

HCCA



HEALTH CARE
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COMPLIANCE TODAY

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Meet
Anne
Doyle

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FOR THE AHLA/HCCA FRAUD & COMPLIANCE FORUM,
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Letter from the CEO

Roy Snell

Michael Moore and the GAO Strange Bedfellows

The Government Accountability Office (GAO) completed a study in July of 2004 entitled, *CMS Needs Additional Authority to Adequately Oversee Patient Safety in Hospitals* (<http://www.gao.gov/new.items/d04850.pdf>). The study focused on the Joint Commission on Accreditation of Health care Organizations (JCAHO). It is quite limited in scope but the results are not pleasant.

The Center for Medicare and Medicaid Services (CMS) checks the effectiveness of JCAHO by comparing State Survey Agencies (SSA) data against JCAHO survey results. SSA's annually audit a sample of the hospitals JCAHO accredits. In their study, the GAO focused primarily on the deficiencies SSA's found that JCAHO "missed" (see chart on this page). The chart lists the Conditions of Participation (COP) and the deficiencies identified by JCAHO vs. SSA.

The GAO report states that, "JCAHO did not identify 3/4 of the Hospitals that the state agencies found to have serious deficiencies" (for fiscal years 2000-2002.)

I did not discover one of the real gems in this report until I read the fine print. At the bottom of the chart is a footnote that states two COP's were not included because neither JCAHO nor the SSA's found any deficiencies. One of the COP's for which there were no deficiencies identified by either organization was "Compliance with Laws". You could knock me over with a feather. How people have said that you could go into any organization in this country and find some violation of the law. How long would it take to check everything? I assume that the list of laws that they



check are very limited in scope or that there is some other explanation. My suggestion to JCAHO is to be more specific in the title of their COP, "Compliance with Laws."

The CMS response to the report was quite positive. JCAHO had issues with almost everything; however they did like the color of the paper on which the report was printed. Ironically JCAHO, CMS, and GAO all agreed JCAHO should have their deemed status periodically reviewed by CMS. Deemed status means that JCAHO accreditation is used by CMS to determine if a hospital meets the Conditions of Participation. Currently CMS is prohibited by law from reviewing JCAHO's

deemed status. Most other deemed entities are reviewed periodically.

Table 3: Number of Serious Deficiencies, by COP, Identified by State Survey Agencies but Not by JCAHO Surveyors in CMS's Validation Survey Sample, Fiscal Years 2000-2002

COP	Number of serious deficiencies identified by state survey agencies	Number of serious deficiencies identified by state survey agencies but not by JCAHO*
Physical environment	107	87
Quality of care		
Anesthesia services	3	2
Discharge planning	2	2
Emergency services	2	2
Food and dietetic services	5	4
Governing body	16	7
Infection control	15	9
Laboratory services	1	1
Medical record services	7	4
Medical staff	10	1
Nursing services	17	10
Organ, tissue, and eye procurement	5	5
Outpatient services	1	1
Patients' rights	10	9
Pharmaceutical services	14	9
Quality assurance	18	8
Radiologic services	1	0
Rehabilitation services	1	1
Respiratory care services	1	1
Surgical services	5	4
Total quality-of-care COPs	134	80

Source: GAO analysis of CMS data.

Note: Neither state survey agencies nor JCAHO identified serious deficiencies in wo of the categories compliance with laws and nuclear medicine services which are not included in this table.

*Determined by CMS through its matching of deficient COPs found by state agency surveyors to JCAHO surveyors' findings of JCAHO standards out of compliance.

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My four-paragraph summary of the GAO's 58-page report is wildly oversimplified and therefore you might consider reading the entire report yourself. Or you could achieve the same effect by splashing a gallon of paint on the wall and watching it dry for a while. The GAO, CMS, and JCAHO are filled with people like you and I. Everyone is trying very hard. Everyone thinks everyone else could be doing better. All three groups are trying to do the impossible for the ungrateful. Self examination, setting standards, and oversight are extraordinarily difficult and very important.

The problem I have is that all this ranting and raving is done at the 60,000-foot level. We really have enough commentary about the status of things. All the complaining does not seem to be effecting change. In fact, this is not the first report of its type. What has been done since the last report? If something has been done, why are these reports still negative? The real issues lie deep within the machine. Data must be collected and analyzed. Problems must be investigated by an independent group. Internal disciplinary action should be taken when appropriate. Internal enforcement should be conducted if the discipline is ineffective. When organizations fail to police themselves there may be government enforcement including fines and penalties.

After health care implemented compliance programs, billing accuracy improved. Independent review, discipline, and enforcement of billing issues are now coordinated by compliance programs. Prior to compliance programs some problems were identified and not acted on. The ability of an influential

person to deter change has been reduced by compliance programs. Will quality of care go through the same evolution? Heaven knows QI, QC, QA, UR, Peer Review, and many outside groups have been collecting data on quality for a long time. Have they met with some reluctance to change? Has there been action taken every time a problem was identified?

I will tell you one other person who believes that there may be a problem, Michael Moore. He has announced that his next "Documentary" will be on health care. Not that you need any clues to his potential bias, but the name of his documentary is reported to be *Sicko*. My bet is that Mr. Moore's Bush-bashing documentary, *Fahrenheit 9/11*, is going to look like child's play when he gets done with *Sicko*. Health care is an easy target. The JCAHO report is nothing compared to the carnage that Mr. Moore can bring to the table. He could negatively affect public opinion (I laugh out loud every time I read this sentence.) Mr. Moore may impact more than just public opinion.

In fact, if he gets his hands on the GAO report, you can bet JCAHO will be in his movie. The announcement of his attack on health care may have a significant ripple effect. Organizations with health care oversight, even beyond those mentioned in this article, may try to stay out of *Sicko* by stepping up their efforts. If they don't step up their activities and they end up in the movie they may be forced to apply pressure after the movie is out. The enforcement and oversight community may react after the cameras show up in their office. Oh....., the carnage of it all. Quality of care will contin-

ue to be a big issue.

Could compliance help quality of care? Are quality problems being dealt with? Is independence required for fixing the quality of care issues? Does quality of care need more enforcement and discipline? If you think that some of those questions will be answered "yes", then the profession of compliance may be about to take on a whole new perspective. In fact, 54% of all those responding to the **2004 HCCA 6th Annual Survey** currently include quality of care in their compliance programs. There will be noise, lots of noise, and my guess is that at the center of it all will be a compliance officer implementing change. ■

Research Compliance Conference

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