HCCA Clinical Practice Compliance Conference

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Living in the EHR

Practical Advice for Avoiding Compliance Pitfalls and Protecting Your Practice

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Agenda

- Real life examples of EHR issues and errors
- Regulations and enforcement
- Avoiding the Pitfalls-
  - EHR issues and solutions

EHRs In the News…

- March 15, 2013
- A survey of thousands of physicians across multiple specialties shows that user satisfaction with electronic health records fell 12% from 2010 to 2012.[1]

- 1: Alecia Ault, Internal Medicine News Digital Network

Reason For Visit
follow up wart on right index

Active Problems
1. Abdominal pain (789.00)
2. Amenorrhea (626.0)
3. Sorethroat (462)

Past Medical History
1. Abdominal pain (789.00)
2. Amenorrhea (626.0)

Social History
- Never a smoker
- Non-smoker (V49.89)

Current Meds
1. Amoxicillin-Pot Clavulanate ER 1000-62.5 MG Oral Tablet Extended Release 12 Hour;
   TAKE 1 TABLET TWICE DAILY;
   Therapy: 21Apr2014 to (Last Rx:21Apr2014) Requested for: 21Apr2014 Ordered
2. ValACYclovir HCl - 500 MG Oral Tablet;
   Therapy: 19May2014 to Recorded

Allergies
1. No Known Drug Allergies

Assessment
DX VERRUCCA VULGARIS FINGER INDEX F/U

Plan
RX DESTRUCTION -CRYO/EXCISSION/PARING /TAA

RTO AFTER 10D

What's wrong with this picture?

- Billed as 99214 + procedure code

What's wrong with this picture?

- Billed as a 99211
  - (in addition to the correct procedure codes)

Status: Final - Signature

Patient came in today and a Uroflow & PVR was performed..Uroflow was performed times 3 and PVR just once..Patient was able to void without any problem..Patient tolerated well..Patient will follow up wity Dr..

Electronically signed by Jun 24 2014 10:40AM EST Author

Electronically signed by. Aug 5 2014 10:52AM EST

What's wrong with this picture?

- *Billed with 99203*

Physical Exam

HEENT: Normal exam.
Pulmonary: Normal exam.
Cardiovascular: Normal exam.
Abdominal: Normal exam. Normal exam
Genitourinary/Rectal: Normal exam.
Neurologic. Normal exam.
Psychiatric Normal exam.

What's wrong with this picture?

- Can you find the copy/paste error(s)?

- **History of Present Illness**
- Mr. Smith is a 48 year old male with a history of urinary tract stricture, who is referred for urinary frequency. He states he has associated nocturia x10, post void drip, and that his urine has a strong odor. He states his symptoms began about 1.5 years ago. He reports his urinary stream is strong. He denies a burning sensation while urinating.

- He states his frequency has improved but his urinary stream remains weak. He urinated today and he does not have enough bladder flow to perform the uroflow and post-void residual test. Urinary diary shows small volume urinations consistent with his complaints of frequency.

What's wrong with this picture?

- **History of Present Illness(cont'd)**

- He is here for follow-up. Uroflow was performed and results show that he has a good urinary stream and flow rate but poor volume. He currently has nocturia x3 or more. He is not currently taking medication for his urination.

- Can you find the copy/paste error(s)?

Case Study: Cut-and-Paste

Progress notes:

3/6 Feeling well today, throat is still sore, breathing very comfortable today. **Eager to participate in rehab. Eating well but has not had a bowel movement in a couple days. Does not want any more IV's.**

3/9 Feeling well today, **had a large bowel movement last night**. Throat is still sore, breathing very comfortable today. **Eager to participate in rehab. Eating well but has not had a bowel movement in a couple days. Does not want any more IV's**

- The bolded, underlined black text was cut-and-pasted.
- What if this patient is discharged and has abdominal complications?

Case Study: Cut-and-Paste

HPI (in Admiting H&P):

Mr. K is a XXy male known to service presenting to ED to check on his progress since his last discharge. He was recently discharged on X/27 after being seen for episodes of hematemesis. He states that on discharge he started to have multiple falls and went to an OSH (cross streets of XXth and R?). He states that during that time there he had another EGD which showed gastritis and had ascites that he had a paracentesis **for.** He was previously admitted to Loyola from X/24-X/27 for hematemesis. EGD during that admission showed moderate portal gastropathy, small ulcer and 3 columsn of rade 1 esophageal varicies. He also states that he wants to rid himself of methadone and alcohol use. Denies hemoptysis, fevers, chills, abdominal pain, nausea, change in bm, weight gain/loss, chest pain or shortness of breath.

In Discharge Summary (by a different physician):

Mr. K is a XXy male known to service presenting to ED to check on his progress since his last discharge. He was recently discharged on X/27 after being seen for episodes of hematemesis and alcohol withdrawl. He states that on discharge he started to have multiple falls and went to an OSH (cross streets of XXth and R?). He states that during that time there he had another EGD which showed gastritis and had ascites that he had a paracentesis **for.** He was previously admitted to Loyola from X/24-X/27 for hematemesis. EGD during that admission showed moderate portal gastropathy, small ulcer and 3 columns of grade 1 esophageal varicies. He also states that he wants to rid himself of methadone and alcohol use. Denies hemoptysis, fevers, chills, abdominal pain, nausea, change in bm, weight gain/loss, chest pain or shortness of breath.

Original work or plagiarism? (Underline = copied)

The above varies by 3 words. Programs may auto-detect copying.

What's wrong with this picture?

Chief Complaint Lumbar pain

History of Present Illness

PATIENT is 74 year old female returns today for post-op follow-up. On her last visit the patient had lumbar transforaminal #2. Lumbar transforaminal #2 provided 100 percent pain relief immediately after the procedure and 60 percent relief within 3 days of the injection. After 10-14 days post-op the patient experienced 75 percent pain relief.

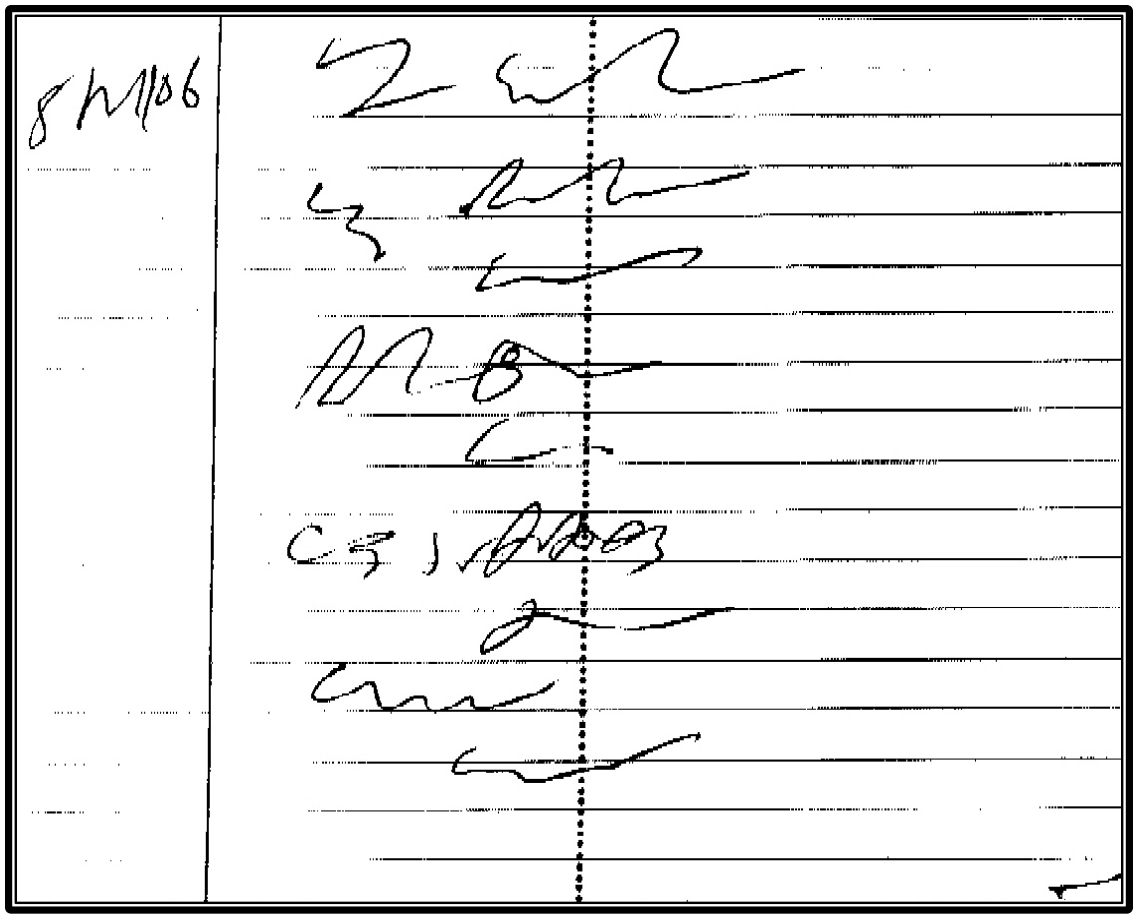
The most recent medication adherence monitoring was conducted on 10/23/2012. Results were have not been tested.

The patient presents with bilateral low back pain. The patient rates her pain as 1/10. She describes the pain as aching. The pain does radiate to the left leg. Radiating pain has been present for >six months. She denies any additional symptoms.

Pain affects the following physical activity and emotions. In addition, she is unable to complete the following activities of daily living: standing, walking, riding in car. There have not been changes in activities since her previous visit.

EHR vs. Written

EHR Eliminated Certain Issues



EHRs And HHS/DOJ

- September 24, 2012 Letter to U.S. Hospitals from Secretary Sebelius and Attorney General Holder
  - "Troubling indications" of use of EHRs to "game the system," "to obtain payments to which they are not entitled:"
    - "Cloning" of records;
    - Upcoding;
  - CMS to conduct audits to identify improper billing;
  - Data analysis to identify outliers;
  - More extensive medical reviews.

EHRs And The OIG

- December 13, 2013 Report *"Not All Recommended Fraud Safeguards Have Been Implemented in Hospital EHR Technology."* Report No: OE1-01-11-00570
  - Study looked at hospitals receiving EHR incentive payments.
  - Focus on implementation of fraud safeguards:
    - Access and Authorization Controls;
    - Audit Function;
    - Data Transfer Standards;
    - Pattern Involvement in Anti-Fraud Activity.

EHRs And The OIG

- December 2013 Study, continued
- What they found:
  - While most hospitals had audit functions in place, not used to full extent;
  - Variety of user authorization and access controls in place;
  - Data transfer safeguards generally in place;
  - Only ¼ of hospitals had policies regarding the use of copy-paste feature.

EHRs And The OIG

- December 2013 Study, continued
- What did the OIG recommend?
  - Audit logs to be operational whenever EHR technology is available for updates and viewing;
  - Strengthen collaborative efforts and develop a plan to address fraud vulnerabilities in EHRs;
  - CMS should develop guidance or use of copy-paste feature in EHR technology.

EHRs And The OIG

- January 2014 Study *"CMS and its Contractors Have Adopted Few Program Integrity Practices to Address Vulnerabilities in EHRs."* Report No: 0E1-01-11-00571
  - Transition from paper records to EHRs may present new vulnerabilities and require CMS and its contractors to adjust techniques for identifying improper payments and investigate fraud;
  - Focus on:
    - Copied language;
    - Over documentation.

EHRs And The OIG

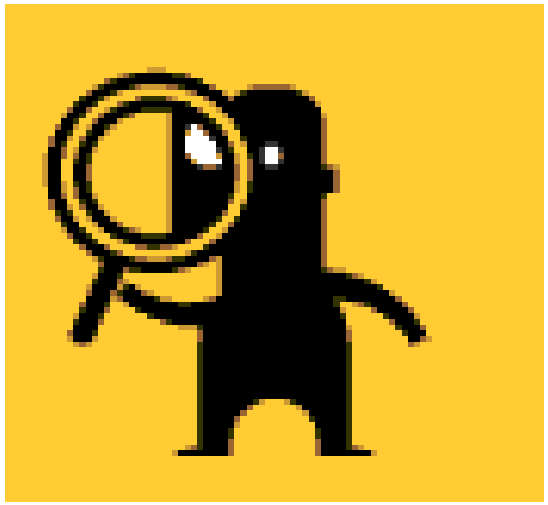
- January 2014 Study, continued
  - What they found:
    - CMS and contractors had adopted few program integrity practices specific to EHRs;
    - Not reviewing EHRs differently than paper records;
    - Contractors not able to identify whether provider had copied language or over documented;
    - CMS offered little guidance to contractors.

EHRs And The OIG

- January 2014 Study, continued
  - What did the OIG recommend?
    - CMS should provide guidance to its contractors in detecting fraud associated with EHRs;
    - CMS should identify best practices and develop guidance tools for deterring fraud associated with EHRs;
    - Contractors should use provider audit logs;
      - validation/authentication of medical record.

EHRs And The OIG

- 2014 OIG Work Plan
  - Look at security and integrity of EHRs
    - Look at providers receiving Meaningful Use incentive payments;
    - Look at documentation vulnerabilities in E&M coding (identical documentation in patient records).



EHRs And Enforcement: The False Claims Act

- The False Claims Act, 31 U.S.C. § 3729, authorizes the United States, or "relators" acting on behalf of the United States to recover monetary damages from parties who submit, or cause others to submit, fraudulent claims for payment by the federal government
- Basic Elements:
  - Submitting or cause to be submitted a claim for payment, or making a false record or statement in order to secure payment of a claim;
  - Claim is false or fraudulent; and
  - Scienter: "knew or should have known" or "deliberate ignorance" of truth or falsity or "reckless disregard" of the truth or falsity of the claim.
  - Liability to both those who submit claims, as well as those who cause claims to be submitted.

No Specific Intent Needed

The FCA Prohibits a Range of Activities

- Knowing presentation of a false or fraudulent claim to the federal government (31 U.S.C. § 3729(a)(1))
- Knowing use or creation of a false record or statement to get such a claim paid by the government ((a)(2))
- Conspiring to defraud the federal government to get a false or fraudulent claim paid ((a)(3))

The FCA Prohibits a Range of Activities

- Intentional failure to return all federal government money or property ((a)(4)
- Intentional making and issuance of a receipt for more than what the federal government actually received ((a)(5));
- Knowing purchase or receipt of property from an unauthorized federal official ((a)(6)
- Knowing creation or use of a false record or statement to decrease a monetary obligation to the government ((a)(7)).

The Consequences of Losing an FCA Case Are Great

- Treble damages assessed on a per claim basis
- Civil penalties of up to $11,000 per claim.
- Program suspension, debarment and exclusion for entities, officers, directors and employees and related parties.

Recent False Claims Act Amendments

- The FCA was amended in 2009 by The Fraud Enforcement and Recovery Act of 2009 ("FERA") and in 2010 by the Patient Protection and Affordable Care Act ("ACA").
- These are the most significant amendments to the FCA since the *qui tam* amendments of 1986, and were intended to reverse certain adverse court precedents, give the government greater power and increase *qui tam* relator resistance to dismissal.

Elimination of Presentment Requirement

- FERA expanded FCA liability by eliminating the "presentment" requirement, overruling the Supreme Court's decision in *Allison Engine Co. v. United States ex rel. Sanders*, 128 S. Ct. 2123 (2008)).

Expansion of "Claim"

- FERA expanded the term "claim" under the FCA to include "money or property spent or used on the Government's behalf or to advance a government program or interest" and where the government provides or reimburses for the claim.

Public Disclosure and Original Source Bars Substantially Lowered

- The ACA modified the FCA to allow the federal government to have the final word on whether a court may dismiss a case based on a public disclosure.
- 31 U.S.C. §3730(e)(4)(A). A relator still may overcome the public disclosure bar if an "original source," and the definitional stricture has been eased. 31 U.S.C. § 3730(e)(4)(B).

Health Care Overpayments to be Remitted in 60 Days

- The ACA provides that Medicare and Medicaid overpayments must be reported and returned within 60 days of discovery or the date a corresponding cost report is due lest FCA liability ensue.

Reverse False Claims Expanded

- FERA extended liability to "knowingly and improperly avoid[ing] or decreas[ing] an obligation to pay or transmit money or property to the Government."

Avoid the Pitfalls…

- EHRs are here to stay
- Choice of the system and system set up are paramount
- In addition to meeting Appropriate Use criteria, the EHR has to work for your practice
- Providers need to balance accurate and efficient clinical documentation with EHR uses billing and reporting purposes

Medicare MACs Weigh In

- Cloned documentation could result in Medicare denials for payment
- Documentation is considered cloned when it is worded exactly like or similar to previous entries. It can also occur when the documentation is exactly the same from patient to patient. Individualized patient notes for each patient encounter are required

Record Issues and Solutions

- Author Identification or Who Wrote that Note?

- It may seem like common sense, but it is often difficult to discern who wrote a note.
  - This is especially true if a note is overly long.
- If copying a note that is not yours, it is crucial that you identify that the original work is not your own.
- It must be clear who wrote a note and that the note is properly authenticated.
- Do you have a policy on what qualifies as authentication?

Record Issues and Solutions

- Cloning
  - It is imperative that each visit note is unique
  - Each patient visit should start with a narrative chief complaint for that day.
  - Ensure that the documentation relates to the patient's reason for visit.
  - There should not be a programmed "Normal" exam that explodes data into the chart.

Record Issues and Solutions

- Copy/ Paste
  - If pasting whole sections of records, make sure you only paste data that does not typically change over time.
    - History: In addition to pasting the information, note that it is unchanged from the date it was originally documented.

Record Issues and Solutions

- Record Bloat

- "Test" a record for reasonableness.
  - An office visit note should not be inordinately long
    - We have seen records over 24 pages for one clinic visit
- Records should not repeat the same information.
- Records should pull in relevant information- not every piece of information needs to be in every note.
- Ask:
  - Is it relevant?
  - Did you consider this information today?

Record Issues and Solutions

- Use for Coding

- **Assessment**
  - Chronic pain syndrome 338.4
  - Fibromyalgia 729.1
  - Facet Joint Disease 721.3
  - Facet Syndrome, Lumbar 724.5
  - Myalgia and Myositis 729.1

Is this really an assessment???

Record Issues and Solutions

- Use for Coding

- A diagnosis code is not an assessment.
- The assessment should be a narrative- or at least specific to the individual patient on that date of service.
- What do you think is the problem?
- What are you ruling out/in?
- What worked or didn't?

Record Issues and Solutions

- What is a Plan?

•Plan

•Long term medication managment (V58.69) - - 01/14/2013

•URINARY DRUG MONITORING - 8 panels. Reason is to prevent diversion, abuse and observance compliance of controlled substances, as part of our narcoitc policy and agreement in chronic narcotic intake patients. The following 8 drugs will be tested: Amphetamines, cocaine, THC, benzodiazepines, TCAs, barbiturates, opiates and methaqualones. (80104) - - 01/14/2013

•Patient encounter was documented using an EHR system (G8447) - - 01/14/2013

•Current medications with name, dosages, frequency and route documented (G8427) - - 01/14/2013

•Pain assessment documented as positive utilizing a standardized tool and a follow-up plan is documented (G8730) - - 01/14/2013

This is an actual Plan from an EHR system

SPELLING ERRORS AND ALL!

Record Issues and Solutions

- What is a Plan?
  - A Plan is not a list of EHR Meaningful Use requirements.
  - A plan should communicate the same things as it did in the paper record.
  - A Plan should communicate what you are going to do to address the issues identified at that patient visit.

While EHRs solve a lot of documentation issues, a lot of other issues arise.

They simply are not the panacea we have been lead to believe.

Conclusions

- Work with your EHR vendor to evaluate the functionality of the record.
- Avoid the pitfalls.
- Test your records for good documentation and communication.
- Don’t be fooled into the trap of EHR setup solely to meet regulatory requirements.

Questions?