Quality and Peer Review: New Government Reform-

What is the Role of Compliance?

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Program Objectives

- Obligations of Systems to ensure Transparencies
- Discuss how Healthcare Reform will impact Quality and Peer Review Relationships
- Discuss Initiatives a Compliance Officer can help drive in those relationships

Mayo Clinic Anecdote

Tradition and Heritage

"The best interest of the patient is the only interest to be considered."

Dr. Mayo

The needs of the patient comes first.
Medicine is a cooperative science.

Ethics Survey in "Modern Healthcare" 2004

*Over **70% of healthcare executives** surveyed believed that physicians performed inappropriate procedures for monetary benefit.*

What's Quality and Peer Review Got to Do With It?

In a word: everything

- **Concerns regarding the quality of health care provided in the United States have been cited as a key driver of health care reform,** and the manner in which quality initiatives and impact have been interwoven into the PPACA bears this out.

Ineffective Peer Review
A Widespread Problem?

Mercy Hospital Sacramento, CA - 1974

- more than 50 unnecessary surgeries

Edgewater Medical Center, Chicago - 2001

- Cardiologist admitted performing over 750 unnecessary angiograms and angioplasties

Regional Med Centro Bayonet Point, Pasco, FL - 2005

- Hospital suspended 9 cardiologists for failure to follow protocols

Our Lady of Lourdes Regional Med Center, Louisiana

- 2008 Cardiologist convicted - over 305 unnecessary PCI's

Ineffective Peer Review
A Widespread Problem?

United Memorial Hospital in Michigan - 1998

- Physician convicted of 32 counts of fraud - performing unnecessary pain management procedures

Western Medical Center - 2005

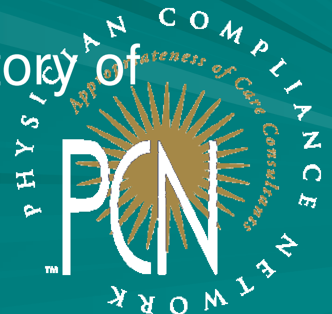
- Sued for malpractice 39 times for negligent care

University of Kansas Medical Center

- 33 counts of healthcare fraud - performing unnecessary surgery

New Hanover Regional Medical Center - 2002

- Performed short cut bariatric surgeries, had known history of drug abuse



Back in Time

- 1980's - Quality/Peer Review gained gov't attention - Health Care Quality Act enacted
- 1997 - Quality and Peer Review introduced in OIG Work-plan
- 2003 - Hospital Quality Oversight
  - must be certified by Medicare to receive payment
- 2005 - Oversight of the Joint Commission – Hand slapped

Federal Focus – Initiatives

OIG Work – Plan 2011 – over 7 items focus on Quality

- Focus on Quality Data for Hospitals and Providers
  - E.g. Readmissions, Adverse Events –Responses to Adverse Events in Hospitals by Medicare Oversight Entities –

Health Care Reform Bill (PPACA)

- PART I—LINKING PAYMENT TO QUALITY OUTCOMES UNDER THE MEDICARE PROGRAM – Title III, Subtitle A

PPACA
Healthcare Reform-Goals

- Improve access
- Universal coverage
- Increased quality reporting to include outcomes
- Cost control and cost reduction
- Increase vertical integration of care through partnerships of physician networks and hospitals

Physicians and Physician Groups

- Physician quality reporting is to be expanded under the PPACA to affect payment rates for physician providers, with incentive to make quality reports in order to obtain favorable reimbursement (§3002).

Insurance Exchanges

- Market-based incentives linked to
  - quality performance and improved health outcomes
    - related to the implementation of quality reporting,
    - effective case management, care coordination, chronic disease management, and medical and care compliance initiatives.
- Relationships with patient safety evaluation systems as part of quality improvement efforts are encouraged (§1311).

Healthcare Reform:
Means to and End

- Enforcement actions as a means to ensure that it is obtaining quality care for the patients it covers through Medicare and Medicaid
- "Conditions of Participation" CMS provides expectation for all providers to meet certain standards and guidelines
- Data Mining to identify quality of care issues e.g.: RACs, CERTs, Pepper Reports, Denials.

QUALITY

PEER REVIEW

COMPLIANCE

How do these fit together?

Healthcare Reform and Compliance: Similarities

- Ordering medically unnecessary treatments or procedures
- Payments or kickbacks
- Special treatment provided to physicians who are big admitters
- Lack or failure of appropriate peer review process
- Underlying regulatory violations
- Fraudulent documentation

Quality Improvement

Main Focus

- Collection and monitoring of outcomes data
- Transparency through reporting and competition
- Dissemination of “Best Practices”
- Adherence to evidence based medicine

Not a Focus

- Does not monitor or report on medical necessity

Peer Review

- Primary means of insuring high quality of patient care
- Intended to ensure industry care norms are practiced
- Designed to identify errors and opportunities for improvement
- Intended to detect incompetent or unprofessional physicians and
- recommend appropriate corrective action

Peer Review
Monitoring – Reporting

Joint Commission-2007 Changes

Focused Evaluations

- New medical staff applicants
- Current practitioners who request new privileges
- No evidence of a practitioners competence
- Negative or failing performances

Ongoing Professional Practice Evaluations

- Continuous outcome and performance data
- Can come from multiple sources-data bases, resource usage, patient complaints, peer review data

Reasons Physicians Discouraged from Performing Effective Internal Peer Review

- Loss of time from their practices without compensation
- May lose referrals from colleagues they review negatively
- Reviewers may be accused of having ulterior motives e.g.: getting rid of a competitor
- Believe they face the possibility of potential lawsuits
- If the physician reviewed is a major source of revenue for the hospital, a reviewer may lose favor with administration

Peer Review Protections

- Protections against liability
- Protections against compelling testimony;
- Protections against disclosing peer reviewers' names;
- Protection against use of information in litigation;
- Protections against disclosure of attorney client and work product information

Peer Review

Principle methods to find cases to review.

- Complaints by healthcare professionals or patients
- Review of patients with medical or surgical complications
- Review of charts of physicians with high rates of complications or outcomes that deviate from benchmarks
- Random chart audits

Lumetra Study

In 2005, the CA Assembly passed legislation requiring the California Medical Board to contract with an independent entity to to conduct a study of the existing state of the peer review process in the state

Findings:

- Variation and inconsistency in policies and standards
- Poor tracking of peer review events
- Confusion on reporting (805 & 809)
- Lack of coordination among state agencies, and licensing agencies
- Burdensome cost of peer review

Tenet Hospital, Redding CA

Between 1995 and 2002, two physicians performed unnecessary cardiac procedures on more than 600 patients.

- The ***two doctors effectively blocked peer review*** of the cardiology and cardiothoracic surgery.
- Tenet settled with the victims to pay $395 million dollars.
- Tenet paid $54 million in state and federal fines.
- Threatened to be excluded from CMS reimbursement and forced to sell the hospital.
- Loss of public trust.

St. Joseph’s, Townsend, Maryland

When Peer Review Fails…..

Patients Learn They Might Have Unneeded Stents

St. Joseph Medial Center in Towson, whose cardiology business is a focus of a continuing federal healthcare fraud investigation has notified hundreds of its patients that they may have received expensive and potentially dangerous coronrary implants they didn’t need.

**Federal probe focusing on procedures;
369 St Joseph heart patients affected.**

St. Joseph's, What Happened

Between 2003 and 2008, one interventional cardiologist was accused of performing more than 500 unnecessary coronary stents.

Findings

- The accused cardiologist was in charge peer review of the cardiology.
- St. Joseph Hospital settled with the DOJ to pay $22 million dollars.
- Hundreds of malpractice suits are still pending.
- The cardiologist has a lawsuit pending against the hospital.

St. Joseph's, Townsend, Maryland Questions

- How was St. Joseph different than any other hospital in terms of it's procedures and protocols?
- Is it standard for the cardiologist to read his/her own angiograms to determine medical necessity?
- St. Joseph's was a top 100 heart hospital. It was equal to John Hopkins on "Hospital Compare" with traditional measures. Why would this not be detected with standard quality measures?
- How do the peer review processes differ from most hospitals in the country?

St. Joseph's CIA

The Corporate Integrity Agreement

- St. Joseph' s recently entered a corporate integrity agreement requiring the hospital to engage an independent review organizations (IRO) to evaluate and modify the peer review process

- Cardiology department is required to have independent external random audits for medical necessity of coronary stents.

Implantable Cardiac Defibrillators (ICD)

DOJ Claims:

"Lack of Medical Necessity "

Department of Justice investigating many large hospitals regarding placement of ICD's

Preliminary investigations indicated many ICD's did not meet the CMS NCD for reimbursement.

The False Claims Act is being used to justify recovery of payments along with substantial fines.

Quality, Peer Review and Compliance

Where do we go from here?

Bridge the Gaps - Move from Multiple Silos to an interconnected Organizational Structure

Quality

Billing

Compliance

Med Staff –
Peer Review

Risk
Management

Benefits of a Quality /Peer Review and Compliance Collaboration

- Encourages reporting of potential problems and gives the organization its best chance to investigate and correct problems
- Through early detection and reporting, financial loss to government, taxpayers and hospitals is minimized
- Will build a "best in class" health care institution that will attract the best providers

Encouragement to Perform Peer Review

- CME for peer reviewers
- Assurance of fair jurisprudence
- Outside peer review upon request
  - removes “blame and shame”
  - removes “ personal relationship issues”
- Confidential reporting
- Physician safety/ethics officer position at the institution

Enforcement of Peer Review: Process:

- Active surveillance based on triggers
- Routine disaster analysis should be done as is required for airplane crashes
- Fines for ineffective or failed peer review
- Hospital department closure in egregious cases
- Public reporting to state

Enforcement of Peer Review Accountability:

- Suspicion of immediate patient jeopardy where peer review is absent – require external peer review is conducted and reports to compliance
- Intermediate sanctions against the medical staff for failure to perform peer review on repeat audits when questionable practices occur
- If department chair is a "star performer? Require automatic medical record review by third party

Audit Questions - Consider

- Is there a diverse set of peers reviewing?
- Is physician given sufficient notice to prepare argument ?
- Data collected is complete and disaster analysis conducted prior to Peer Review?
- Are clinical outcomes sole decision maker?
- Are integrity or behaviors considered?
- Is compliance notified of any negative decisions to determine repayment if applicable?
- Does the CEO attend Peer Review?

Summary

Peer review

- protects patients
- may avoid big losses long term
- mitigate investigations and/or whistle blowers
- can improve quality
- Protects the reputation of the organization

Enforcement, accountability and monitoring of Peer Review activities is a must

Quality
Peer Review and
Compliance

"If we ignore history we are doomed to repeat it"