



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



New Edition of Form I-9 Now Available

[A new version of the I-9 employment eligibility verification form has been issued.](#) The new edition is dated 10/21/2019 but will not become mandatory until May 1. Through April 30, employers can choose to use the previous edition dated 07/17/2017 or the new edition. The new version of the paper form has no changes from the prior version.

Employee of Michigan Healthcare Company Leaked Patient Data to Personal Injury Attorney

A Michigan eight-hospital health system fired an employee suspected of disclosing confidential information of more than 1,000 patients to a person believed to have been working on behalf of a personal injury attorney. The company said it notified 1,182 individuals who may have had their data compromised and worked with law enforcement on the investigation. They also notified the Michigan Health & Hospital Association to alert other hospitals about the incident and guard against similar intrusions.

Risk Management Perspective:

The unique, key issue in this case study is that the employee was suspected of disclosing confidential information to a personal injury attorney. Also at issue here is whether or not an employee has the right to protected health information of residents/patients without their consent in order to earn money referring them to a personal injury attorney. It is an unlawful use of marketing, known as being a runner, and there are statutes which explicitly prohibit it. According to [NJ Rev Stat § 2c:21-22.1 \(2018\)](#), "Runner" means a person who, for a pecuniary benefit, procures or attempts to procure a client, patient, or customer at the direction of, request of, or in cooperation with, a provider whose purpose is to seek to obtain benefits under a contract of insurance or assert a claim against an insured or an insurance carrier for providing services to the client, patient, or customer, or to obtain benefits under or assert a claim against a State or federal healthcare benefits program or prescription drug assistance program. A person is guilty of a crime of the third degree if that person knowingly acts as a runner or uses, solicits, directs, hires or employs another to act as a runner. Facilities should review referral sources of all their current residents/patients to ensure the referral sources came in appropriately.

Pennsylvania Nursing Home Sued over Alleged Abuse

A lawsuit was filed against a Pennsylvania nursing home following a case of alleged elder abuse that resulted in the state fining the facility nearly \$50,000. Attorneys for the 78-year-old resident allege a nurse's aide at the facility violently grabbed the woman while she attempted to use a bedpan, causing significant bruising and broken ribs. The lawsuit, filed January 27, said the resident entered the facility for rehabilitation last January following a fall at her home that led to knee, hip, and ankle pain as well as an abscess to her foot. Attorneys for the resident say a nurse's aide had been very rough with her while helping her use a bedpan, which alarmed another employee in the room. According to the lawsuit, when the abuse was reported to superiors, the whistleblower was told to "keep her mouth shut."

Compliance Perspective:

Staff should be educated about ways to approach and provide care to residents without using force. Periodically audit reported incidents involving staff-to-resident altercations to determine if staff have been trained in and are applying non-confrontational, supportive methods of providing care to residents. Make sure staff understand the proper channels for reporting incidents of abuse and that retaliation for reporting will not be tolerated. Med-Net Academy offers a helpful course on [Staff Sensitivity toward Residents](#).

Important Notice Regarding Individuals' Right of Access to Health Records

On January 25, 2013, HHS published a final rule entitled "Modifications to the HIPAA Privacy, Security, and Enforcement Rules Under the Health Information Technology for Economic and Clinical Health Act (HITECH), and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules." (2013 Omnibus Rule). A portion of that rule was challenged in federal court, specifically provisions within 45 C.F.R. § 164.524, that cover an individual's access to protected health information. On January 23, 2020, a federal court vacated the "third-party directive" within the individual right of access "insofar as it expands the HITECH Act's third-party directive beyond requests for a copy of an electronic health record with respect to [protected health information] of an individual . . . in an electronic format." Additionally, the fee limitation set forth at 45 C.F.R. § 164.524(c)(4) will apply only to an individual's request for access to their own records, and does not apply to an individual's request to transmit records to a third party. The right of individuals to access their own records and the fee limitations that apply when exercising this right are undisturbed and remain in effect. OCR will continue to enforce the right of access provisions in 45 C.F.R. § 164.524 that are not restricted by the court order. A copy of the court order in Ciox Health, LLC v. Azar, et al., No. 18-cv-0040 (D.D.C. January 23, 2020), may be found at https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2018cv0040-51.

Compliance Perspective:

Facilities should keep up to date with the latest HIPAA requirements.

Iowa Nurse Sentenced for Drug Theft and Tampering with a Consumer Product Resulting in Injury

A former nursing home employee was sentenced to four years in prison for taking painkillers from hospice patients for her own use. The 31-year-old registered nurse was sentenced to four years on a plea of tampering with a consumer product resulting in injury and acquiring oxycodone by deception. She will be on supervised release for three years following her prison time. Authorities allege that at least 50 times she checked out hydrocodone for two patients' pain relief and swapped it out for Tylenol that she gave the patients, keeping the hydrocodone for herself. On Dec. 24, 2018, she allegedly took a part of hospice patients' morphine solution for herself and diluted the remainder with mouthwash, putting the patient, who was suffering from a terminal illness, at risk of increased pain. She is also accused of opening medication cartridges to obtain narcotic pain pills including oxycodone, morphine, tramadol and codeine, and then replacing the medications with Tylenol, Lasix, and other substances, leading to \$593 in false billing for Medicare, Medicaid, and the patients. Before working at the nursing home, she had been terminated from two Iowa hospitals for inaccurate narcotic documentation and failing to follow pain medication protocols, according to court records.

Risk Management Perspective:

Policies and procedures should be in place regarding the reconciliation protocols for ensuring that controlled medications intended for residents cannot be misappropriated. Staff should be educated about the abuse, neglect, misappropriation, and exploitation of controlled medications, and how to prevent diversion and discover if controlled medications have been tampered with or are unaccounted for. Periodically audit medication documentation and observe the process of medication reconciliation to determine if protocols for ensuring the prevention of misappropriation of controlled medications are being followed. Med-Net Academy has a course on this topic: [Drug Diversion: What Every Nursing Facility Needs to Know](#).

New Jersey Man Used Fraudulent Invoices to Steal from Hospitals, Clinics, and Doctors' Offices across US

A 49-year-old New Jersey man admitted mailing thousands of fraudulent invoices to hospitals, clinics, and doctor's offices throughout the United States. Operating under the name of Pinnacle Medical Supplies, he prepared and caused to be prepared fraudulent invoices for medical supplies such as diabetic test strips, EpiPens®, and sanitizing wipes that the medical providers never ordered or received. In addition, the invoices included fraudulent shipping information and a fraudulent address. He then contracted with a legitimate bulk mailing company to mail more than 10,000 invoices to medical providers across the United States. Each invoice included a payment envelope preaddressed to Pinnacle Medical Supply at mailboxes he had set up with commercial mail receiving agents in Florida and Texas. In response to the phony invoices, at least 943 medical providers sent \$214,495 to Pinnacle Medical Supply.

Compliance Perspective:

Ten percent of the recipients of the fraudulent invoices paid without confirming receipt. The others were not taken in by the scam. There need to be checks and balances in place. There should be a segregation of employee duties: Whoever does the purchasing should not also do the accounts payable. There should also be a system of inventory control to check the status of any supplies received.

Taking this one step further, what if this individual had recruited the person who receives products at each of these providers? He could have sent the invoice and provided a signed packing slip to accounts payable so the items would match up: a fake packing slip to his colleague and a fake inventory list to accounts payable. That is why inventory control needs auditing. Using bar code scanners makes it difficult for employees to steal inventory and alter records and documents. It is also helpful to rotate employee assignments and have policies requiring annual vacations.

State Investigating Deadly Stabbing at Virginia Nursing Home

The Virginia Department of Health launched an investigation into the death of a patient at a Richmond nursing home and rehabilitation center. The on-site investigation began January 21, six days after the fatal stabbing of an 86-year-old resident, who was found dead inside his room. The police arrested his roommate, 65, and charged him with murder. "Reportedly, the residents were arguing, and one resident fatally stabbed the other with a pocketknife," a spokesperson for the Centers of Medicare and Medicaid Services (CMS) in Philadelphia said. CMS officials were working with the Virginia officials. According to court records, the 65-year-old has a long history of criminal activity and mental illness. A nurse at the facility said there had been confrontations between the two residents, and that they should have been moved to separate rooms.

Risk Management Perspective:

Failure to perform a Preadmission Screening and Resident Review (PASARR) to evaluate residents for serious mental illness in order to ensure that they are in the most appropriate setting, failure to move residents who are having confrontation issues into separate rooms, and failure to maintain mandated levels of staff may be considered abuse and neglect and deemed provision of substandard quality of care, in violation of state and federal regulations. Train staff to report incidents of confrontations between residents and take necessary

precautions to prevent future incidents that may result in serious harm to one or both residents, particularly when one of the residents has a history of criminal behavior or mental illness. Periodically audit to determine if staff are ensuring a Level I PASARR at admission, if a required Level II PASARR is obtained and incorporated into the resident's care plan, and if staffing levels comply with state and federal regulations. For more information on this topic, Med-Net Academy offers these courses: [Resident to Resident Aggression](#) and [Workplace Violence Prevention and Response](#).

Massachusetts Vendor Charged with Defrauding VA Hospitals by Failing to Inspect Medical Gas Systems

A 49-year-old vendor for several Veterans Affairs medical facilities was charged in connection with a scheme to profit by billing for, but failing to perform, critical medical gas inspections at VA facilities. It is alleged that from May 29, 2014, through March 5, 2015, he engaged in a scheme to defraud the VA by creating false invoices and reports for medical gas inspections that never took place. Medical gas supply systems deliver piped gases, including compressed air, oxygen, nitrous oxide, nitrogen, and carbon dioxide, to operating rooms, recovery rooms, and patient rooms. Medical gas supply systems must be inspected and maintained regularly to ensure the safety of patients and medical professionals. The vendor allegedly failed to perform, and then lied about, scheduled inspections of medical gas systems at VA facilities in Sioux Falls, SD, Tuskegee AL, and Montgomery, AL. He was allegedly paid \$8,981 by the VA for services that he did not perform.

Risk Management Perspective:

One way to effectively combat fraud is to understand the various fraud risks you, as a provider, face. Vendor fraud is one key fraud category, and can manifest itself in different ways: billing schemes, check tampering, bribery, etc. In this case the vendor billed for work he hadn't done, which not only was fraudulent, but also a safety risk. There should be policies and procedures set in place to provide accountability and ensure the work contracted for is actually done.

Florida Medical Clinic Worker Pleads Guilty to Aggravated Identity Theft and Wire Fraud

A 49-year-old woman pleaded guilty to aggravated identity theft and wire fraud and faces a maximum penalty of 20 years in federal prison for the wire fraud offense, to be followed by a mandatory consecutive term of 2 years' imprisonment for the identity theft offense. She worked administrative jobs at several Florida medical clinics, using the jobs to gain access to patient medical records to obtain patients' birthdates and Social Security numbers. She then sold the stolen identities to others for cash, or used them herself to defraud businesses. In May 2019, she unwittingly sold stolen patient identities to an undercover law enforcement officer. When agents searched her home and car, they located 113 distinct sets of identities that had been stolen from clinic patients.

Compliance Perspective:

In this case study, the woman worked at various clinics in order to gain access to patients' confidential information so she could use that information fraudulently herself, or to sell to others. Unfortunately, healthcare employee data theft is a somewhat common occurrence. Conduct regular audits of access logs to determine if employees are inappropriately accessing patient files. Staff should know that the hotline is there not only to report instances of abuse or neglect, but to also be used in cases of suspected employee fraud.

Yours truly,



David S. Barmak, JD, CEO.

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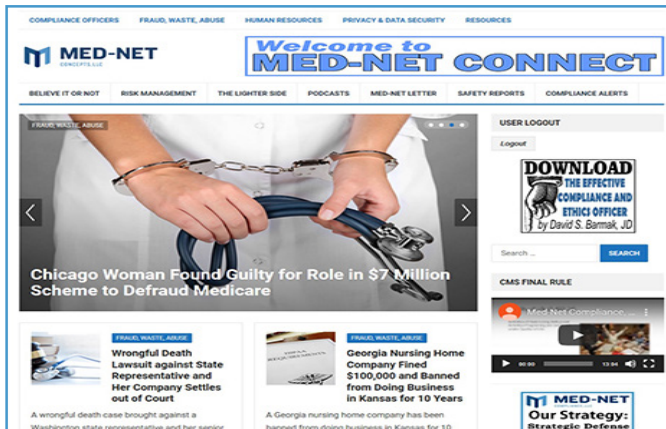
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