Is Your Compliance Program Compliant?
Tips on Monitoring and Auditing the Effectiveness of Your Compliance Plan

Michael D. Miscoe, JD, CPC, CASCC, CUC, CCPC, CPCO, CHCC

AAPC

DISCLAIMER

DISCLAIMER
This presentation is for general education purposes only. The information contained in this presentation and handouts is not intended to be, and is not, legal advice or even particular business advice relevant to your personal circumstances. The laws, regulations and policies pertaining to the subject matter of this presentation are open to interpretation. It is your responsibility to seek private counsel with your attorney to determine whether and how these laws, regulations, and policies apply to your specific case before applying the concepts addressed in this lecture.

Attendance at this presentation should not be construed as creating an attorney – client relationship with the speaker nor should the information presented be construed as legal advice. Remaining for this presentation indicates your acknowledgement and agreement with the above.

NOTICES
Current Procedural Terminology (CPT®) is copyright © 2013 American Medical Association. All Rights Reserved. CPT® is a registered trademark of the American Medical Association (AMA).

Admitted to the practice of law in California (Cal Bar ID 260146), the United States Supreme Court and the US District Courts in the Southern District of California and the Western District of Pennsylvania.

AAPC
2

Remember!

- Please Be Respectful of Other Attendees by **Turning Off Ringers on your Cell Phones/Pagers!**

AAPC
3

Self –Evaluation
…You Might Have a Problem

- If there is dust on your plan or you don't know where it is…
- If you are the only person in the office that knows that there is a compliance plan…
- If you are not allowed to do an internal audit because your boss is afraid you might find something…
- If your compliance officer is also responsible for cleaning the bathroom…

AAPC

OBJECTIVES

- Identify the role of compliance in the health care setting.
- How to determine whether a formal or informal fraud and abuse compliance plan is right for you.
- Identify what increases compliance risk within a system as it relates to documentation, billing and coding.
- Common sense steps to minimizing compliance risk.
- Creating a culture of compliance and a Team oriented approach toward achieving compliance.
- Tips on how to keep your compliance program "compliant".

AAPC

What Does Compliance Mean To You?

- First the definition:
  - **Compliance** = acting consistent with applicable laws
  - What laws?
- Is there a difference between
  - Having a compliance program; and
  - Being compliant?
- Requirements of a compliance program.
  - Generally defined in the OIG Model Compliance Guidance
- Requirements for being compliant.
  - Honesty/integrity
  - ethical behavior
  - But beyond that and equally if not more important…
- Who is responsible for Compliance?

AAPC

THE SCOPE OF "COMPLIANCE"

- Potential Rules to "Comply" With:
  - Fraud and Abuse (Coding/Billing) Compliance
  - HIPAA Privacy Compliance
  - HIPAA Security Compliance
  - Quality Program Compliance
  - Corporate Compliance
    - OSHA, CLIA, Employment, Contract, etc.

AAPC

THE ROLE THAT COMPLIANCE PLAYS IN HEALTHCARE

- Fraud and Abuse (Coding/Billing) Compliance
  - Necessary to minimize post payment risk for
    - Recoupment
    - False Claims (civil/criminal)
- HIPAA Privacy/Security Compliance
  - Necessary because
    - Formal plans are mandated
    - Protect the practice from litigation and financial penalties

AAPC

THE ROLE THAT COMPLIANCE PLAYS IN HEALTHCARE

- Quality Program Compliance
  - Protect the practice from malpractice risk
  - Allow practice to obtain incentive payments where available
- Corporate Compliance (OSHA, CLIA, Employment, Contract, etc.)
  - Protect the practice from civil litigation, or fines/penalties where permitted under relevant laws.

AAPC

TO HAVE OR NOT TO HAVE A FORMAL FRAUD AND ABUSE COMPLIANCE PLAN

- Formal Fraud and Abuse Compliance Plans still voluntary
  - PPACA authority to HHS
- Key Considerations
  - Practice Size
  - Number of locations
  - Education/Credentials of Workforce
  - Resources

AAPC

RISKS ASSOCIATED WITH FORMAL PLANS

- Plan is insufficient
  - Avoid by structuring plan according to HHS OIG Model Guidance
    - A written plan which includes specific policies and procedures based on practice-specific risk analysis.
    - A designated compliance officer with authority to enforce the compliance program
    - A specific plan for auditing and review with a mechanism to communicate findings and plans of action
    - Mechanism for anonymously reporting non-compliant behavior
    - Policies that detail employment related sanctions for non-compliance.

AAPC

RISKS ASSOCIATED WITH FORMAL PLANS

- Non-Compliance
  - Plan contains provisions that you cannot or do not comply with
- Currency
  - Plan is not up to date
- Plan does not identify your practice specific risk areas.
- All these risks are common with off-the-shelf plans.
- Implications with respect to FCA liability.

AAPC

RISKS ASSOCIATED WITH INFORMAL PLANS

- Practice has no dedicated focus on compliance.
- Efforts are insufficient.
  - Insufficient risk analysis
  - Insufficient efforts at education/auditing
- Lack of Leadership
  - No one is really in charge;
  - The person in charge of compliance has too many other responsibilities; or
  - The person in charge has conflicting interests.

AAPC

IDENTIFYING RISK AREAS

- The most critical aspect of compliance planning whether for a formal plan or informal program.
- Factors to consider
  - Who does services?
    - Incident – to?
    - Delegation to unlicensed assistants/technicians?
  - What services are being done?
  - What carriers are involved?
- Define every law, medical policy or contractual provision that the practice is bound to adhere to relative to the above. Also identify any educational material published by carriers the practice routinely bills or participates with that pertain to services the practice provides.
- Keeping current – how often do you review and update?

AAPC

Identifying the Rules…

- Binding Rules
  - Statutes/Regulations (e.g. Medicare, Medicaid, Personal Injury (auto), workers compensation)
  - Commercial carrier contracts and incorporated medical policies.
- No Rules?
  - Qualification and use of secondary resources.
    - Coding Publications
    - Specialty Society Recommendations
- If I'm right with Medicare, I'm right for everyone else…" True / False?

AAPC

Factors that Increase Risk Despite Your Compliance Plan / Program

- Lack of Education
  - About the Plan/Program
- Lack of Commitment
  - By management
  - By non-compliance department staff
- Lack of Training
  - Compliance department staff
  - Coding/Billing and Clinical staff

AAPC

Minimizing Risk and Making Your Compliance Plan / Program "Effective"

- Education
  - Educate all staff members routinely. At least 1 staff meeting per month should address elements of the plan and billing/clinical staff should present the material.
- Commitment
  - Ensure that you have true "buy-in" from management as well as clinical and non-clinical staff.
    - Compliance is required but is also profitable.

AAPC

Minimizing Risk and Making Your Compliance Plan / Program "Effective"

- Training
  - Use appropriately trained and credentialed compliance officers to direct the compliance program/plan. (CPCO)
  - Use appropriately trained and credentialed coding and billing personnel.
  - Obtain commitment from clinical personnel to attend training to address changes in coding and billing rules especially as it pertains to their ability to document services properly.
  - Training of billers/coders and clinical staff should be collaborative.

  Training Must Be Consistent and Ongoing.

AAPC

Does Your Practice Have a "Culture of Compliance?"

- Key Goals of any Healthcare Practice/Facility…
  - Excellent patient care?
  - Be profitable?
  - Provide a valuable service to the community?
- Where does compliance fit in?
  - Cost vs. Benefit
    - Something we do because we think we must?
    - Something we do because we don't want to go to jail?
    - Something we do to enhance long term profitability?

AAPC

Creating a "Culture of Compliance"

- How do we create a culture of compliance?
  - Mandate Compliance? – or -
  - Sell the Benefits?
    - Coding/Billing Staff
    - Clinical Staff
    - Stakeholders/Management
    - Other staff
- If all understand the importance and benefits of compliance at a personal level, you can achieve buy-in.

AAPC

Keeping Your Compliance Plan/Program "Compliant"

- Periodic Review and Amendment
  - Identify policies or procedures that just don't work and amend them.
  - Continuous training / re-training on requirements.
  - Periodic review of risk areas.
  - Continually sharpen your internal audit program.
  - Review/amend as necessary each time the practice adds clinical personnel (NPPs), incorporates new services

AAPC

Keeping Your Compliance Plan/Program "Compliant"

- Welcome a Visit by the Compliance Officer
  - Like the Government – they are just there to help!
- Compliance Personnel Should be Constructive
  - Why something is wrong
  - What is necessary to correct
  - Provide/recommend training.
- Don't Assume Every Mistake is Fraud
- Be Part of the Solution. When Identifying a Problem,
  - Cite the binding rule
  - Propose the appropriate solution and any necessary corrective action.
- All Compliance Efforts Should Be Documented.

AAPC

Coder's Ethical Responsibilities

- AAPC Code of Ethics
  AAPC members shall:
  - Maintain and enhance the dignity, status, integrity, competence, and standards of our profession.
  - Respect the privacy of others and honor confidentiality
  - Strive to achieve the highest quality, effectiveness and dignity in both the process and products of professional work.
  - Advance the profession through continued professional development and education by acquiring and maintaining professional competence.

AAPC

Coder's Ethical Responsibilities

- AAPC Code of Ethics
  AAPC members shall:
  - Know and respect existing federal, state and local laws, regulations, certifications and licensing requirements applicable to professional work.
  - Use only legal and ethical principles that reflect the profession's core values and report activity that is perceived to violate this Code of Ethics to the AAPC Ethics Committee.
  - Accurately represent the credential(s) earned and the status of AAPC membership.

AAPC

Coder's Ethical Responsibilities

- AAPC Code of Ethics
  AAPC members shall:
  - Avoid actions and circumstances that may appear to compromise good business judgment or create a conflict between personal and professional interests.

  Adherence to these standards assures public confidence in the integrity and service of medical coding, auditing, compliance and practice management professionals who are AAPC members.

  Failure to adhere to these standards, as determined by AAPC's Ethics Committee, will result in the loss of credentials and membership with AAPC.

AAPC

Coder's Ethical Responsibilities

- Continuous Professional Development
  - Is simply getting your CEU's enough?
  - What else can you do?
- Maintain an active understanding of the compliance plan/program in your practice or institution
  - Read it, live it, teach it…

AAPC

SUMMING UP

- A formal compliance plan is not mandatory (yet) but operating compliantly is.
- Evaluate the risks associated with formal plan adoption before you do so.
- Avoid "off-the-shelf" plans.
- All employees and practice owners have an important role in compliance.
- Audit, educate, then audit some more.

AAPC

Questions?
CEU Code: