research</th>
<th>Quality/Performance Improvement</th>
<th>Hospital Coding and Billing</th>
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<td>Board Management</td>
<td>Research Compliance Program</td>
<td>Patient Safety</td>
<td>Registration accuracy</td>
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<td>Staff</td>
<td>Clinical Trials billing</td>
<td>Medical Errors</td>
<td>Charge Master (CDM)</td>
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<td>Employed Providers</td>
<td>Human Subjects Protections</td>
<td>Quality indicator monitoring and reporting</td>
<td>Monitoring and Auditing</td>
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<td>Contracted Providers</td>
<td>Scientific misconduct</td>
<td>Regulatory surveys</td>
<td>Care Coordination</td>
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<td>Organized Medical Staff</td>
<td>Grant management</td>
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<td>Training and Education</td>
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<tr>
<th>Professional Coding &amp; Billing</th>
<th>Privacy and Security</th>
<th>Materials Management/Procurement</th>
<th>Specific Compliance/Regulatory Risks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physician documentation and coding</td>
<td>Access and permissions</td>
<td>Purchasing/Materials Management</td>
<td>RACs provider based status</td>
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<td>Training and education</td>
<td>Physical security</td>
<td>Purchase Cards</td>
<td>EMTALA</td>
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<td>Auditing and monitoring</td>
<td>Privacy and security compliance</td>
<td>Accounts Payable</td>
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<td>Breach Management</td>
<td>Returns, Rebates, Credits and Warranties</td>
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<td>Encryption</td>
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<td>Licensure</td>
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Adapted from HCCA Compliance Today, April 2015 Planning and Executing enterprise-wide compliance risk assessments in healthcare organizations
Questions

Other ideas from the participants on how to effectively manage the risks
Hot Topics

* Ransomware
* Physician Compensation/Physician Contracts/Arrangements
* MOON & 2 Midnight Rule
* CMS Discharge Planning Rule for Hospitals & Certain Post-Acute Providers

Hot Topics

* Recovery auditors
* Yates Memo
* Quality Measures
* 501R
* Data
* Roll out of 60 day Overpayment Regulation
Hot Topics

- Identity Theft
- Patient Corrected Charts
- EHR Contingency Plans
- Defective Medical Devices
- Population Health
- 340B Updates

Questions

Other hot topics from the audience?
Value Based & Risk Based Contracting
Issues to Consider

- Accepting Risk (are you an insurer?)
- Subcontracting (are you subject to the WA OIC?)
- Provider Directories (are you up-to-date?)
- Reducing Variation (can you spot a whistleblower?)
- Revenue Cycle (can you collect?)
- Data Sharing and Collection (are you secure?)
- Credentialing (are you doing it right?)
- Tax Status (are you exempt?)
- Accreditation (can you qualify?)
- Value (what are you going to get and give?)

Social Media Challenges of Today
The Situation

* Over 70% of the workforce has some form of social media profile which they can access quickly and easily through their smartphones; uploading pictures has never been easier.
  - Facebook
  - Instagram
  - Twitter
  - Tumblr
  - LinkedIn
  - Snapchat
  - Pinterest

Employees have access to sensitive information, often Protected Health Information (PHI), and the temptation or lack of knowledge creates an environment ripe for a breach or employment defamation.

Holding business associates accountable for similar situations.

Auditing and monitoring potential issues are extremely difficult and run the risk of violating the employee’s rights through the National Labor Relations Act.

The Risks
The Risks - continued

* Evidence of Facebook posts typically only become applicable in legal cases when the individual is contradicting their claims.
* Difficult to prove.
* Small town trends – being “friends” with your doctor.
* New type of whistleblower.

Recent Cases to Consider

* McAllister v. Lee County
  * EMT/medical helicopter pilot went to Federal Aviation Administration (FAA) and social media to report lack of required federal certification.
  * Attempted to work with employer first.
* Yath v. Fairview Clinics
  * Electronic medical record improperly accessed by employees which revealed sensitive lab information. That employee told another employee, and an online account was created, announcing the information.
  * Should the clinic be liable?
The Solution

* Be proactive – start the conversation with your organization, top to bottom.
* Describe recent cases, recent situations where the lines between personal and professional communication has been blurred.
* Focus on what they can do, what is acceptable.

The Solution - continued

* Be consistent with how policies are enforced, conversation should be the same for executive level staff as it is for all other areas of the organization.
* Employees must be aware of policies and consequences of violations.
* Make an ally of your supervisors – they are often linked in with their staff through social media channels.
EHR Integrity

Then and Now

Paper
If it isn’t documented, it did not happen...

EHR
It’s documented, but did it really happen?

Note Bloat: How do I find what I need to know to treat this patient?
EHR Integrity Risks

When used appropriately, copy/paste and related tools do save practitioners valuable time.

However, if used inappropriately or carelessly, these tools may produce a flawed medical record that results in patient care risks, professional liability, and/or payment denials.

EHR Integrity Risks - continued

* Unlike a note written on paper, an EHR note can be generated using information previously recorded, and that can be imported from within the EHR or elsewhere.
* The result can be a note that looks new and original, but actually is a combination of new and/or pre-existing material.
* Sometimes this can be very risky.
EHR Accuracy Example

At a medical center in another state, an oncologist copied forward only part of a patient’s history. The history originally said:

**Family** history of breast cancer

The oncologist picked up only a part of it:

**History of breast cancer**

This information was then copied forward multiple times into multiple notes. Copies of the records were sent to the insurance company for billing. The patient was denied coverage based on the history of breast cancer. The patient reported the error to the organization. This type of incorrect information undermines the integrity of the medical record.

What’s the Big Deal?

**Quality Issues**
- Incorrect or inaccurate data
- Missing data
- Stale or outdated data
- Over-documentation
  - Hard to find information
- Copying into wrong patient record
- Credibility
- Potential patient harm
- Potential HIPAA breach
Patients as New Auditors

A patient complaint at one entity involved a patient who (after reviewing records sent via portal set up based on meaningful use) noted that:

- Physician did not do an examination even though a comprehensive exam was documented in the medical record.
- Physician documented spending 30 minutes longer with the patient than the patient asserted was accurate.

Using templates or other variations on copy and paste without confirming accuracy for the current visit is **RISKY**. These practices also have potential to create the following risk concerns:

- Patient Safety
- Professional Liability
- HIPAA Privacy

Advice to Providers
EHR Integrity Error Prevention

Use **EXTREME** care in copying information from a patient’s previous encounter or from another practitioner.

- **ONLY** copy-forward from within the same patient record and only do so using info that is accurate and relevant.
- **NEVER** copy encounter-unique information such as previous exam findings and medical decision making.
- **ONLY** include information that is **accurate for current encounter**.
- **REREAD YOUR NOTE BEFORE SIGNING** to be sure that all of it is accurate and pertains to the CURRENT visit.
What CMS has to Say About This

CMS MANUAL SYSTEM – MEDICARE PROGRAM INTEGRITY MANUAL
Chapter 3 - Verifying Potential Errors and Taking Corrective Action

* CMS does not prohibit the use of templates to facilitate record-keeping. CMS also does not endorse or approve any particular templates. A physician/LCMP may choose any template to assist in documenting medical information.

* Some templates provide limited options and/or space for the collection of information such as by using “check boxes,” predefined answers, limited space to enter information, etc. CMS discourages the use of such templates. Claim review experience shows that limited space templates often fail to capture sufficient detailed clinical information to demonstrate that all coverage and coding requirements are met.

3.3.2.1.1 Progress Notes and Templates (Rev.455, Issued: 03-15-13, Effective: 12-10-12, Implementation: 03-21-13)

What CMS has to Say About This

CMS MANUAL SYSTEM – MEDICARE PROGRAM INTEGRITY MANUAL
Chapter 3 - Verifying Potential Errors and Taking Corrective Action

* Physician/LCMPs should be aware that templates designed to gather selected information focused primarily for reimbursement purposes are often insufficient to demonstrate that all coverage and coding requirements are met. This is often because these documents generally do not provide sufficient information to adequately show that the medical necessity criteria for the item/service are met.

* If a physician/LCMP chooses to use a template during the patient visit, CMS encourages them to select one that allows for a full and complete collection of information to demonstrate that the applicable coverage and coding criteria are met.

3.3.2.1.1 Progress Notes and Templates (Rev.455, Issued: 03-15-13, Effective: 12-10-12, Implementation: 03-21-13)
What Noridian* has to Say About This

* “Medical Record Cloning” -- Cloned documentation may be handwritten, but generally occurs when using a preprinted template or an Electronic Health Record (EHR).

* While these methods of documenting are acceptable, it would not be expected the same patient had the same exact problem, symptoms, and required the exact same treatment or the same patient had the same problem/situation on every encounter.

* Cloned documentation does not meet medical necessity requirements for coverage of services. Identification of this type of documentation will lead to denial of services for lack of medical necessity and recoupment of all overpayments made.”

*Noridian : Medicare Provider Outreach and Education (POE) August 2014

What Government Auditors are Looking for

* Evidence of Authentication
  * Who performed which care?

  * Contradictions between:
    1) ROS, PFSH, HPI
    2) Multiple provider notes
    3) Same typos and/or grammar issues in multiple encounters
    4) Medically implausible information
EHR Integrity: Templates

* Can provider actively select/personalize a template?
* Are they reasonably specific to chief complaint or diagnosis?
* Can you tell what really happened during this encounter?

EHR Integrity: Copy Paste/Cloning

* Multiple patients with exact same issues?
* Difficult to find original source of documentation
* HIPAA issues if various patient names and diagnoses appear in record
* Can appear fraudulent
Audit & Investigation War Stories

* AGO Investigating Charity Care and Financial Assistance
* Covermymeds.com
* MAC Chemo Infusion - CPT 96413 Prepay Audit
* Home Health Certification Requirements
Questions?

Feel free to contact us!

Lori Laubach
Lori.laubach@mossadams.com
Christie Moon
cmoon@uwp.washington.edu
Erin Brown
ebrown@igh.org
Molly B. Herrmann
Molly.b.herrmann@kp.org
Richard Meeks
rameeks@evergreenhealthcare.org