Compliance Plan 101: How to Start & Keep Compliance Alive in your Practice

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Marcia Brauchler does not have a financial conflict to report at this time.
Learning Objectives

• Describe the importance of a compliance program

• Explain the basics of creating and maintaining a compliance program

• Identify high-risk areas of federal laws, such as the False Claims Act, HIPAA, OSHA and HR regulations
60 minutes!

Count tips
Lots of supplemental reference material
To Set the Stage...

Informal survey provided to small practices in the Denver area
MGMA member survey
Does your Compliance Officer have a Position Description?

- Yes: 33%
- No: 67%
My practice has written policies and procedures.

Written Policies & Procedures

Yes 53%

No 47%
For my practice, “compliance” efforts should be allotted an annual budget of:

37.5% of respondents said “0” or “no budget.”

For the practices that gave a dollar amount, the annual average was:

$1,215
Disclaimer:

- This is not legal advice and represents only recommendations and observations in general compliance issues.

- We recommend you use this information to better examine your practices and to open a dialog with your legal counsel.
Objectives:

1: Describe the importance of a compliance program
I am aware of the OIG Individual and Small Group Voluntary Compliance Plan from 2000.
“Voluntary” Guidance(s) for creating a Compliance Programs for:

- Individual and Small Group Physician Practices
- Third Party Medical Billing Companies
- Hospitals
- Nursing Homes
- Etc.

A great place to start
Resource list #1

HEALTHCON Hot Topic: Compliance Plan 101
Six takeaways illustrate the importance for providers to have a working compliance plan.

Compliance is the hot topic in healthcare right now — and with good reason. Government payers, especially, are ag-

kinds of requirements, from collecting co-pays to following the payer's coverage requirements, and on and on. Compliance,
“Mandatory” Compliance Programs Coming “Soon”...

Patient Protection and Affordable Care Act (PPACA)

2 PPACA provisions mandate compliance programs for Medicare and Medicaid providers

- § 6401 applies to **ALL** Medicare and Medicaid providers
- § 6402 applies to Medicare skilled nursing facilities & Medicaid nursing facilities **ONLY**
I am aware that the Patient Protection and Affordable Care Act will require all Medicare and Medicaid providers to have **mandatory** compliance plans in the future.
CMS Comment to Providers:

- Implementing a Compliance program is “not just a paper exercise”

- Must be able to demonstrate that they have a “systemic process for proactively and promptly fixing noncompliance issues”

- Must be effective
This all started with... HIPAA of 1996*

- Doubled Office of Inspector (OIG) auditors and investigators
- Expanded Federal Bureau of Investigation’s (FBI) ability to investigate health care fraud
- Created Medicare Integrity Program (MIP)
  - Federal government may enter into contracts with private entities to review and audit activities where Medicare provides coverage
  - Established reward program to encourage Medicare beneficiaries to report questionable behavior.

* HIPAA Health Insurance Portability and Accountability Act
The 7 Elements
The OIG believes any Compliance Program has 7 basic elements…

1. Written Policies and Procedures
2. Designating a compliance officer or contact
3. Conduct appropriate training and education
4. Effective lines of communication
5. Internal Monitoring
6. Enforcement of Standards
7. Prompt Response

And an informal 8th…

8. Ensure it is effective – Periodically reassess
“I didn’t know”

Is no longer an excuse . . .

Deliberate ignorance
Objectives:

2: Explain the basics of creating and maintaining a compliance program
Examples of Necessary General Coding & Billing Policies:

- Unbundling
- Upcoding the level of service provided
- Inappropriate Balance Billing
- Etc.
OIG – 2018 Work Plan Issues:

- Non-compliance with assignment rules . . .
- Incident To Services by Non-Physicians
- Place of Service coding errors
- Modifiers during global surgery period, etc.

Current WORK PLAN from Fall 2017:
COMPLIANCE HEAT MAP

RISK ASSESSMENT

Risk:
- Stark
- ADA
- DEA
- Anti-Trust

Probability:
- Anti-Kickback
- HIPAA
- FCA
- Medical Records
- OSHA
- HR
- Overpayment
More on the Heat Map

Resource #2

By Marcia L. Brauchler, MPH, FACMPE, CPC, COC, CPC-I, CPHQ

Risk Assessment
High Priorities

Compliance is a broad concern for provider practices, encompassing everything from proper coding and billing procedures to human resource requirements, patient privacy, etc. When developing a compliance plan, one of the most important decisions you must make is how to allocate your finite resources. By undertaking a risk assessment of your practice’s processes, you’ll better direct your efforts.

My firm created the “Heat Map” for physician practices to identify where to focus their resources — time, money, manpower, and the attention of management, providers, and staff — most efficiently and effectively (see Compliance Heat Map on page 52).
Compliance Plan

HIPAA OSHA HRCoding
Objectives:

3: Identify high-risk areas of federal laws, such as the False Claims Act, HIPAA, OSHA and HR regulations
A NOTE ABOUT SLIDE FORMAT

▪ 1st Bullet = *What* is the regulation?
▪ 2nd Bullet = *Why* should your practice care?
▪ 3rd Bullet = *Where* do you get help to comply?
HIPAA


**Why?** Enforcement is increased due to ARRA. Maximum fine increased to $1.5 million per incident.

**Where?** www.hhs.gov/ocr/privacy/HIPAA/understanding/coveredentities/index.html
HIPAA Resources

Resource #3

Answer Common HIPAA Questions

What is Protected Health Information (PHI)?

Under the HIPAA Privacy Rule, PHI refers to health information that can identify an individual or can be used with other available information to identify an individual. The rule applies specifically to “covered entities” and their “business associates.” Health information that identifies an individual, but is not held by a covered entity or business associate, is not subject to HIPAA's Privacy Rule.

Consider the following example to illustrate the distinction:

A 16-year-old girl is injured in an automobile accident and requires surgery at a hospital to repair a broken leg. Any health information the hospital possesses relating to the patient is considered PHI, and HIPAA's Privacy Rule protects the use and disclosure of that information. For example, a nurse who was in the operating room for the surgery could not share any information about the patient or the surgery with a nurse at another hospital without the patient’s patient authorizing it because the nurse is a member of the workforce of a covered entity.

But if a news reporter interviews the patient’s parents, who has no direct health information about the patient, the reporter may disclose information without the patient’s authorization. The news reporter is not bound by HIPAA’s Privacy Rule because news agencies are not covered entities or business associates under HIPAA.

What Makes PHI PHI?

PHI requires two things:

1. An identifier, and

One of the most significant changes under HIPAA’s final rule, effective September 23, 2013, was that business associates of HIPAA-covered entities became directly liable for compliance with certain Privacy and Security Rule requirements. This means that the U.S. Department of Health & Human Services (HHS) Office for Civil Rights (OCR), which enforces HIPAA, now has jurisdiction to audit, regulate, and sanction business associates for noncompliance with HIPAA. Previously, OCR’s ability to ensure compliance of the rules extended primarily only to providers, healthcare organizations, and insurance companies. Business associates were bound to compliance with HIPAA only by means of their contract with the covered entity for which they worked.

Under the final rule, OCR clarified and expanded who qualifies as a business associate under HIPAA to include the following types of entities:

- Health Information Exchange Organizations (HIEs) that work to exchange health information across different organizations
- E-prescribing gateways that allow providers to write and send prescriptions to a participating pharmacy electronically
- Data transmission service providers (for both paper and electronic PHI) who require access to PHI on a routine basis
- Vendors of personal health records (PHRs) who offer PHI to individuals on behalf of a covered entity
- Patient Safety Organizations (PSOs) that receive reports of
What? 
The way to defend yourself.

Why?
• Proving compliance with laws

Where?
Correct Coding

What?
Medicare National Correct Coding Initiative (NCCI) edits apply now under ACA [Section 1902(a)(42)(B)(i)] to Medicaid agencies

Why?
Recovery Audit Contractor (RAC) Program
  - Allows government to contract with 3rd parties to audit billing and coding practices

October 1, 2014—Transition from ICD-9 codes (13,000) to ICD-10 codes (65,000)

Where?
http://static.aapc.com/0691bfc6-725a-408e-beb5-a8a398d6c5b9/83e77b77-d67b-4429-8233-288d0a6b4c61/a353c6f1-3d02-41b8-a0e4-8f1449625837.pdf
False Claims Act

What? Prohibits the submission of false or fraudulent claims to the federal government 31 U.S.C. §§ 3729 - 3733

Why?
Federal governments #1 tool for fighting fraud and abuse. The OIG has returned over $30 billion to the federal government.

Expected recoveries from 2012 alone = $6.9 Billion.
Penalty is $5k-$10k & 3x damages per violation to the federal program

Where?
www.OIG.hhs.gov
Overpayment Refunds

**What?**  
Section 6402(a) of PPACA  
Requires providers to report and return an overpayment to the appropriate Medicaid state agency or Medicare contractor within the later of 60 days of identification or the filing of a cost report if applicable

**Why?**  
False Claims Act liability

**Where?**  
Risk Assessment High Priorities

Part 2: Five human resources policies every practice should implement and maintain.

Five significant human resources policies your practice should adopt are: non-discrimination, sexual harassment, Family Medical Leave Act, the Fair Labor Standards Act, and non-retaliation. These policies ensure your practice complies with important federal and state laws implemented to protect individuals in the workplace.

- The Age Discrimination in Employment Act of 1967, which protects individuals who are 40 years of age or older;
- Title I and Title V of the Americans with Disabilities Act of 1990, as amended, which prohibits employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;
HR: Non-Discrimination

What?
Civil Rights Act of 1964 (Title VII)
U.S. Equal Employment Opportunity Commission (EEOC) promotes equal opportunity in employment
Required to investigate all employment discrimination charges

Why?
EEOC may file claims in federal court
Substantial civil damages
Loss of reputation

Where?
www.eeoc.gov
HR: Sexual Harassment

What?
Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964.

Why?
Penalties (via litigation)
- Lost wages
- Compensatory damages
- Punitive damages

Where?
Title VII of the Civil Rights Act of 1964:
http://www.eeoc.gov/laws/statutes/titlevii.cfm
Guidelines:
**HR: Family Medical Leave Act (FMLA)**

- Applies to employers with 50 or more employees
- Provides entitlement of up to 12 weeks of job-protected leave during any 12-month period for birth of a child, care of an immediate family member, employee’s own serious health condition, or an immediate family member is on active military duty.

**Why?**
- Enforced by the Department of Labor, Wage and Hour Division
  - Court actions to compel compliance
- Civil actions filed by employees

**Where?**
FMLA: [http://www.dol.gov/whd/regs/statutes/fmla.htm](http://www.dol.gov/whd/regs/statutes/fmla.htm)
What?
Basic minimum wage and overtime pay

Why?
Enforced by Department of Labor, Wage and Hour Division
- Civil suits for back wages, liquidated damages, and expenses
- Civil money penalties (up to $100,000 each violation for some child labor violations)
- Criminal penalties including fines and imprisonment
- Protection of employees filing complaints

Where?
- https://www.dol.gov/whd/flsa/
  http://www.dol.gov/whd/regs/compliance/posters/flsa.html
HR: Americans with Disabilities Act (ADA)

What?
ADA Employment (Title I) [42 U.S.C. § 12111 - 12117]
- Employers with 15 or more employees must provide qualified individuals with disabilities an equal opportunity to the full range of employment-related opportunities available to others.
- Prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities and other employment privileges.

Why?
Enforcement through Department of Justice

Where?
ADA Q&A - http://www.ada.gov/q%26aeng02.htm
OSHA Medical Practice

What?
Occupational Safety and Health Act of 1970
Safe and healthful workplace
Primary OSHA standards affecting physician practices:
1. Bloodborne Pathogens
2. Hazardous Chemicals
3. Exit routes
4. Electrical
5. Reporting occupational injuries and illness (state-law)
6. OHSA Poster
7. Ionizing Radiation (only if you have it)

Why?
Enforced by OSHA
Penalties of up to $63,000 per instance for willful violations

Where?
https://www.osha.gov/law-reggs.html
www.OSHA.gov/publications/poster.html
OSHA requires employers to provide a safe workplace for employees, and grants employees with the right to working conditions free from risk of serious harm.

The burden of compliance depends on the industry you're in. Mining, manufacturing, and maritime industries, for example, have to comply with a lot more OSHA standards than the average physician practice. There are three major OSHA standards affecting a physician practice (listed here in the order of their risk to the practice, with the first being the most common):

1. **Bloodborne Pathogens Standard**: There were 198 citations of this standard in 2013. Bloodborne Pathogens is the only OSHA standard specific to healthcare. According to OSHA, the definition of bloodborne pathogens is any pathogenic microorganisms that are present in human blood and can cause disease in humans.

Note: “Bloodborne” may be too narrow of a term; Pathogens can be transmitted in other ways, such as by other bodily fluids besides blood, and by contact with mucous membranes, such as the eyes or mouth.
Anti-Kickback Statute

What?
Anti-Kickback Statute [42 U.S.C. § 1320a-7b(b)]
Prohibits knowing & willful payment of remuneration to induce or reward patient referrals
*Don’t confuse with STARK rules*

Why?
Enforced by the Office of the Inspector General (OIG)
Civil penalties: <$50,000 per and administrative sanctions (i.e. exclusion)
Criminal penalties—fines up to $25K each occurrence/prison sentence up to 5 years

Where?
http://oig.hhs.gov/fraud/safeharborregulations.asp
STARK

What?
Prohibits physicians from referring patients to a health facility in which the physician has a financial interest
• OIG 3 Questions

Why?
Enforced by CMS. Penalties include:
- Refunds, FCA liability, program exclusion
- CMP up to $15K per service; $100K per arrangement
- Civil assessments up to 3x the claim

Where?
https://www.law.cornell.edu/uscode/text/42/1395nn
Patient Check-In

What?
Collecting Co-pays and Deductibles;
Advance Beneficiary Notice (ABN)
Financial Hardships; Professional Courtesies

Why?
False Claims Act & Anti-Kickback Statute. Penalties include jail time.

Hints and Tips:
2. What form is provided to a patient to indicate a service may not be covered by Medicare and the patient may be responsible for the charges?
   a. LCD
   b. CMS-1500
   c. UB-04
   d. ABN

And More...

- Self-Disclosure Protocol
- Americans with Disabilities Act
- DEA
- FDA
- Use of Non-Physician Providers
- Incentive Programs
- Antitrust Laws
- Sunshine Act
- Dismissing a Patient
- Informed Consents
- Provider Exclusion Law
- In-Office Labs
- On Call/Emergency Treatment
- Collections for Bad Debt
Reminders and Tactics:

1. Don’t reinvent the Compliance Plan wheel
2. Use the Heat Map as an illustrative tool
3. Do HIPAA Self-Assessment (post HITECH)
4. Review personnel files for necessary trainings
5. Distribute handout articles (one per month) as topic of discussion at physician/staff meetings

Continued . . .
Reminders and Tactics:

6. Implement free Billing Knowledge Assessment for new (and existing?) billers/coders to gauge aptitude

7. Review/update OSHA policies and procedures

8. OSHA training annually

9. Consider audit of medical record documentation

10. Review all compliance designations (Compliance Officer, Privacy Officer, Security Officer, OSHA Officer) and position descriptions
Resources

1. HEALTHCON Hot Topic: Compliance Plan 101
2. Risk Assessment High Priorities
3. Answer Common HIPAA Questions – PHI
   1. Uh-oh, That's a HIPAA Breach!
   2. Answer Common HIPAA Questions – Business Associate
   3. What are HIPAA's new rules for marketing?
   4. Answer Common HIPAA Questions
4. Risk Assessment High Priorities: Part 2
5. Risk Assessment High Priorities
Continuing Education

ACMPE credit for medical practice executives .................. 1
ACHE credit for medical practice executives .................. 1
CME AMA PRA Category 1 Credits™ .................. 1
*CPE credit for certified public accountants (CPAs) .......... 1.2
CEU credit for generic continuing education .................. 1

Let the speakers know what you thought!
Evaluations will be emailed to you daily.
Thank You.

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