Compliance in the Post-Acute World

HCCA Pittsburgh Regional Healthcare Compliance Conference
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Janet Feldkamp

Janet focuses her practice in the area of health care law, including long-term care survey and certification, state and federal regulation, physician and nurse practice, and fraud and abuse involving hospitals, suppliers, insurers and physicians. She retains active licenses as a registered nurse and a nursing home administrator and has extensive health care experience.

Janet is a member of the editorial advisory board of *Caring for the Ages*, a monthly newspaper for long term care practitioners. She has been a frequent speaker, particularly in the area of long term care. She is also co-author of *The Long Term Care Handbook: Regulatory, Operational and Financial Guideposts* published by the American Health Lawyers Association.

Janet is also a board member of the American Association of Post Acute Care Network, the parent organization of AANAC and the American Association of Director of Nursing Services (AADNS)

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Risk Areas /Mitigation for Post-Acute Care Providers

- Kickbacks/Inappropriate Referrals
- Medical Necessity/Eligibility of Services (and documentation)
- Homebound Status for Home Health (and documentation)
- Insufficient Documentation
- Unsupervised Services
- Services ordered but not performed
  - Services performed and billed but not ordered
- Overbilling/Up-coding/OASIS/ICD-10/MDS
- Therapy Manipulation
- Staff Training/Education
- Credentialing/Certification
- OIG Exclusion List- Monitoring and prebill auditing

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Focus of Government Auditing and Investigations

Home Health Focus:

    485/POC; Medical Necessity; Homebound Status; Face-to-Face;   Therapies

Hospice Focus:

    Eligibility; Levels of Care: General Inpatient Care and Continuous Home Care; Long Length of Stays, Patients in SNFs or ALFs.

Skilled Nursing Facilities:

    Quality of Care; Therapy Medical Necessity; OIG probe on staffing records; Other

Assisted Living Communities:

    Quality of Care, lack of consistency with reporting deficiencies and Government Accountability Office (GAO) findings.

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Government Audits

▶ Medicare Administrative Contractors (MACs).

▶ Zone Integrity Program Contractors (ZPICS) — Focus on Fraud.

▶ Unified Integrity Program Contractors (UPICS).

   – Replacing the ZPIC, PSC and other.

   ▶ Seven initial contracts.

   ▶ Advance Med Corp ($76.8 million task order — first under the UPIC).

   ▶ Other Medicare Contractors: TriCenturion, Inc.;
     StrategicHealthSolutions LLC; Noridian Healthcare Solutions, LLC;
     IntegriGuard LLC d/b/a/ HMS Federal; Health Integrity, LLC.

   ▶ Medicare and Medicaid audits (replace MIC).

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Government Audits (Continued)

▶ HHS OIG: Hospices Inappropriately Billed Medicare Over $250 Million for
General Inpatient Care. March 2016.

▶ Office of Inspector General (OIG) Office of Audit Services (OAS).

   – OAS Audits agencies with intent to publish findings

   – Sample size

   – Example:

     • Hospice of New York, LLC, Improperly Claimed Medicare
       Reimbursement for Some Hospice Services - June 2015

▶ RACS — created administrative backlog.

▶ Comprehensive Error Rate Testing (CERTS).

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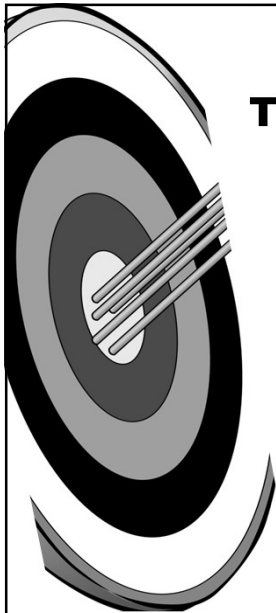
Targeted Probe and Educate (TPE)

▶ MACs Medical Review Program.

▶ MACs must develop an annual Improper Payment Reduction. Strategy (IPRS)—required by CMS.

  – Data is analyzed by provider, services and beneficiary.

  • Historical claims data
  • Use of patterns/trends; high volume/cost and change in frequency/outliers
  • Comparative billing reports: state, regional and national
  • CMS Reports and other government reports (OIG/GAO)

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TPE: What Providers Need to Know

▶ Once the MAC identifies your risk, claims review is initiated.

  – Validate issue.

  – Target and Probe of 20-40 claims

    • Selected Sample of 20-40.
    • Initial request for records may be a smaller number of patients if agency has small census (but a total of 20-40 for round one is still applicable).
    • Benchmarks are established.
    • One on one provider education is provided.
    • Providers with high error rates will continue to second and possibly third rounds.

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What can Post-Acute Care Providers Do to Avoid Government Audits ---or Perform Well when Called upon?

- Educate staff on why clinical documentation is important and how it applies to your service line.
- Understand your Electronic Medical Record System and how it can work for you:
  - Review billing edits
  - Set-up Red Flags
  - Review your Data Analytics –Customize EMR reports
  - Review PEPPER Reports
  - Create your audits plans based on data analytics.

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Current Financial Environment for Post-Acute Health Care Providers

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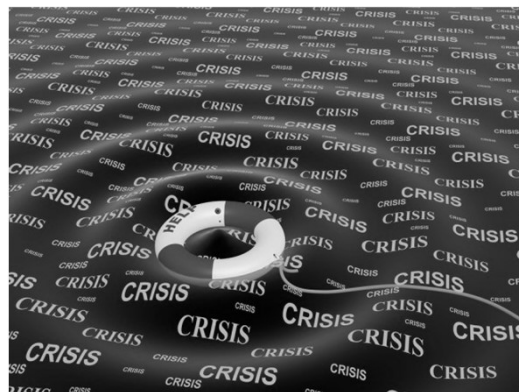
Bankruptcies

- More facilities and providers in financial distress
  - Increasing lease payments in long term leases for nursing facilities
  - Increasing defaults on financial covenants
- Financial distress can bring with quality of care issues as well as potential billing issues
- Bankruptcies for individual nursing facilities, large and small chains
- Receivers are being appointed by the court
- All types and sizes of providers can be at risk

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Troubled Building

- Nursing Facilities in the news:
  - Across the country individual facilities and chains are having financial concerns
  - Many facilities are running deficits: Massachusetts building with $3.3 million deficit closed
  - New York Times article in early March 2019 discussing
    Epidemic of rural facilities being closed across
    America
    No staff, Medicaid cuts and dwindling small town populations

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Criminal Actions

- New York: 2 RNs and 1 STNA charged for ventilator death in nursing facility
  - Failed to respond to multiple alarms
  - Criminal negligent homicide, endangering welfare of elderly and falsifying business records
  - Acquitted on most serious charges
- Arizona: LPN charged with rape of incapacitated resident resulting in birth of a child
  - Case still pending
- All facilities dramatically affected by individuals actions or inactions

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Wrongful Death Suits

- Kansas: Resident died 10 days after suffering a fall with significant ankle injures
  - Suite claimed negligence and "failure to follow the standard and prudent nursing care and treatment actions"
- Many nursing facilities charged with wrongful death and negligence:
  - Actions related to actions or inactions that failed to uphold the standards of care and those actions linked through proximate cause to the residents' injuries or death.

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Abuse

- $7.5 million verdict to a family of a elderly female nursing facility resident
  - Sexually abused in the facility
  - Parent organization and facility 85% liable
- Michigan: Son placed a hidden camera in his father's room after multiple unexplained injuries
  - Footage captured numerous incidents of physical abuse, failure to provide water and racial slurs from staff members
  - Civil suit alleging abuse, neglect and racial motivation underlying neglectful behavior

hidden cameras.

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Embezzlement

- Pennsylvania: Former business office manager plead guilty to embezzlement
  - $43 million embezzled from the facility
  - Covered actions with false invoices
- Multiple other situations across the country

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Fraud & Abuse

- Florida: Nursing facility accused of using a sham medical director to pay the physician for referrals.
  - Must pay $1.5 million to the government
- All providers at risk of kickback schemes and issues

REGULATORY CHANGE

Nursing Facility: Requirements of Participation: Phase 3 Requirements

- November 28, 2019
  - Infection Control preventionist
  - Trauma informed care
  - Compliance & ethics program
- Should be well underway or at least thinking about it
- **But Wait. . . .**

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Proposed Change of Rules Implementing Phase 3 ROPs

- Issued July 18, 2019; 84 Fed. Reg. 34737-34768
- Proposed: Taking comments until September 16, 2019
- What will happen in November???? Time will tell
- Handout and attachment to slides
  - Bulletin from Benesch
- LeadingAge Ohio education in October
  - Check the website for dates and locations

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ROPs Phase 3: Highlights: PROPOSED ONLY

- Resident rights: Revision to discharge notice requirements—only send to Ombudsman if a "facility initiated discharge"
- Pharmacy: Remove requirement for physician to have in-person visit prior to renewing antipsychotics
- QAPI: More flexibility to allow facilities to tailor QAPI
- Infection Control: Removed requirement for Infection Preventionist at facility frequently or part-time and proposes less time
- Compliance & Ethics: Proposes delaying requirements and removing compliance officer mandate for certain facilities.

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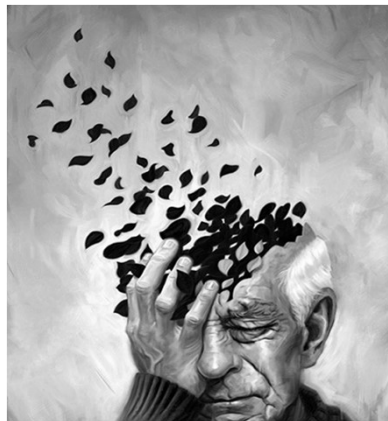
New Issuances

- QSO-19-09-ALL March 5, 2019
- Revisions to Appendix Q
  - No major overhaul since 2004
  - Drafted a specific subpart for NH
  - Developed immediate jeopardy template
  - Key components of IJ
    - 1. Noncompliance
    - 2. Caused or created a likelihood that serious injury, harm, impairment of death to 1 or more resident would occur or recur; **and**
    - 3. Immediate action is necessary to prevent the occurrence or recurrence of serious injury, harm, impairment or death

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Appendix Q – Immediate Jeopardy

- Definitions are important
- Survey team leader must be immediately notified by team members when any IJ concern is identified
- Likelihood: Surveyor must determine whether a specific serious adverse outcome is **reasonably expected to occur** if immediate action is not taken

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Immediate Jeopardy Template

- Template developed that addresses each of the 3 IJ components
  - Provides definitions of 3 elements
  - Provides space for preliminary fact analysis which demonstrates the key components exist

Date/Time IJ Template provided to entity: _____

IJ Component	Yes/No	Preliminary fact analysis which demonstrates whe key component exists.
Noncompliance: Has the entity failed to meet one or more federal health, safety, and/or quality regulations? If yes, in the blank space, identify the tag and briefly summarize the issues that lead to the determination that the entity is in noncompliance with the identified requirement. This includes the action(s), error(s), or lack of action, and the extent of the noncompliance (for example, number of cases). Use one IJ template for each tag being considered at IJ level.	Yes/No	

Proactive & Continuous Assessments & Auditing

- How do we get there?
  - Start with strong Compliance & Ethics Plan framework and company culture

Refresh: Seven Elements of a Compliance Program

1. **Policy/Procedure/Written Code**
2. **Compliance Officer/Committee**
3. **Training/Education**
4. **Communications/Anonymous**
5. **Auditing Monitoring — External monitoring by experts (Attorney Client Privileges issues/ethics)**
6. **Disciplinary Measures**
7. **Disclosure /Timely Investigations and Reporting**
8. **NY OMIG: A Policy of Non-Intimidation and Non-Retaliation**

- **LEARN FROM current Corporate Integrity Agreements (CIAs)—next slide**...

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Other CIA Enforceable Compliance Requirements

- Management and Board Certifications: Governing Board Education and Consulting Experts
- Contract Arrangement Review
- Annual Internal Audit Plan
- Annual Compliance Program Risk/Effectiveness Assessment
- Reporting Overpayments
- Coding
- Annual IRO Audits and Claims Reviews (usually for five years) under an OIG Monitor Attorney
- Annual Reports to the OIG

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Learn from Requirements of Annual CIA Audits

▶ CIAs based on allegations of false claims billed and paid require annual clinical record and claims audits by an Independent Review Organization (IRO).

▶ CIAs based on allegations of violations of Anti-Kickback statute: require annual audits of contracts and "arrangements".

▶ Reporting Period Annually for five years: Date CIA fully executed through the next year.

    ▶ CIA will identify sample to be audited.

    – Specific issues such as medical necessity or eligibility, coding.

AUDIT CHECKLIST
☑ Audit Satisfactory
☐ Nonconformances Found
☐ Observations Made

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Self-Auditing: Annual Assessments & Audit Plan(s)

• Conduct an Annual Risk and Effectiveness Assessment of your Compliance Program/Plan based on the seven elements and CIA requirements

• Create a solid ongoing auditing plan annually and follow-up
    – Considerations and discussion:
        • Multiple facility/agency provider companies
        • Multiple-State Providers
        • Multiple Service-Line Providers
        • How often will you audit? Ongoing? Daily? Monthly? Quarterly/
        • Who will conduct the audits?

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Internal Versus External Audits

Considerations for audits:

- Internal auditing and monitoring
    - What is the difference between auditing and monitoring?
- External Auditing
    - Role of Consultants
    - Role of Attorneys
- When/Why do you perform audits under attorney-client privilege
    - Routine
    - Focused? Why Focused Audits?
- PRE-BILL: advantages/disadvantages
- POST-CLAIMS billed and paid: advantages/disadvantages
- Frequency

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What do you do with your Audits Results?

- Gap Analysis
- Overpayment issues? Reporting issues?
- Educate appropriate Staff
- Audit …. And Audit Again….

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Effects of a Culture of Compliance

- Accountability
- Best Practices
- Consistency
- Collaboration

Compliance is everyone's job!

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Questions

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**Marisol Valentin
Compliance, Integrity and Risk Officer
Pittsburgh Mercy Health System**

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Marisol Valentin

Marisol Valentin is the Compliance, Integrity and Risk Officer for Pittsburgh Mercy Health Systems, part of Trinity Health. Her passion is developing innovative ways to improve organizations through empowerment initiatives that create positive changes for all stakeholders.

Prior to coming to Pittsburgh Mercy, Marisol worked for 6 years on public health improvement projects with the Pan-American Health Organization and Ministries of Health in the Caribbean. Marisol holds a B.S. in International Business from Duquesne University and a Certificate from La Roche College and RedR on Global Development and Humanitarian Aid. She is a member of the Health Ethics Trust.
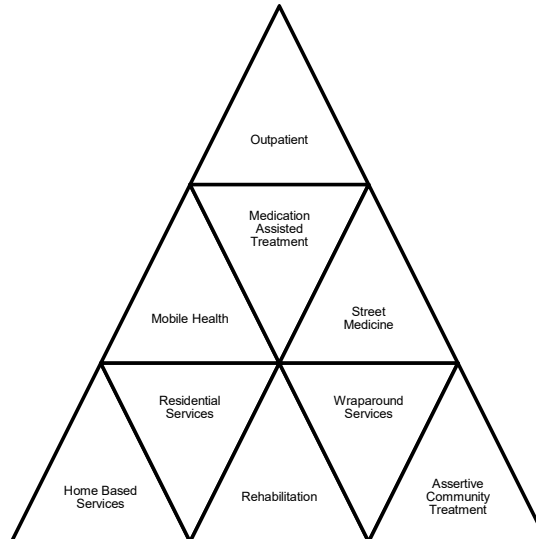
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AMC1   Reformatted the title page to get rid of the other boxes
Andrei M. Costantino, 9/9/2019

The Post-Acute Care World

Let's Take a deeper dive into the risk areas from the lens of a community provider

INCENTIVE PROGRAMS

- Gift Cards / Rewards / Cash

Anti-KickBack

Inappropriate Referrals

- What is the Program?
- How will the incentive be monitored?
- How do you treat petty cash? Do you treat Incentive Programs with the same controls?
- Spotlight Test: If the program became a Reality Show would it be praised or ridiculed?

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Program Oversight

- Who is authorized to determine a Diagnosis, approve an intake, sign a discharge form?

For Example, Behavioral Health Services:

Program	Director	Regulatory Body
Psychiatric Rehabilitation	Certified Psychiatric Rehabilitation Professional	OMHSAS 55 PA Code Section 5230.55
Adult Residential Treatment Facility	Primary Physician	OMH RTFA Memo November 6 1995
Personal Care Homes	Personal Care Home Administrator	DHS 55 PA Code Section 2600
Outpatient Services	Various Models. Watch Billing Requirement – i.e. Incident to	CMS (Medicare) OMSHAS DDAP State (Medicaid)

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Medicaid: Electronic Visit Verification (EVV)

- Section 12006 of the 21stCentury Cures Act requires all states to implement the use of EVV for Medicaid-funded personal care and home health care services.

- States that do not comply with the 21stCentury Cures Act will have their Federal Medical Assistance Percentage (FMAP) reduced.

- EVV must be implemented for personal care services by **January 1, 2020**.

- EVV must be implemented for home health care services by **January 1, 2023**.

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Medicaid: Electronic Visit Verification

- The 21stCentury Cures Act requires that the EVV system verify:

  1. Type of service provided
  2. Individual receiving the service
  3. Individual providing the service
  4. Date of the service
  5. Location of the service delivery
  6. Time the service begins and ends

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AMC2   I added (EVV) to the title to define Electronic Visit Verification
Andrei M. Costantino, 9/9/2019

Medicaid: Electronic Visit Verification

- Home Health Services (HHCS)
  - provided under 1905(a)(7) of the Social Security Act or a waiver
  - PA DHS has not provided specifics for EVV implementation for HHCS as of 9/1/2019 [AMC3]

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Medicaid: Electronic Visit Verification

- Personal Care Services (PCS)
  - **Office of Long-Term Living (OLTL) Waivers** (Includes Agency and Participant-Directed Services)
    - Personal Assistance Services
    - Participant-Directed Community Supports
    - Respite (unlicensed settings only)

  - **Intellectual Disabilities/Autism Waivers** (Includes Agency and Participant-Directed Services)
    - Companion
    - In-Home and Community Support
    - Respite (unlicensed settings only including camp)
    - Homemaker/Chore (chore portion not included)

  - **Adult Autism Waiver**
    - Community Support
    - Respite (unlicensed settings only)

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AMC3   Changed bullit two to read better, please review. I added the word specifics to bullit two

Andrei M. Costantino, 9/9/2019

Medicaid: Electronic Visit Verification

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  5. Location of the service delivery
  6. Time the service begins and ends

- Stay up to date by visiting: http://www.dhs.pa.gov/provider/billinginformation/electronicvisitverification/

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Tips

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AMC4   Do you need this slide? It repeats slide 8 or just have the web link.

Andrei M. Costantino, 9/9/2019

Internal Controls Framework

- The backbone to your Compliance Program
- Establishes the foundation for designing, executing and reporting for internal audit
- Based on prioritization of risks that supports organization's strategic aims
- Look at the COSO model for Best Practice Tips

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Internal Controls Framework

- **Control Environment** – Message from Management

- **Risk Assessment** – Internal Assessment & Prioritization

- **Control Activities** – Segregation of duties, Authorizations, Policies & Procedures, etc.

- **Information & Communication** – What are the results and how are they communicated?

- **Monitoring** –Internal Audit Oversight

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AMC5   Define COSO
Andrei M. Costantino, 9/9/2019

Catch New Ideas **BEFORE** Implementation

Innovation leads to great ideas and many grey hairs for Compliance Officers

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Catch New Ideas **BEFORE** Implementation

Identify Departments that may know about a new program before you do

- Purchasing
- Front Desk Staff

Did anyone talk with Compliance?

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Catch New Ideas **BEFORE** Implementation

Help walk staff through a Compliance

On-Your-Side Review

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Questions?

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