

Post-Corporate Integrity Program Compliance

A User's Guide for Compliance Officers and Attorneys

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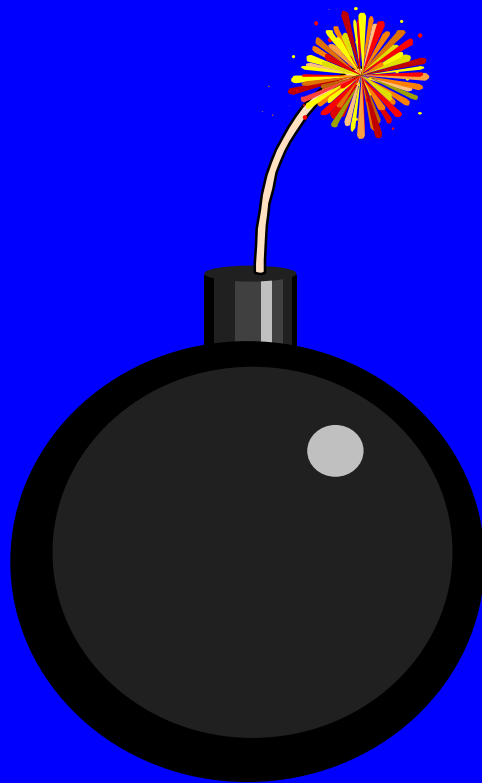
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Background

- Clinical Practices of the University of Pennsylvania (CPUP) 1995 OIG Settlement provided for Mandatory Five-year Professional Fee Program;
- April, 2001 – CPUP formally released from Corp. Integrity Agreement, removed from OIG Web-site;
- Challenge: Set Priorities, Maintain Protection and Maximize Internal Support

REGULATORY ENVIRONMENT FRAUD HOT LINE



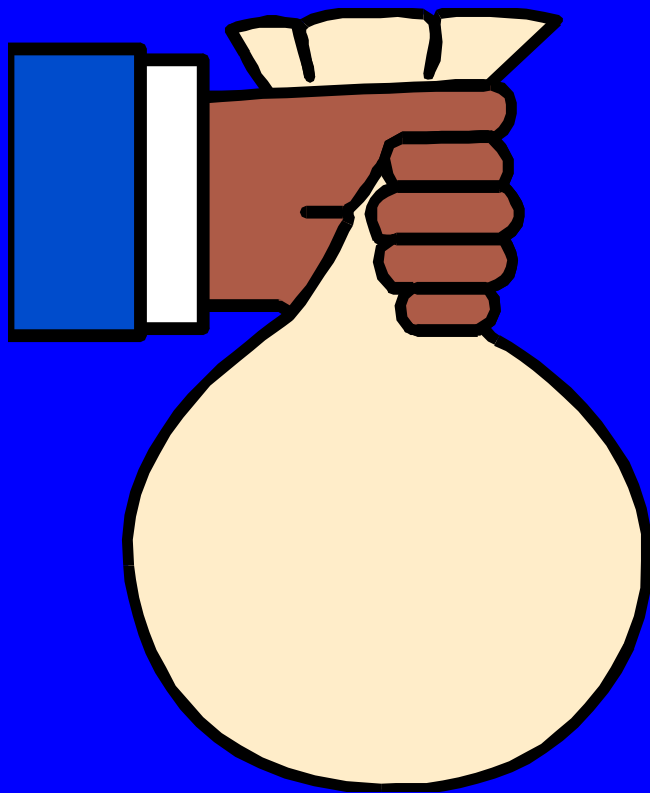
- “Who pays? You pay. Report fraud by calling An example of fraud would be claims for items or services you did not receive. If you have any other questions about your claim,.....”

HHS Fraud Line

Who Pays; You Pay Program

- Established by HHS in 1995
- HIPAA established incentive program for reporting fraud & abuse
 - 10% of recovered overpayment or a \$1,000 maximum
- Medicare received over **1.5 million calls** over the **past 4 years**
 - Led to recoveries in excess of \$38 million

**“It’s everybody’s responsibility now...
HELP STOP Medicare/Medicaid Fraud”**



- Over \$23 billion...lost to waste, fraud & abuse
- ..Person who reports... paid up to 25%..
- If you work with a ...health care provider who has committed health care fraud, please call our law firm...”

FISCAL YEAR 2001

- \$1.6 billion in civil fraud recoveries; health care predominant
- 75% of recoveries related to Whistle-blower cases and settlements
- \$210 million paid to Whistle-blowers

Department of Justice 11/14/01

Fundamental Requirements

- I. System of Internal Auditing
- II. Program of Faculty/Staff Education
- III. Capacity to Respond to External or Internal Allegations

Implement Monitoring, Auditing & Reporting Systems

- Cost vs. Benefits
 - 80/20 rule
- Select appropriate data to monitor
 - Organizational risk
 - Establishment of benchmarks
 - Ability to change based upon identified discrepancies

Implement Monitoring, Auditing & Reporting Systems

- Regular & periodic compliance reviews
 - *Sample size & tolerable error rate*
- Types of testing
 - *Trend analysis*
 - *Transaction testing*
 - *Documentation and related billing*
 - *Requisition forms*
 - *Interviews*

Implement Monitoring, Auditing & Reporting Systems

- Concurrent vs. Retrospective Reviews
 - *Ability to access data (e.g. dictated notes & reports)*
 - *Time requirement to complete audit to include holding claims*
 - *Correct claims prior to submission*
 - *Auditees ability to over-ride findings*
 - *Refund policy for retrospective reviews*

Implement Monitoring, Auditing & Reporting Systems

- Audit purpose
 - *Specific purpose review e.g. internal allegation or external notice*
 - *Systematic routine review*
- Reporting findings to appropriate authorities
 - *Potential fraud or violations of the False Claims Act*
 - *Refunds*

AMC Audit Challenges

- “Cutting Edge” of medicine
 - Introduction of new procedures &/or techniques that do not agree with CPT code descriptions (e.g. approach using arthroscopy versus open fashion as described in CPT)
 - Use of unlisted codes
- Technological advances in medicine
 - Extended timeframe for development of new codes

AMC Audit Challenges

- Tertiary/quaternary care institutes
 - Patient acuity
- Teaching Physician New Rules (TPNR)
 - Required attestation & tethering language
 - Service fully documented by resident but insufficient documentation by teaching physician (e.g. attending documentation addresses PE and MDM but not history)

UPHS Compliance Program

- Extends to all areas of UPHS
 - Practice plans
 - Hospitals
 - Home health care
- Goal: Ferret out potential issues, and rebut “reckless disregard” or “deliberate ignorance” standard if issues are missed

DRG Audit Program

- Quarterly reviews conducted at each hospital
- Review of OIG targeted DRG's/DRG Pairs
- Focused review DRG 079
- Educational sessions conducted annually

DRG Audit Program

- The following attributes are required for the assignment of DRGs:
 - Principal diagnosis & all subsequent diagnoses;
 - Principal procedure & all subsequent procedures;
 - Complications and/or co-morbid conditions;
 - Signs and symptoms; &
 - Discharge status

DRG Monitoring

- Systematic Monitoring & Review Technique (SMART)
 - Software program from PricewaterhouseCoopers
 - Automated coding data quality review
- 100% prospective screening of coded records prior to billing
 - 360 standard edits written in compliance with Coding Clinic guidelines

Outpatient OT/PT

- HCFA Form 700 & 701
 - Start of care date
 - Diagnosis
 - Short & Long term goals
 - Specific modalities/procedures to be used
(including amount, frequency & duration, etc)
- Clinical documentation in support of services

Medicare Coverage Requirements

- Therapy must be ordered/prescribed by a physician
- Therapy must be rendered by (or under the supervision of) a certified skilled therapist
- Therapy must be reasonable & necessary for treatment of the patient's condition

Medicare Coverage Requirements

- Amount, frequency & duration of services must be reasonable for patient's condition and established treatment goals
- Expectation that patient's condition will improve significantly in a reasonable and generally predictable period of time

Medicare Coverage Requirements

- Therapy provided in accordance with physician-approved treatment plan
- Services rendered under OT should not be duplicated by PT

Home Health Care Audit Program

- Review HCFA Form 485
 - Start of care date
 - Signed physician certification
 - Plan of care (medications, functional limitations, goals, etc)
- Review clinical documentation by all care givers

Conditions Patient Must Meet to Qualify for Coverage

- Confined to home
- Plan of care established/approved by physician
- Patient under care of qualified physician
- Physician certification

Conditions Patient Must Meet to Qualify for Coverage

- Need for Skilled Nursing/Skilled Rehab Services on an Intermittent Basis
 - Physical therapy
 - Speech-language pathology
 - Intermittent skilled nursing
 - Occupational therapy

Education Survival Tips

- Avoid “off the shelf” educational programs with focus exclusively on legal ramifications
 - Focus on clinically relevant case studies with corresponding documentation requirements
 - Inform providers of coding changes (CPT-4 & ICD-9)
 - Share results of departmental auditing; compare to institution

Education Survival Tips

- Conduct documentation training at the departmental level
 - Use live progress notes for educational purposes with clinical significance
 - Identify “Physician Champion” in all educational sessions

Education Survival Tips

- Involve faculty in training
- Include compliance training in new employee orientation programs

Survival Tips

- Providers should submit claims representing **documented** services that are **medically necessary**
- If services are supported by medical necessity, bill accordingly
 - **Avoid down-coding based on fear**
- The “R” word

Survival Tips

- Clear chart documentation
 - *Templates*
 - *Sign correspondence*
 - *Initial labs, incoming correspondence, etc to support decision making*
- Document supervision
 - *Residents*
 - *Nurses - “Incident To”*

Utilization of Templates

- Complexity of coding & documentation in current market place
- Criminal & civil liabilities for miscoding
- Ability to document pertinent normal findings with ease
- Continuity of care

Chart Documentation

Utility of Templates

Prompts

- FH/SH/ROS on initial/consult notes
- Essential elements of PE
- Refer to labs, radiology, PFT
- Link/tether to housestaff notes
- Time spent (start/stop or total cumulative)

Chart Documentation

Utility of Templates

Distinguish Visit Type

- Initial visit or consultation
- Ventilator or Management
- Time driven codes (Critical care, prolonged care > E & M)

Chart Documentation Utility of Templates

Efficiency

- Reduce redundant writing
- Facilitate abstraction, coding, billing

Foundation for Electronic Medical Record

Review of Templates

- Ensure templates are not “leading” providers to select high levels of service
 - Explanations address all levels of service
- Validate accuracy & completeness of forms
- Ensure templates satisfy reporting requirements for Evaluation & Management services (E&M)

Review of Templates

- Ensure templates offer tethering language - attending physician attestation
- **Documentation must equal performance and supported by medical necessity!**

Investigations: Operational Concerns

- Organizations state of readiness
 - Critical need for operational policies to address organizational response to external notice(s) of investigation(s)
- All members of organization must know what action is required upon receipt of notification

Operational Concerns

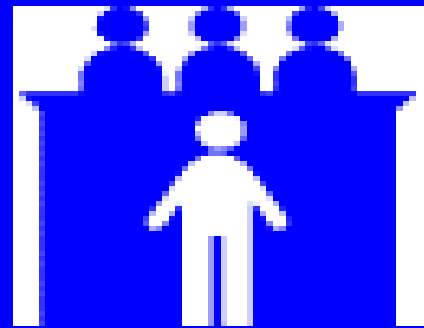
- Identify nature of allegations (if possible)
 - Physician based (e.g. upcoding, TPNR, etc.)
 - Hospital based (e.g. DRG's, 72 hour rule, transfers, cost report)
- Identify entity that authored investigation notice
 - Insurance carrier/ FI
 - OIG

Operational Concerns

- What is the subject matter & time period under review?
 - Attention to date of service vs. applicable regulations & specific coding requirements
- Complexity of coding
 - Over **1,500** material **changes** in CPT CY's **1999** → **2001**

Operational Concerns

- Attorney - client privilege
 - Compliance initiated and managed investigations
 - Co-ordination
- Tread carefully; **“First, Do no harm”**



Shadow Audit

- Ability to offer defense
 - Establish expected error rate & estimated potential liability
 - Identify errors that may result in over-payments
 - Identify & quantify favorable findings such as missed billings & under-coding

Shadow Audit

- Critical need for organization to identify potential deficiencies & liabilities
- Potential interim measures, such as billing suspension
- Organizational & managerial ability to make informed decisions
 - Influence to expedite settlement negotiations

Treat Employee Allegations of Wrongdoing Extremely Carefully

- Assume each complainant is current or potential Whistle-blower
- Discount apparent bias or motive (government will)
- Document responses and keep in communication
- Confidentiality and privilege
- Intercede to prevent Human Resource actions which could be misconstrued as retaliation