

MEDICARE COMPLIANCE

Weekly News and Analysis on New Enforcement Initiatives and Billing/Documentation Strategies

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Medicare Auditors Target Signature Rules After Finding 'Significant Problems'

Medicare signature requirements are in the spotlight, with Medicare contractors warning providers that claims can be denied if medical records lack legible signatures and are not timed and dated.

Two recovery audit contractors (RACs) are already targeting noncompliance in this area, so hospitals may want to assess how well physicians conform to the signature mandate and implement compliance solutions.

Hospitals around the country have been receiving notices from their Medicare administrative contractors, fiscal intermediaries and carriers about noncompliance related to signatures. For example, in a letter earlier this year, Palmetto GBA, the Ohio-based carrier, said it "has seen an escalating number of errors assessed by the Comprehensive Error Rate Testing (CERT) contractor due to signature problems with practitioners' medical records, X-ray reports and laboratory/radiology orders." In April, Palmetto suggested hospitals "take immediate action" if changes are needed. Problems with signatures, the carrier says, are widespread. (See p. 5 for examples of acceptable and unacceptable signatures.)

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A Variety of Strategies Can Measure How Well Your Culture Supports Compliance

A compliance program with lots of bells and whistles won't mean much unless the corporate culture embraces it. Assessing whether your corporate culture is compliance-friendly is not the easiest thing to do, but there are ways of getting at it.

"Culture defines whether or not people will follow the rules," says Carrie Penman, president of the Ethical Leadership Group in Bedford, Mass. "If the culture doesn't support compliance, the message is that rules are just guidelines. And in a highly regulated environment like health care, culture is something that needs to be nurtured."

The culture of an organization is often called its character, and reflects employees' behavior and attitudes, including their response to compliance issues. Compliance guidance from the federal government emphasizes the importance of culture. For example, the Federal Sentencing Guidelines state that organizations must "promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law."

And the HHS Office of Inspector General's 1998 compliance-program guidance for hospitals states that "fundamentally, compliance efforts are designed to establish a culture within a hospital that promotes prevention, detection and resolution of instances of conduct that do not conform to Federal and State law, and Federal, State and private payor health care program requirements, as well as the hospital's ethical and business policies."

To determine whether your culture supports compliance, compliance officers "have to be in touch with employees," Penman says. "You can't hide in your office. You can't

Managing Editor

Nina Youngstrom
nyoungstrom@aishealth.com

Associate Editor

Eve Collins

Executive Editor

Jill Brown

assume because you wrote the code of conduct, people will follow it. You have to understand what drives behavior in your organization.”

Penman thinks that focus groups are a useful tool for “data mining” employees’ perceptions and behavior. The compliance or ethics team can run focus groups internally, she says. She recommends that each focus group be comprised of randomly selected peers from the same profession or department (e.g., pharmacists, nurses, coders), with no supervisors or managers allowed. “It is crucial they be in the safest group possible, where their confidentiality is protected,” Penman says. “It’s critical to create an environment where employees are willing to talk.”

When Penman conducts employee focus groups for organizations, participants are gathered in a room and asked questions. They answer anonymously on a keypad, but aggregate answers (e.g., 70% say “yes,” 30% say “no”) are projected on a screen to help encourage discussion of the topic.

Here are some examples of questions that can be presented to focus groups:

- ◆ What are the priorities of the organization?
- ◆ Do your managers set a good example of living the company’s values?
- ◆ What value do they do the best job with and what value do they have the hardest time with?
- ◆ Can you raise an issue without fear of retaliation?
- ◆ Do you feel pressure to violate the code of conduct?
- ◆ What happens to great performers who violate the code of conduct?

By sharing the group’s overall responses, “they realize there are other people who feel the same way,” she says. For example, if a lot of people say they can’t raise a concern without fear of retaliation, Penman probes for details. Who do they fear? Coworkers? A boss? That gets people talking and gives Penman a chance to discover more about the corporate culture. And she always conducts three or four focus groups, so when findings are shared with management, they can’t be attributed to any particular group of employees.

Penman says she also looks for red flags before, during and after focus groups that point to a poisonous corporate culture:

(1) If 20 people are invited to attend the focus group and only two show up, that may be a sign that people fear retaliation if they talk.

(2) “Folklore” — an old, possibly apocryphal story about a bad act by an employee — is still bandied about. “Folklore, whether true or not, will define the culture,” Penman says. “Even if someone got away with something 10 years ago, we will hear about it unless management is conveying a message that people will not get away with [misconduct].”

(3) When employees don’t cite safety and/or quality as a priority of the organization, that is a red flag. It’s alarming, Penman says, when she asks what’s important to the organization and safety and quality aren’t mentioned, even after she prods for more priorities. “Safety should be seen as a management priority.”

(4) Employees panicking about things they said during focus groups, even though it’s confidential, and contacting the focus group leader to make sure nothing they say will be revealed or even mentioned again anonymously. That’s another sign that employees fear retaliation for revealing problems, which bodes poorly for the health of the corporate culture.

(5) Leaders are unavailable for a quick chat. At one location, an executive dodged five or six meetings with Penman.

Like focus groups, employee surveys are another strategy for understanding the corporate culture. But Penman says they are less effective. For one thing, there is

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no opportunity to ask follow-up questions. And “we have seen surveys used and abused,” she says. At one company, Penman wanted to know why focus group results were worse than annual employee surveys. She got her answer: “Someone said to me that the best way to keep corporate out of our face is to give them the answers they want on the annual survey,” Penman says. She has also learned that some companies do practice surveys with employees to ensure favorable responses. At companies where managers are compensated based on survey results, some managers even provide employees with answers to survey questions.

Performance Management Is Another Tool

Another risk with surveys is they may be structured in a way that makes employees suspicious about whether they can be identified (e.g., too many demographic questions, such as your age, position, how many years of service you have). If that’s the case, employees won’t answer questions truthfully and companies will learn nothing about the corporate culture.

Performance management systems are a good vehicle for assessing culture, Penman says. Do managers set goals for employees that invite rule-breaking (e.g., sell \$3 million worth of medical supplies, code 500 charts a week)? Or are they “stretch goals,” just something to strive for? “You want stretch objectives but you want them to be achievable,” she says.

And what happens when top performers violate the code of conduct? Does management look the other way because the physician or employee is seen as indispensable to the organization? “Nothing impacts culture more than top performers and high-level people who break the rules,” Penman says. “The rest of the people become very cynical about management and it affects attitudes. They feel they are expected or allowed to break the rules to achieve certain objectives — it doesn’t matter how we get the product out the door, whether it’s safe or inspected or went through quality testing — as long as we get X bottles of medication out the door every day.”

Evaluations are another way to assess culture. “We look to see if people are even evaluated on their ethical behavior,” she says. When ethical behavior is included in evaluations, the rating system may be too vague to be useful. If it asks a manager to rate an employee’s ethical behavior on a scale of one to five, and the rating given is low, then what? Should the person be fired? The better approach, Penman says, is for leaders to focus on setting achievable performance objectives and for employees to know they don’t have to break the rules to get there.

Leadership shapes the corporate culture in a big way. Ethical behavior “flows from the top,” says William Moran, senior vice president of Strategic Management,

a consulting firm based in Alexandria, Va. The CEO and chairs of the board and audit committee should all be asking, “are we compliant? How are we doing in terms of making sure our culture stresses doing the right thing?”

There are concrete ways to assess this. For example, Moran says, does the code of conduct include a message from the CEO saying he or she wants everyone in the organization to act in an ethical and truthful way? Does the code say that employees have a duty to report anything that is unlawful or unethical? Are there monthly or quarterly audit committee meetings? “Look at the minutes of the audit committee of the board to check whether there is a lively discussion of things related to compliance or ethics,” he says. Ethical behavior also should be discussed in staff meetings and the compliance department newsletter. And there must be an effective hotline and a strong nonretaliation policy.

“A good compliance officer constantly asks the president and chair of the audit committee to help reinforce the whole notion of running an ethical organization,” Moran says.

Contact Penman at carrie@ethicalleadershipgroup.com and Moran at wmoran@strategiccm.com. ♦

Leases With Physicians Lead to CMP Settlement for Baltimore Hospital

Mercy Medical Center in Baltimore, Md., and two physician groups will pay \$195,000 in a civil monetary penalty settlement with the HHS Office of Inspector General (OIG).

The two provider groups involved are St. Paul Place Specialists and Maryland Family Care.

In August 2006, the providers self-reported multiple arrangements “that raised potential compliance issues under the Stark Law and anti-kickback statute.” OIG then requested more detail on certain arrangements, plus descriptions of changes made to the compliance program, which the providers supplied, according to the settlement.

The deals Mercy and the other providers disclosed included physician service arrangements, leases, physician on-call arrangements, and billing and collection agreements, according to the settlement. The contracts were allegedly noncompliant with Stark, but some also included financial benefits that allegedly violated the anti-kickback statute, the agreement says.

The providers did not admit liability, but agreed to settle to avoid the uncertainty and expense of litigation, according to the document, which was obtained by RMC through a Freedom of Information Act request.

Among the arrangements involved in this case are: