

Hot Topics Round Table: Compliance

Seattle HCCA
June 10, 2016

Jefferson
Healthcare

MOSS ADAMS LLP
Certified Public Accountants | Business Consultants

UW Medicine
UW PHYSICIANS

1

Office of Legal Affairs
NORTHWEST PERMANENTE, PC

EvergreenHealth

The material appearing in this presentation is for informational purposes only and is not legal or accounting advice. Communication of this information is not intended to create, and receipt does not constitute, a legal relationship, including, but not limited to, an accountant-client relationship. Although these materials may have been prepared by professionals, they should not be used as a substitute for professional services. If legal, accounting, or other professional advice is required, the services of a professional should be sought.

2

Agenda

- Introductions
- Background/Risk Discussion
- Hot Topics
 - Value Based & Risk Based Contracting
 - Social Media
 - Documentation/EHR integrity
 - Audit and investigation war stories
- Questions



Panel Introduction



Panel Introductions

- | | |
|---|---|
| <ul style="list-style-type: none">• Lori Laubach, CHC
Principal – Regulatory Compliance Practice
Moss Adams LLP• Christie Moon
Director of Compliance
UW Physicians• Erin Brown
Compliance Officer and Manager of Patient Access Services
Jefferson Healthcare | <ul style="list-style-type: none">• Richard Meeks, CHC, CCEP, CHP
Corporate Compliance, Information Security & Internal Audit Officer
EvergreenHealth• Molly Burns Herrmann, J.D., CPC
Vice President, General Counsel
Corporate Compliance Official, HIPAA Privacy & Security Officer
NW Permanente PC, Physicians and Surgeons |
|---|---|

Background / Risks



Assessing Compliance Risks

- * Identify and communicate the scope of the Compliance function
- * Educate internally on the Compliance Risk Universe
- * Stay on top of the ever-changing risk landscape
- * Conduct risk assessments that lead to an auditing and monitoring work plan

Enterprise-wide Compliance Risk Universe			
Culture/Governance	Institutional Compliance Program	Departmental Compliance Program	Contract Management
Culture/Tone at the Top Policies and Procedures Roles and Responsibilities Compliance Function Board structure and education Succession Planning Compliance education	Code of Conduct Training and Education Communication Disciplinary Action Policies and Procedures Reporting Issues and Concerns Auditing and Monitoring Response and Prevention	Emergency Department Pharmacy Laboratory Imaging Home Health Hospice Durable Medical Equipment Human Resources Finance Other operating departments	Physician Contracts/Arrangements Joint Ventures Vendor Agreements Business Assoc Agreements Contract Repository Lease arrangements
Conflict of Interest	Clinical Research	Quality/Performance Improvement	Hospital Coding and Billing
Board Management Staff Employed Providers Contracted Providers Organized Medical Staff	Research Compliance Program Clinical Trials billing Human Subjects Protections Scientific misconduct Grant management	Patient Safety Medical Errors Quality indicator monitoring and reporting Regulatory surveys	Registration accuracy Charge Master (CDM) Monitoring and Auditing Care Coordination Training and Education Billing accuracy and integrity Patient billing/claim editing Charity Care
Professional Coding & Billing	Privacy and Security	Materials Management/Procurement	Specific Compliance/Regulatory Risks
Physician documentation and coding Training and education Auditing and monitoring	Access and permissions Physical security Privacy and security compliance Breach Management Encryption	Purchasing/Materials Management Purchase Cards Accounts Payable Returns, Rebates, Credits and Warranties	RACs Provider-based status EMTALA Cost reporting Meaningful Use Licensure Regulatory filings Conditions of Participation

Adopted from HCCA Compliance Today, April 2015, Planning and Executing enterprise-wide compliance risk assessments in healthcare organizations.

Questions

Other ideas from the participants on how to effectively manage the risks



Jefferson
Healthcare

MOSS-ADAMS LLP
Certified Public Accountants | Business Consultants

UW Medicine
UW PHYSICIANS

Office of Legal Affairs
NORTHWEST PERMANENTE, PC

EvergreenHealth

Hot Topics

- * Ransomware
- * Physician Compensation/ Physician Contracts/Arrangements
- * MOON & 2 Midnight Rule
- * CMS Discharge Planning Rule for Hospitals & Certain Post-Acute Providers



Hot Topics

- * Recovery auditors
- * Yates Memo
- * Quality Measures
- * 501R
- * Data
- * Roll out of 60 day Overpayment Regulation



Hot Topics

- * Identity Theft
- * Patient Corrected Charts
- * EHR Contingency Plans
- * Defective Medical Devices
- * Population Health
- * 340B Updates



13

Questions

Other hot topics from the audience?



14



Case study

Jefferson
Healthcare

MOSS-ADAMS LLP
Certified Public Accountants | Business Consultants

UW Medicine
UW PHYSICIANS

15

Office of Legal Affairs
NORTHWEST PERMANENTE, PC

EvergreenHealth

Value Based & Risk Based Contracting



Jefferson
Healthcare

MOSS-ADAMS LLP
Certified Public Accountants | Business Consultants

UW Medicine
UW PHYSICIANS

16

Office of Legal Affairs
NORTHWEST PERMANENTE, PC

EvergreenHealth

Issues to Consider

- * Accepting Risk (are you an insurer?)
- * Subcontracting (are you subject to the WA OIC?)
- * Provider Directories (are you up-to-date?)
- * Reducing Variation (can you spot a whistleblower?)
- * Revenue Cycle (can you collect?)
- * Data Sharing and Collection (are you secure?)
- * Credentialing (are you doing it right?)
- * Tax Status (are you exempt?)
- * Accreditation (can you qualify?)
- * Value (what are you going to get and give?)

Social Media Challenges of Today



Jefferson
Healthcare

The Situation

* Over 70% of the workforce has some form of social media profile which they can access quickly and easily through their smartphones; uploading pictures has never been easier.

- Facebook
- Instagram
- Twitter
- Tumblr
- LinkedIn
- Snapchat
- Pinterest

19

The Risks

- * Employees have access to sensitive information, often Protected Health Information (PHI), and the temptation or lack of knowledge creates an environment ripe for a breach or employment defamation.
- * Holding business associates accountable for similar situations.
- * Auditing and monitoring potential issues are extremely difficult and run the risk of violating the employee's rights through the National Labor Relations Act.

20

The Risks - continued

- * Evidence of Facebook posts typically only become applicable in legal cases when the individual is contradicting their claims.
- * Difficult to prove.
- * Small town trends – being “friends” with your doctor.
- * New type of whistleblower.



21

Recent Cases to Consider

- * McAllister v. Lee County
 - * EMT/medical helicopter pilot went to Federal Aviation Administration (FAA) and social media to report lack of required federal certification.
 - * Attempted to work with employer first.
- * Yath v. Fairview Clinics
 - * Electronic medical record improperly accessed by employees which revealed sensitive lab information. That employee told another employee, and an online account was created, announcing the information.
 - * Should the clinic be liable?

22

The Solution

- * Be proactive – start the conversation with your organization, top to bottom.
- * Describe recent cases, recent situations where the lines between personal and professional communication has been blurred.
- * Focus on what they can do, what is acceptable.

23

The Solution - continued

- * Be consistent with how policies are enforced, conversation should be the same for executive level staff as it is for all other areas of the organization.
- * Employees must be aware of policies and consequences of violations.
- * Make an ally of your supervisors – they are often linked in with their staff through social media channels.

24

EHR Integrity



Jefferson
Healthcare

MOSS ADAMS LLP
Certified Public Accountants | Business Consultants

UW Medicine
UW PHYSICIANS

25

Office of Legal Affairs
NORTHWEST PERMANENTE, PC

EvergreenHealth

Then and Now

Paper

If it isn't documented,
it did not happen...



EHR

It's documented, but
did it really happen?



26

*Note Bloat: How do I find what I need
to know to treat this patient?*

EHR Integrity Risks



When used appropriately, copy/paste and related tools do save practitioners valuable time.

However, if used inappropriately or carelessly, these tools may produce a flawed medical record that results in patient care risks, professional liability, and/or payment denials.

27

EHR Integrity Risks - continued

- * Unlike a note written on paper, an EHR note can be generated using information previously recorded, and that can be imported from within the EHR or elsewhere.
- * The result can be a note that looks new and original, but actually is a combination of new and/or pre-existing material.
- * Sometimes this can be very risky.



28

EHR Accuracy Example

At a medical center in another state, an oncologist copied forward only part of a patient's history. The history originally said:

Family history of breast cancer

The oncologist picked up only a part of it:

History of breast cancer

This information was then copied forward multiple times into multiple notes. Copies of the records were sent to the insurance company for billing. The patient was denied coverage based on the history of breast cancer. The patient reported the error to the organization. This type of incorrect information undermines the integrity of the medical record.

29

What's the Big Deal?

Quality Issues

- * Incorrect or inaccurate data
- * Missing data
- * Stale or outdated data
- * Over-documentation
 - * Hard to find information
- * Copying into wrong patient record
 - * Credibility
 - * Potential patient harm
 - * Potential HIPAA breach

30

Patients as New Auditors

A patient complaint at one entity involved a patient who (after reviewing records sent via portal set up based on meaningful use) noted that:

- * Physician did not do an examination even though a comprehensive exam was documented in the medical record.
- * Physician documented spending 30 minutes longer with the patient than the patient asserted was accurate.

Using templates or other variations on copy and paste without confirming accuracy for the current visit is **RISKY**. These practices also have potential to create the following risk concerns:

- Patient Safety
- Professional Liability
- HIPAA Privacy

31

Advice to Providers EHR Integrity Error Prevention

Use **EXTREME** care in copying information from a patient's previous encounter or from another practitioner.

- **ONLY** copy-forward from within the same patient record and only do so using info that is accurate and relevant.
- **NEVER** copy encounter-unique information such as previous exam findings and medical decision making.
- **ONLY** include information that is **accurate for current encounter**.
- **REREAD YOUR NOTE BEFORE SIGNING** to be sure that all of it is accurate and pertains to the **CURRENT** visit.



32

What CMS has to Say About This

CMS MANUAL SYSTEM – MEDICARE PROGRAM INTEGRITY MANUAL

Chapter 3 - Verifying Potential Errors and Taking Corrective Action

- * CMS does not prohibit the use of templates to facilitate record-keeping. CMS also does not endorse or approve any particular templates. A physician/LCMP may choose any template to assist in documenting medical information.
- * Some templates provide limited options and/or space for the collection of information such as by using “check boxes,” predefined answers, limited space to enter information, etc. CMS discourages the use of such templates. Claim review experience shows that that limited space templates often fail to capture sufficient detailed clinical information to demonstrate that all coverage and coding requirements are met.

<https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/Downloads/R455PI.pdf>

3.3.2.1.1 Progress Notes and Templates (Rev.455, Issued: 03-15-13, Effective: 12-10-12, Implementation: 03-21-13)

33

What CMS has to Say About This

CMS MANUAL SYSTEM – MEDICARE PROGRAM INTEGRITY MANUAL

Chapter 3 - Verifying Potential Errors and Taking Corrective Action

- * Physician/LCMPs should be aware that templates designed to gather selected information focused primarily for reimbursement purposes are often insufficient to demonstrate that all coverage and coding requirements are met. This is often because these documents generally do not provide sufficient information to adequately show that the medical necessity criteria for the item/service are met.
- * If a physician/LCMP chooses to use a template during the patient visit, CMS encourages them to select one that allows for a full and complete collection of information to demonstrate that the applicable coverage and coding criteria are met.

<https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/Downloads/R455PI.pdf>

3.3.2.1.1 Progress Notes and Templates (Rev.455, Issued: 03-15-13, Effective: 12-10-12, Implementation: 03-21-13)

34

What Noridian* has to Say About This

- * **“Medical Record Cloning** -- Cloned documentation may be handwritten, but generally occurs when using a preprinted template or an Electronic Health Record (EHR).
- * While these methods of documenting are acceptable, it would not be expected the same patient had the same exact problem, symptoms, and required the exact same treatment or the same patient had the same problem/situation on every encounter.
- * Cloned documentation does not meet medical necessity requirements for coverage of services. Identification of this type of documentation will lead to denial of services for lack of medical necessity and recoupment of all overpayments made.”

*Noridian : Medicare Provider Outreach and Education (POE) August 2014

35

What Government Auditors are Looking for

- * Evidence of Authentication
 - * Who performed which care?
 - * Contradictions between:
 - 1) ROS, PFSH, HPI
 - 2) Multiple provider notes
 - 3) Same typos and/or grammar issues in multiple encounters
 - 4) Medically implausible information



36

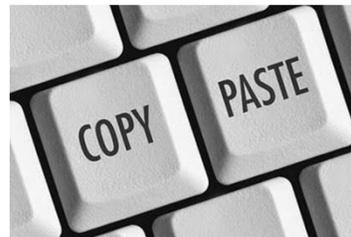
EHR Integrity: Templates

- * Can provider actively select/personalize a template?
- * Are they reasonably specific to chief complaint or diagnosis?
- * Can you tell what really happened during this encounter?

37

EHR Integrity: Copy Paste/Cloning

- * Multiple patients with exact same issues?
- * Difficult to find original source of documentation
- * HIPAA issues if various patient names and diagnoses appear in record
- * Can appear fraudulent



38

War Stories



Jefferson
Healthcare

MOSS ADAMS LLP
Certified Public Accountants | Business Consultants

UW Medicine
UW PHYSICIANS

39

Office of Legal Affairs
NORTHWEST PERMANENTE, PC

EvergreenHealth

Audit & Investigation War Stories

- * AGO Investigating Charity Care and Financial Assistance
- * Covermymeds.com
- * MAC Chemo Infusion - CPT 96413 Prepay Audit
- * Home Health Certification Requirements

Questions?



Jefferson
Healthcare

MOSS ADAMS LLP
Certified Public Accountants | Business Consultants

UW Medicine
UW PHYSICIANS

41

Office of Legal Affairs
NORTHWEST PERMANENTE, PC

EvergreenHealth



**THANKS
FOR
LISTENING**

Feel free to contact us!

- Lori Laubach
Lori.laubach@mossadams.com
- Christie Moon
cmoon@uwp.washington.edu
- Erin Brown
ebrown@jgh.org
- Molly B. Herrmann
Molly.b.herrmann@kp.org
- Richard Meeks
rmeeks@evergreenhealthcare.org



42