



MED-NET CONCEPTS LETTER ©

Where Compliance and Ethics, Risk Management/Safety, Quality Assurance and Performance Improvement, Reimbursement and Law Come Together.

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Dear Colleague,

Awareness is the first step toward an effective Compliance, Risk Management, Quality Assurance, Performance Improvement, and Law program. The following true reports are intended to broaden your understanding and awareness of potential exposures of liability throughout healthcare settings with the expectation that, as a starting point, forewarned is forearmed.

We believe a first-hand opinion of our sector of healthcare provides invaluable insight into the daily challenges facing our community.

Remember, it is important to immediately report any abuse of residents/patients, no matter the circumstances.

Please contact us for additional information as well as to discuss potential proactive programs to detect, prevent, and mitigate potential exposures and damages.

ALERTS



The HHS Office for Civil Rights (OCR) has issued a new fact sheet that provides a clear compilation of all provisions through which a business associate can be held directly liable for compliance with certain requirements of the HIPAA Privacy, Security, Breach Notification, and Enforcement Rules (“HIPAA Rules”), in accordance with the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009. The new fact sheet may be found **here** along with OCR’s guidance on business associates.

Chicago-Area Physical Therapy Center and Four Nursing Facilities to Pay \$9.7 Million to Resolve False Claims Act Allegations

A Chicago-area physical therapy center and four nursing facilities have agreed to pay \$9.7 million to resolve civil allegations that they violated the False Claims Act by providing unnecessary services to increase Medicare payments. The settlements and consent judgments resolve allegations that the skilled therapy service provider and its owner worked with the four skilled nursing facilities to increase Medicare reimbursements by “upcoding” their patients’ “Resource Utilization Group” scores. The allegations also contend that the providers rendered skilled therapy to patients who did not need it or could not benefit from it, as part of an effort to bill the highest possible amount to Medicare.

Compliance Perspective:

A rigorous system of compliance and cross-checking needs to be in place to ensure that no up-coding occurs, such as billing Medicare for 45 minutes of individual therapy when the actual therapy time was 30 minutes. An audit of claims submitted for accuracy in coding should be performed quarterly each year or more often if indicated. A monthly triple-check process with a representative from therapy, nursing, and the business office can ensure that billing is correct before claims are submitted to Medicare.

Ongoing Email Phishing Attacks Highlight Need for Staff Education

Cancer Treatment Centers of America (CTCA) discovered an employee's email account had been compromised as a result of a response to a phishing email. The email account breach occurred after the employee disclosed network login credentials when responding to a seemingly legitimate internal email. CTCA discovered the breach the following day and secured the account by changing the password. This was the second successful phishing attack on CTCA to be reported in a six month period. In the previous attack, an employee's email account which contained the protected health information (PHI) of 41,948 patients was compromised

An employee at an Oregon hospital responded to a spear-phishing attack, which allowed a hacker to obtain their user credentials. The IT team detected the breach just 40 minutes later and was able to secure the account.

Several employees of a Connecticut-based health system fell victim to phishing attacks, potentially compromising the PHI of patients. The attack was detected soon after, and the accounts were secured.

According to a recent report published on the JAMA Network¹, among a sample of US healthcare institutions that sent phishing simulations, almost one in seven simulated emails sent were clicked on by employees. Increasing campaigns were associated with decreased odds of clicking on a phishing email, suggesting a potential benefit of phishing simulation and awareness.

Privacy and Security Perspective:

Communication should be provided to all staff members regarding phishing emails. Examples should be provided to demonstrate potentially harmful email addresses, URLs, and types of attacks.

Med-Net Academy offers a course in cybersecurity, including email phishing attacks: Understanding and Preventing Ransomware, APTs, and Zero Day Exploit Attacks.

Eloping Georgia Nursing Home Resident Narrowly Misses Death

A resident of a Georgia nursing home opened the window of her room, climbed outside, and wandered off. The staff at the nursing home realized she was gone and launched a search. The woman had been reported to be delusional and refusing to take some of her prescribed medicine. Thirty minutes later, two nurse aides spotted her on railroad tracks about a mile away, and they heard a train approaching. The resident was rescued before the train got there, but it was a very close call. One of the nurse aides told investigators, "If it had been another minute, the resident would have been hit by the train."

Risk Management Perspective:

Staff should be trained to assess residents for wandering and elopement risk, and to apply prevention protocols. Regular audits should be conducted to determine if residents at risk of eloping are being adequately monitored by staff, and if electronic monitoring systems are functioning properly. Periodic elopement drills can help staff demonstrate competence in responding appropriately.

¹<https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2727270>

Nurse Aide Guilty of Assaulting New Hampshire Nursing Home Resident

A former nurse aide, 19, who made “a recording of herself putting her hand over a 92-year-old resident’s mouth to prevent the resident from speaking,” was found guilty of simple assault and abuse. The facility learned of the allegations after receiving a tip from a retail store employee who saw the nurse aide display the recording of the crimes on her phone. Staff at the facility immediately notified the local police department, who investigated the case and arrested her. The aide “admitted that she recorded herself covering [the resident’s] mouth. She said she wanted to show one of the nurses but then ended up showing some co-workers. She said she did this because [the resident] was acting ‘extreme.’”

QAPI Perspective:

Educate the staff on residents’ rights, including appropriate responses to negative behaviors and the right to privacy. Resident care staff should communicate all issues to the supervisor and management. Staff should also be instructed about the facility’s policy and procedures that forbid the use of personal recording devices and social media involving residents.

Miami Valley Fair Housing Center Sues Nine Nursing Homes over Sign Language Services

The Miami Valley Fair Housing Center (MVFHC) is suing nursing homes and nursing home companies for allegedly declining to provide aid or interpreter services to hearing-impaired or deaf people. MVFHC said it had “testers” call or visit defendants to determine whether they would supply an ASL interpreter for a deaf resident if requested. “Defendants made statements to plaintiff refusing to provide auxiliary aids and services necessary to achieve effective communication with prospective deaf residents who use ASL (American Sign Language),” the federal lawsuit states. “Therefore, plaintiff alleges that defendants’ conduct amounts to discrimination based on disability.” The suit names nine defendants in all.

Risk Management Perspective:

Healthcare providers have a duty to provide appropriate auxiliary aids and services when necessary to ensure that communication with people who are deaf or hard of hearing is as effective as communication with others (ADA 28 C.F.R. § 36.303(c)). The US Department of Justice expects that the healthcare provider will consult with the person and consider carefully his or her self-assessed communication needs before acquiring a particular auxiliary aid or service (56 Fed. Reg. at 35566-67).

Yours truly,



David S. Barmak, JD, CEO.

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MED-NET ACADEMY E-LEARNING COURSES

Med-Net Compliance offers our clients' employees the opportunity to expand their knowledge of healthcare compliance rules and regulations. Healthcare Compliance e-learning courses on fraud, waste and abuse, privacy, human resources, safety, and compliance officer training are available for review and study. The courses are authored by Betty Frandsen, Vice President of Professional Development, and her staff, and are password protected, ensuring use only by client staff members. If you are not a client, click [HERE](#) to learn how you can become one.

- Abuse of Resident Personal Funds
- How To Survive a NY OMIG or other State Medicaid Audit
- Elements of a Compliance Program and Code of Conducts
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COMPLIANCE