



America's Voice for Community Health Care



NATIONAL ASSOCIATION OF
Community Health Centers

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The National Association of Community Health Centers (NACHC) represents Community and Migrant Health Centers, as well as Health Care for the Homeless and Public Housing Primary Care Programs and other community-based health centers.

Founded in 1971, NACHC is a nonprofit advocacy organization providing education, training and technical assistance to health centers in support of their mission to provide quality health care to medically underserved populations.



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The NACHC Mission

To promote the provision of high quality, comprehensive and affordable health care that is coordinated, culturally and linguistically competent, and community directed for all medically underserved populations.



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**For further information about NACHC and
America's Health Centers**

Visit us at www.nachc.com



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Compliance Effectiveness to Drive Operational Excellence

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Coding & Compliance Initiatives, Inc.



My Background

- My connection to compliance
 - CHC
 - Medicare Intermediary experience
- My connection to YOU



Compliance Scope Today

OIG & CMS

- Fraud & Abuse
 - Documentation, coding, billing
 - Stark, anti-kickback, false claims act
 - Compliance guidance

Office for Civil Rights

- HIPAA Privacy & Security



The Foundation

Compliance Excellence





Two Key Components

Compliance Plan

Guiding document

- Code of Conduct
- Seven required elements

Compliance Program

Daily Operations

- How effectively do we operate and follow compliance procedures
- Risk assessments
- Auditing and monitoring



Compliance Program Guidance

Issued by Office of Inspector General (OIG)

- Good models for health centers to consider
 - Small group practices
 - Third party billing companies
- <https://www.oig.hhs.gov/compliance/compliance-guidance/index.asp>



The Seven Elements

- Conducting internal monitoring and auditing
- Implementing compliance and practice standards
- Designating a compliance officer
- Conducting appropriate training and education



The Seven Elements

- Responding appropriately to detected offenses and developing a corrective action plan
- Developing open lines of communication
- Enforcing disciplinary standards through well publicized guidelines



Compliance Officer

- “Quarterback”
- Not an expert in all operational areas



Compliance Committee

- Coding and billing
 - Clinicians
 - Ancillary
 - Providers
 - Finance
 - IT
- Not necessarily all managers




Risk Assessment



Where Risk Exists

- Over 80% of your risk is **INSIDE** your health center
- Lack of accurate internal controls (procedures)
- Internal controls not followed

Risk

- All Risk  Equal
- Focus your time and money on
 - Materiality (what is the impact of failure)



Risk Assessment - Focus

Two Environments to Consider

Internal

Uniquely you

External

OIG, OCR, State,
HRSA



Risk Areas

- Coding & Billing
- Reasonable & Necessary
- Documentation Quality
- Improper Inducements
- Quality & Patient Safety
- Privacy & Security
- HRSA



Rapid Change Considerations

- Always consider “change”
 - New regulations?
 - New providers?
 - New services?
 - New technology?
 - Employee turnover



Data Analytics

- Production reports by provider
- Rejection reports – clearinghouse
- Denials – patterns?
- Scheduling & “no shows”
- Year to year comparatives



Technology Considerations

Risks evolve with EMR updates

- Templates, note cloning
- Lack of medical necessity
- Malpractice risks
- HIPAA IT Risk Assessment



Documentation Risk

- Documentation indicates “the following were reviewed: nutrition, tobacco use, alcohol, caffeine use and drugs of abuse”
but the social history indicates
- Patient smoking status as “never smoker” and no history of alcohol use or caffeine



Documentation Risk

- Review of systems does not correlate with HPI
 - HPI indicates symptoms of nausea and vomiting, but the review indicates “negative for nausea and vomiting”



Documentation Risk

- Systems marked as positive in ROS are not documented as being addressed:
 - Creates potential liability risk
 - If positive for shortness of breath and patient dies of pulmonary embolism
 - If positive for chest pain, patient subsequently has heart attack

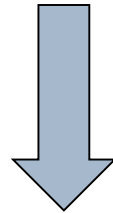


Billing Risk – Supplies / Drugs

- LARC supplies
- Many States allow the contraceptive device to be separately billed (and paid) in addition to the office visit
- In our Pilot Project in 2017, approximately \$20,000 in supply charges not billed in one quarter by a facility
- **What is your reconciliation process between physician orders and charge capture?**

Payment Posting Risk

- Communication about
 - Rejections
 - Denials



Back to the Physicians / Mid-levels



60 Day Rule

- Must repay within 60 of quantifying error
- Act without delay once you suspect, not usually longer than 6 months to quantify
- 6 Year lookback maximum
- False Claims Act liability, Civil Monetary Penalties liability



False Claims Act

- Key provisions;
 - Knowingly presents, or causes to be presented, a false or fraudulent claim for payment
 - Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim



False Claims Act

- Penalties;
 - Up to “triple” the amount paid, plus
 - Up to \$10,957 - \$21,916 per false claim
- Qui Tam (whistleblower)
 - Can receive 15% - 30% of recoveries
 - **92% of 2017 false claims act recoveries**



HIPAA Risk Assessment Considerations



HIPAA Desk Audits

- Some areas of focus;
 - NPP content and practices 45 CFR 164.520(a)(1) & (b)(1)
 - NPP electronic notice requirements 164.520(c)(3)
 - Patients' rights to access PHI 164.524
 - Timeliness of breach notification 164.404(b)



HIPAA Desk Audits

- Content of breach notification 164.404(c)(1)
- Security risk analysis 164.308(a)(1)(ii)(A)
- Security risk management 164.308(a)(1)(ii)(B)

Patient Access Rights

- Patient access rights
 - Access vs. authorization
 - CE may require the request to be in writing
 - Be consistent



Access Rights con't

- Reasonable verification – cannot create barriers / unreasonable delays
 - May not require use of the web portal
 - May not require the individual to physically come to the office

Access Rights con't

- Expected CE can provide via email
 - Must send encrypted if requested by the individual
 - Can send unencrypted if requested by individual

Must warn them there is “some level of risk” while in transit



Business Associate Agreements

- Verify:
 - In place and signed for relevant partners
 - Contain all necessary language

Privacy Rule vs. Part 2

- Privacy Rule is overarching umbrella
 - Behavioral health & psychotherapy notes
 - State Law and “minors” rights
- Part 2 covers substance use PHI
 - More stringent on use and disclosure than Privacy Rule guidelines
 - State Law will outline rights of a “minor” around use and disclosure

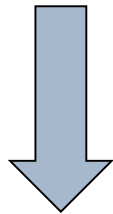


Security Risk Analysis

- Enterprise-wide risk analysis and risk management plan
- What are the risks and vulnerabilities to the
 - Confidentiality
 - Integrity
 - Availabilityas it relates to ePHI

Security Risk Analysis

- Administrative Safeguards
- Technical Safeguards
- Physical Safeguards



ePHI that you create, maintain, transmit and receive



Cybersecurity Risk

- Cybersecurity / forensic experts estimate 80 million **internal** cyberattacks occur annually

The majority of risk is **inside** your health center



OCR Enforcement

- In order of frequency:
- Impermissible uses and disclosures of PHI
- Lack of safeguards of PHI
- Lack of patient access to their PHI
- Uses or disclosures beyond “minimum necessary”
- Lack of administrative safeguards of ePHI



HIPAA Settlement

- Metro Community Provider Network – an FQHC in Denver CO
- Email phishing compromised PHI of 3200 patients
- Fined \$400,000 for failure to properly conduct a risk analysis and implement a risk management plan timely
- When MCPN did finally conduct a security risk analysis it was insufficient to meet the Security Rule standards



HIPAA Settlement

- Center for Children's Digestive Health contracted with FileFax for scanning and file storage
- FileFax was audited by OCR, who then moved "upstream" to the covered entity
- Neither party could provide a copy of an executed business associate agreement
- **\$31,000 fine to CCDH**



HIPAA Settlement

- Pagosa Springs Medical Center failed to immediately terminate remote access for a former employee
- The former employee was able to access PHI through the web-based scheduling calendar (557 patients)
- AND
- The hospital did not have a Business Associate Agreement in place with the web-based calendar vendor
- **\$111,400 fine**

Risk Assessment Matrix

Risk Assessment Matrix			Impact Level	
		<u>Significant</u>	<u>Moderate</u>	<u>Low</u>
Frequency of Event				
Daily				
Weekly				
Monthly				
Occasionally				



Every Year Areas of Focus



Low Hanging Fruit

- ▶ OIG List of Excluded Ind. and Entities
- ▶ Business Associate Agreements
- ▶ Breach Notification Policies / Proc.
- ▶ Coding & billing audits
- ▶ Facilitate Education & Document it




Low Hanging Fruit

- ▶ Who does coding?
 - ▶ Mandate ongoing education
- ▶ Loop physicians back into billing challenges created at their level

80 / 20 Rule



- ▶ High risk and materiality
- ▶ All operational issues  equal



External Resources



Office of Inspector General

- **OIG Work Plan**
- www.OIG.HHS.Gov
 - Reports and Publications



Office of Inspector General

- **OIG Resources for Boards**

- www.OIG.HHS.Gov

- Compliance

- Compliance 101 and Provider Education

- Education Material for Health Care Boards



Office of Inspector General

- For current activity on new risk areas:
- www.OIG.HHS.Gov
 - Advisory Opinions
 - Special Fraud Alerts

HIPAA

- ▶ HIPAA Privacy and Security



Office for Civil Rights
–www.hhs.gov/ocr



Compliance Excellence

- We are what we repeatedly do.
Excellence then is not an act, but a habit.

Aristotle



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