The New Frontier: Compliance and Quality

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The Problem

- IOM: To Err is Human
- IOM: Crossing the Quality Chasm
- Leapfrog Group
- Errors and patient safety
- Misuse, underuse and overuse
- Concern for green eyeshade values

Enforcement

- Standard approach to breach of conditions of participation
- Quality failures as false claims
  - Nursing homes
  - Managed care: ‘Promises made but not kept’

OIG Work Plan

- OIG Work Plan Issues on quality:
  - Hospital privileging
  - PRO sanction authority
  - Home health care quality
  - Nursing home quality assessment and assurance committees
  - Family experience with nursing home care
  - Use of restraints in many settings

PROs

- Basic responsibilities
  - Whether services are reasonable and medically necessary
  - Of quality which meets professionally recognized standards
  - Proposed to be done inpatient could be done in a cheaper facility

PROs (continued)

- Review medical aspects of EMTALA cases
- Review beneficiary complaints about quality
- Review is binding on claims payers
- Recommend sanctions:
  - Single gross and flagrant violation
  - Substantial violation in a substantial number of cases

Exclusions for Quality

- Items or services to patients (whether or not eligible for benefits under Medicare or Medicaid) substantially in excess of the patient's needs
- Of a quality which fails to meet professionally recognized standards of health care

Civil Money Penalties for Quality

- Claims for a pattern of medical items or services that a person knows or should know are not medically necessary
- Provides false or misleading information that could be expected to lead to premature discharge
- Hospital payments to physicians to reduce services

CMPs (continued)

- Physician incentive plans that put physicians at substantial financial risk
- HIPAA privacy regulations: quality relevance?
- Stark and Kickback violations
- EMTALA itself

Welcome to Wonderland

- Recasting Accountability
- Why the physician nexus matters
- Understanding the doctor-patient essentials
- Where have we strayed
- Four principles to make quality happen

Why and How to Focus on Physicians

- Physician Centrality
  - Plenary legal authority
  - Portal to the system
- Their Critical and Fundamental Role to your system (AMA Monograph)
- Expertise (Reinertsen's Axioms)
  - Explain, predict and change patient futures: the healing relationship

The Altered Doctor-Patient Relationship

- Loss of time and touch
  - 1-800-nurse-from-hell
  - Meaningless regulation: E &M codes
  - False claims risk; CMPs
  - Exclusions: quality, incentives
  - Anti-referral laws
- Malpractice liability in a non-traditional world
  - Defensive medicine
  - The plans get a bye

Altered Relationship (Continued)

- Irrelevant payment systems
- Rampant consumerism
  - Olympic caliber Web surfing
  - Alternative therapies
  - Direct to consumer advertising
- Burgeoning physician report cards
- Shift to disease management approaches
- Explosion of knowledge base

What Makes Physicians Different?

- Responsibility for individuals
- Accountability for life and death
- Legal captain of the ship
- Collegiality and “groupiness”
- Evidence based, scientific decision-making
- Outcomes and quality improvement feedback (the dynamism of medicine)
- Due process as the scientific method

Gosfield's Unified Field Theory: Escaping the Rabbit Hole

- Standardize
- Simplify
- Make Clinically Relevant
- Public Accountability for what they can control

Clinical Practice Guidelines per the Institute of Medicine

- CPGs, Medical Review Criteria, Performance Measures and Standards of Quality
- Using good guidelines

The Theory in Practical Steps: Collaboration

- Select a CPG: Better National
- Translate into applicable ICD-9 and CPT codes
- Note documentation standards: templates
- Document full pathway (not just physicians)
- Accommodate deviations
- Price the services
- Measure compliance
- Analyze and refine

Making It Credible to the Physicians

- Involve them in the process
- Use real leaders
- Make their involvement visible
- Develop trust: Do what you say; Say what you do
- Open, frequent, candid communication: raw data
- Recognize the need for group platform
- Fair and equitable procedures: the scientific method

Advantages

- Provides for unified clinical management of patients (simple and standard)
- Speaks to physicians the way they think (clinically relevant)
- Creates time for touch and healing
- Permits credible branding for quality

Advantages (Continued)

- Lowers fraud and abuse risks for all
- Maximizes efficiency without sacrificing quality
- Provides a new way to price
- Can eliminate intrusive medical management and documentation
- Preempts malpractice claims and lowers liability risk

Potential Disadvantages

- There aren't enough CPGs to make it work
- Systems are too cumbersome and expensive to implement
- Cookbook medicine doesn't work
- It's a sword if you don't follow through

Conclusion

- Compliance is not isolated
- There are many people paying the piper
- Something meaningful must be done
- Physicians are at the core
- You can do well by doing good (and right)

Resources

- Gosfield, “Integrating Clinical Guidelines Into Administrative Processes can Lower Risk”, J HC Compliance (Sept/Oct 1999) pp.9-15
- Reinertsen, “Health Care: Past, Present and Future,” Group Practice Journal (March/April 1997) pp.37-43
- Gosfield, Quality and Clinical Culture: The Critical Role of Physicians in Accountable Health Care Organizations, http://www.ama-assn.org/ama/pub/article/371-477.html

Resources (continued)

Gosfield, “Legal Mandates for Physician Quality: Beyond Risk Management,” Health Law Handbook, 2001 ed., WestGroup, pp. 285-231

Gosfield, “Making Quality Happen: In Search of Legal Weightlessness,” in 2002 Health Law Handbook , (forthcoming)