HCCA REGIONAL PROGRAM
PHILADELPHIA
TRENDS IN THE FUTURE OF HEALTH CARE AND COMPLIANCE
JAMES G. SHEEHAN
CHIEF, CHARITIES BUREAU
NEW YORK ATTORNEY GENERAL’S OFFICE
JAMES.SHEEHAN@AG.NY.GOV

COMPLIANCE HEADLINES

• “Victory” for defendants
• US ex rel. Ruckh v. Salus Rehab (1/11/2018) -$350 million jury verdict against nursing homes for RUGS upcoding thrown out
• Relator asserts that “a handful of paperwork defects” compel the decisive inference that the defendants never provided the services
• Relator provided no evidence that govt “would have regarded” the disputed practices as material to the decision to pay.
COMPLIANCE HEADLINES

• UnitedHealth—claim for upcoding as part of consultant record review-risk adjustment payments
• California case (Swoben) dismissed
• Minnesota case (Poehling) goes forward (March 2018)
• UnitedHealthcare v. Price—still pending—challenge to Medicare overpayment rule—(duty to report, refund, explain)

COMPLIANCE HEADLINES

• $114 million judgment against three—individuals—jury trial—kickbacks for lab referrals (May 23) processing and handling fees to MDs ($16 million in claims induced by kickbacks)
• $20.75 million kickback settlement—UPMC—contract for unneeded services with cardiology group
COMPLIANCE HEADLINES-other 2018 cases

- Fla. Hospice settlement-patients not terminal-$2.5 million
- Insys Therapeutics FCA complaint-speaker programs, meals and entertainment to MDs and NPs to prescribe opioid painkiller
- Mercy Health-Ohio-self-disclosure of payments to six employed physicians which exceeded fair value of services-$14.25 million
- Charles Cole hospital-Pa.-self-disclosure-failure to use modifier for pa’s; failure to perform face-to-face on recerts. of hospice patients $373K

Trends in the Future of Health Care

- 1) “BIGLY”-Healthcare Information and Management Systems Society Conference - 45,000 attendees (Nonprofit organization promoting use of information technology and management systems in health care.)
- 2) VULNERABILITY OF HEALTH CARE NOT-FOR-PROFITS-Capital and systems requirements in new health care
- 3) WHAT DATA? WHAT ARE THEY (payors, plans, government) GOING TO DO WITH IT?
- 4) RISKS, LIMITATIONS, COMPLIANCE
“BIGLY’

• Critical mass in health care
• bargaining power of large systems
• Capital requirements for IT, data, telemedicine, analytics, billing, outcome capture, data reporting
• Value based reporting and payment

“BIGLY”

• Amazon, Berkshire Hathaway, JPMorgan healthcare joint venture (January 2018)
• #1 United Healthcare and Surgical Care Group (January 2017), DaVita Medical Group (December 2017)
• #2 Anthem starting own PBM, IngenioRx, in partnership with CVS (October 2017)
• #3 CVS Health acquiring Aetna (to close in second half of 2018) 21 million members, 1100 minute clinics, 28 state insurance departments
• #3 Aetna joint ventures (Inova, Banner Health “neighborhood care, multidisciplinary teams ”)
• #4 CIGNA and Express Scripts (March 2018)
• #6 Centene (managed care) and Health Net California) (2016) Fidelis (New York) (July 2018); RxAdvance partnership (March 2018)
“BIGLY”

• Jefferson Health-so big it now runs ads during the Super Bowl
• Penn Medicine
• Temple

SAVINGS/PROFIT OPTIONS for BIGLY

• High volume, high cost surgeries-CABG, angioplasty, knee and hip replacement, caesarians-2-6 times comparable countries
• Administrative costs 3-5 times comparables
• Medical imaging procedures –up to 10 times cost in comparables
• Drugs spending 3 times comparables
• E. Emanuel editorial in JAMA 3/13/2018
VULNERABILITY OF NOT-FOR-PROFITS

- Gradual disappearance of not-for-profit nursing facilities
- Effect of metrics-driven managed care payment systems – and managers- on not-for-profit custodial care-developmental disabilities, mental health, substance abuse (state Medicaid and ACA)
- Weaker funding, management, board, IT, finance structures
- Consensus based institutions at risk in period of rapid change
- Hospitals remain outlier: 2849 NFP vs. 1,035 FP

WHERE DOES BIG DATA COME FROM? (some sources)

- Electronic medical records
- Photos and images
- Prescription records
- Adverse event/near miss reporting
- Appointment records/Patient communication records
- Billing records (coding for ICD-10 and CPT)
- Email and text records
- Wearable technology/body sensor/remote monitoring records
- Social determinant/demography data
- Care coordination records
- Laboratory value records
- Insurance interaction records
WHAT CAN ALL THIS DATA BE USED FOR?

- Predictive Analytics
- Machine Learning/ Artificial Intelligence
- Doppelganger searches/reports
- Integration of pharmacologic, therapeutic care, monitoring, followup, custodial care
- Patient learning and behavior modification
- Provider learning and behavior modification
- Outcomes improvement
- INTEGRATING PHARMA AND MEDICAL/CUSTODIAL CARE

Machine Learning/ Artificial Intelligence

- Machine Learning-the Watson approach
- “Scalable and accurate deep learning for electronic health records” Rajkomar, A. et al (January 2018) (Stanford, UCSF, U Chicago, Google study, not yet published)
- “We propose a representation of patients’ entire, raw EHR records based on the Fast Healthcare Interoperability Resources (FHIR) format.”
- “Deep learning models achieved high accuracy for tasks such as predicting in-hospital mortality (AUROC across sites 0.93-0.94), 30-day unplanned readmission (AUROC 0.75-0.76), prolonged length of stay (AUROC 0.85-0.86), and all of a patient’s final diagnoses (frequency-weighted AUROC 0.90). These models outperformed state-of-the-art traditional predictive models in all cases.”
FILLING AND EXPLOITING DATA GAPS

• WHAT SYMPTOMS PREDICT WHICH DISEASES? (pancreatic cancer)
• DO PATIENTS TAKE THEIR PRESCRIPTIONS? DO THEY WORK?
• HOW DO DRUGS AFFECT LAB VALUES?
• WHAT SIDE EFFECTS AND COMPLICATIONS DO PATIENTS EXPERIENCE? ARE THEY REPORTED/REFLECTED?
• WHAT HAPPENS AFTER PATIENTS LEAVE THE HOSPITAL?
• WHAT PROCEDURES ON WHICH PATIENTS DO NOT HAVE POSITIVE OUTCOMES?
• WHAT ARE THE CHARACTERISTICS OF THE MOST EXPENSIVE/NONCOMPLIANT PATIENTS

IF DATA ANALYSIS AND GAP ANALYSIS IS SUCH A GOOD IDEA, WHY HASN’T IT HAPPENED ALREADY?

• INCENTIVES
• HOW DOES EACH INDUSTRY SEGMENT MAKE MONEY?
  • Pharmaceuticals
  • PBM
  • Labs
  • Physicians/ancillaries
  • Hospitals
  • Custodial care
IF DATA ANALYSIS AND GAP ANALYSIS IS SUCH A GOOD IDEA, WHY HASN’T IT HAPPENED ALREADY?

• Data aggregation
• Data quality/accuracy
• Interoperability of data systems
• Ownership/licensing issues
• Lawyers
• Regulators

HOW “BIGLY” ADDRESSES THE DATA ISSUES

• Change in Incentives
• Deep Data Aggregation
• Data standards and quality
• Interoperability
• Common ownership
• Profit motive
NEW RISKS FROM BIGLY AND BIG DATA

• Big Brother aspects of data aggregation-do we want private companies with this much personal information about us?
• Required consents from patients?
• Access and breaches
• Moving expensive patients to high cost drug tiers to encourage migration
• Should data generated algorithms be protected intellectual property?
• Are data generated algorithms disclosed or black box? Can providers rely on black box in malpractice actions? In medical necessity or privilege reviews?

BIG DATA

• OIG's Consolidated Data Analysis Center
2018 OIG CMPs and Exclusions

- **Patient dumping:**
  - NC hospital-patient dumping-4 cases-$200k
  - Iowa hospital-patient dumping $90,000
  - NC hospital $52K
  - FL. Hospital $42,500
  - Ohio hospital-$50K
  - Ga. Hospital-$52K
  - Tenn. Hospital-$40k
- ARC of Anchorage (AK) $2M false claims-individual and group services at same time, overlapping times, retention of overpayments
- Fla. Drug and Alcohol Rehab-$95k-kickbacks (point of care test cups) from Millenium Health LLC

2018 OIG CMPs and Exclusions

- Immediate Home Care-Bensalem-excluded home health nurse-$189K
- Alameda Health System-Ca.-excluded eligibility clerk-$257k
- Turtle Creek Recovery Center-Tx-$24k-counselor
- Pharmex Pharmacy-NJ-excluded pharmacist-$314k
- Southwest Trinity Mgmt-OK-$141k-LPN
- Arkansas Convalescent Center-AR--$189-LPN
UPCOMING COMPLIANCE ISSUES TO WORRY ABOUT

- HIPAA and privacy issues
- Ransomware and system vulnerabilities
- Secondary payor
- Risk Assessments-data and claims systems