Deciphering The “Black Box”:
Compliance and the Operating Room

Robert H. Ossoff, DMD, MD, CHC
Assistant Vice Chancellor for Compliance
and Corporate Integrity

Christopher D. Thomason, MBA, CHC
Director, Compliance and Corporate Integrity

Vanderbilt Medical Center
Nashville, TN
HCCA Compliance Institute
Orlando, FL
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Black Box: The Operating Room

Topics to Address

◆ Pre-Operative Workflow
  ◆ Billing Compliance
  ◆ Safety Compliance

◆ Surgery in the Teaching Environment
  ◆ Over-lapping Surgery
Black Box: The Operating Room

◆ Pre-Operative Work – Billing Compliance
  
  • Surgeon evaluates the patient
    • Document the encounter
      – Encounter must demonstrate medical necessity
      – Demonstrate that the risks and benefits were covered with the patient
      – Order must be documented for surgery
    • Sounds simple enough – but is it?

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◆ Pre-Operative Work – Billing Compliance
  
  • Administrative Staff
    • Schedule the surgery
    • Verify benefits
    • Determine insurance requirements/limitations
      – Is this on the Inpatient Only List
      – Elective versus Cosmetic or Investigational
      – Predetermination required?
      – Will this require an overnight stay, a couple hours to recover or other?
    • Oh, did the Surgeon write the order?
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- Pre-Operative Work – Billing Compliance
  - Order for Surgery must contain a minimum of five elements
    - Patient identifying information (e.g. name or other identifier)
    - Procedure to be performed
    - Diagnosis (e.g. medical necessity justification)
    - Physician’s authentication
    - Date and Time the Physician signed the order
  - Did the Surgeon update the History of Present Illness?

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- Pre-Operative Work – Billing Compliance
  - History of Present Illness
    - Documentation must be updated no more than 30 days before or 24 hours after admission or registration but prior to the surgical procedure itself.
    - Regulations also require that an updated examination of the patient occur within 24 hours of admission or registration that documents any changes in the patient’s condition when the HPI was completed within 30 days prior to the admission or registration.
  - Did we remind the patient why they were here? Prove it!!
Black Box: The Operating Room

- Pre-Operative Work – Billing, Legal and Safety
  - Consent to Surgery
    - A properly executed consent to surgery must be obtained prior to the operation
      - Development of the consent form can be complex
      - Multiple citations are involved with form development
      - Should include staff from compliance, legal, administration, nursing and surgery to ensure all parties understand the requirements for developing, implementing and executing a compliant surgical consent process
    - Failure could lead to lawsuits and possible allegations of criminal assault in today's medical-legal environment

- Pre-Operative Work – Patient Safety
  - Safety of the patient takes precedence over all things compliance
  - Communication Breakdown
    - The Joint Commission states that between 1995 and 2006 a leading root cause for sentinel events was communication breakdown
    - Compliance must be involved in the protection of the patient in the proper delivery of care
    - TJC established a universal protocol for delivery of surgical services
Pre-Operative Workflow – Patient Safety

- TJC Universal Protocol
  - Aimed at eliminating communication breakdown and at establishing how a patient is moved from pre-op to post-op in a safe and systematic manner
  - Aimed at preventing wrong-person, wrong-site and wrong-procedure surgery
  - Relies on strategies that involve patient interaction and communication with the surgical team to achieve the goal

Pre-Operative Work – Patient Safety

- TJC Universal Protocol
  - Begins with verification of the correct patient, site, and procedure and is repeated throughout the preoperative period each time a patient’s care is transferred from one provider to the next
  - The attending surgeon is responsible for verification of these parameters through the process of communication with the patient and completion of all documents
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◆ Pre-Operative Work – Patient Safety

- TJC Universal Protocol
  - Surgical site marking is performed by the attending surgeon while the patient is awake and involved if possible
  - This step is included to verify the procedure and site in an active manner outside of what is merely listed on a written document
  - It isn’t over yet!

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◆ Pre-Operative Work – Patient Safety

- Once the patient is marked and prior to incision, a “time-out” is called under this protocol

- This is a written check list and verbal affirmation that confirm patient identity, side and site of surgery, general and specific health concerns about the patient, the availability of necessary instruments, materials and implants for the procedure prior to the operation
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◆ Pre-Operative Work – Patient Safety
  ● TJC Universal Protocol
    ▪ Despite the aggressive nature of TJC’s universal protocol, a 2007 review found that cases of wrong-patient, wrong-site surgery had actually increased rather than decreased
    ▪ The source for this discrepancy has been linked to failure of compliance in protocols even when they are set in place
    ▪ Common thread was communication breakdown

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◆ Pre-Operative Work – Patient Safety
  ● TJC Universal Protocol
    ▪ When facilities have concrete application of the protocol with standardized implementation and coordinated teamwork approach, success can be achieved
    ▪ Compliance at this level requires multidisciplinary cooperation with the surgeon taking a leading role
Black Box: The Operating Room

- Post-Operative Work – Patient Safety
  - Communication is critical when transferring the patient from the OR to the recovery room and beyond
  - Compliance concerns arise with ensuring appropriate orders for care are given in the recovery room as well as at discharge

Surgery in a Non-Teaching Environment

- Non-Teaching Environment
  - Surgeon identifies the problem and proceeds with the plan of care that involves a surgical procedure
  - Patient follows the workflow described previously and moves through this “seamless” process
  - Every incision made, every organ manipulated, and vessel coagulated are performed by the principle operator, the attending surgeon
Surgery in a Teaching Environment

- **Teaching Environment**
  - All of the aforementioned requirements exist for the teaching physician but there are unique compliance issues that arise in this setting related to overlapping surgeries and teaching physician rules, in general.
  - **Overlapping surgery**
    - The attending or teaching surgeon has a team of residents and fellows to assist in the orchestration of the steps of the surgical procedure itself.
    - This allows the surgeon to act in the best interest of the patient by directing and performing the key and critical portions of the procedure as well as training residents and fellows.

- **Teaching Environment**
  - **Overlapping Surgery**
    - Two patients can not have surgery at concurrent times; however, in the teaching setting, two teams can begin and end a procedure so that the teaching surgeon can be available to perform the key portions of each procedure.
    - Strict rules apply to the timing of these events and the teaching surgeon has the responsibility to document precisely what the key portions of the procedure are and that they were present for them.
Teaching Environment

- Overlapping Surgery
  - This process allows for the surgical procedures to be scheduled and staggered in such a way that one procedure does not have to conclude before the next begins as long as the key portions of one procedure have been completed prior to the commencement of the next procedure
  - This process allows the teaching physician to instruct the resident and fellow so that they will gain the knowledge, experience and tactile skill necessary to complete their training in a safe manner

Overlapping Surgery

- This process also allows specialized surgeons, whose skills are in high demand, the ability to expand their services to a greater number of patients
- The rules that govern this practice allow for protection of the patient so that the teaching surgeon is not over-extended in a fashion that does not allow direct oversight or participation for the key portions of the case
Surgery in a Teaching Environment

**Teaching Environment**

- **Overlapping Surgery**
  - This unique situation presents a real challenge for the compliance professional
  - There must be adequate policies and procedures in place within the academic teaching facility to govern this practice
  - There must be adequate education regarding these policies to all staff involved with performing this service
  - There must be adequate monitoring of this service to ensure compliance with the policies and procedures

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Surgery in a Teaching Environment

**Teaching Environment**

- **Overlapping Surgery**
  - First step to understanding this process is to understand the guidelines that apply to teaching surgeons and the compliance requirements for conducting billable, overlapping surgical procedures
  - Three key elements
    - Presence of the teaching physician and documentation thereof;
    - Fulfilling the backup surgeon requirement; and
    - Prohibition on billing for more than two concurrent surgical procedures by the teaching physician
Surgery in a Teaching Environment

◆ Teaching Environment

  • Overlapping Surgery
    • Element One: Presence of the surgeon and documentation requirements
      – CMS states that "In order to bill Medicare for two overlapping surgeries, the teaching surgeon must be present during the critical or key portions of the surgery. Therefore, the critical or key portions may not take place at the same time."
      • Vanderbilt’s process for documenting this process

  • Vanderbilt’s process for ensuring compliance
Teaching Environment

- Overlapping Surgery
  - Element Two: Fulfilling the backup surgeon requirement
    - CMS states “When a teaching physician is not present during non-critical or non-key portions of the procedure and is participating in another surgical procedure, he/she must arrange for another qualified surgeon to immediately assist the resident in the other case should the need arise.”
  - Vanderbilt’s process to ensure compliance

- Element Three: Prohibition on billing for more than two concurrent surgical procedures by the teaching physician
  - CMS states “In the case of three concurrent surgical procedures, the role of the teaching surgeon in each of the cases is classified as a supervisory service to the hospital rather than a physician service to an individual patient and is not payable under the physician fee schedule.”
  - Vanderbilt’s process to ensure compliance
Surgery in a Teaching Environment

Teaching Environment

- Overlapping Surgery – Things to ensure
  - Process relies heavily on the surgeon’s documentation
    - Policies and procedure should be sufficient to provide instruction on acceptable and required documentation
    - The surgeon must be present and document they were present for the key portions of the surgical procedure
    - Back-up surgeon must be identified prior to the surgery and be immediately available for non-key portions of the surgery
    - Prohibit billing for surgeries where a surgeon is conducting more than two surgeries concurrently
    - Have a reliable monitoring and audit process in place for this compliance concern

Resources

- Consent to Surgery
  - 42 CFR 482.22(c)(5)
  - 42 CFR 482.51(b)(1)
  - 42 CFR 482.51 (b)(2)
  - 42 CFR 482.13(b)(2)
  - 42 CFR 482.24(c)(2)(v)
  - Root causes of sentinel events, all categories, Oakbrook, IL: Joint Commission, 2006
  - 2008 National Patient Safety Goals by the Joint Commission for Hospital Accreditation
  - The Joint Commission Perspectives on Patient Safety, October 2007, Volume 7, Issue 10

- General and Quality
  - Institute Of Medicine, Crossing The Quality Chasm: A New Health System For The 21st Century, March 2001

- Over-lapping Surgery
  - Medicare Claims Processing Manual, Chapter 12 – Physicians/Nonphysician Practitioners, Section 100.1.2 (a)(2)
Questions?

Contact Information

Robert Ossoff, DMD, MD, CHC
Assistant Vice Chancellor,
Compliance and Corporate Integrity
1500 21st Ave. S., Suite 3100
Nashville, TN 37212
Robert.Ossoff@vanderbilt.edu
(615) 343-0429

Chris Thomason, MBA, CHC
Director, Compliance and
Corporate Integrity
1500 21st Ave. S., Suite 3100
Nashville, TN 37212
Chris.Thomason@vanderbilt.edu
(615) 343-7266