MDS 3.0: A Compliance Officer's Nightmare or Nirvana?

Introduction

- In October 2010, CMS implemented a new standardized resident assessment instrument called MDS 3.0
- FY2012, new assessment type implemented: Change of Therapy (COT)
- Goals:
  - Improve clinical relevancy and accuracy
  - Improve user satisfaction and efficiency
  - Increase resident involvement “voice”
The MDS 3.0 Is the Backbone of the Industry

- The MDS 3.0 drives
  - Care delivery
  - Quality measurement and improvement
  - Risk management
  - Reimbursement (Medicare/Medicaid)
  - Consumer evaluation
  - Litigation and defense
  - And, consequently, compliance

MDS Has Many External Stakeholders

- External entities who are directly or indirectly concerned about MDS

- Office of Inspector General (OIG)
  - General Accounting Office (GAO)
  - Center for Medicare and Medicaid Services (CMS)
  - Fiscal Intermediaries (FI)
  - State Agencies (SA)
  - Others

And with many stakeholders comes much...
As the Principle Driver, It’s Also Essential in Compliance

- As a compliance tool, the MDS
  - Audits quality
  - Audits billing practices
  - Monitor access to care
  - Appropriate utilization of resources
  - Reinforces that industry standard practices are in place
  - Is a documented map to success...or failure

MDS 3.0 A CORPORATE COMPLIANCE IMPERATIVE
Compliance Program Timeline

- In 2000, Federal Register / Vol. 65, No. 52 / Thursday, March 16, 2000 / Notices ‘MAY’ develop programs – voluntary
  - OIG/DHHS issues the first Compliance Program Guidance (CPG) for Nursing Facilities
- In 2008, compliance programs, ‘SHOULD’ develop programs
  - OIG/DHHS issued a supplemental CPG
- In 2013, ‘MUST’ develop programs
  - PPACA of 2010 sets a deadline of 3/23/2013 for nursing facilities to have an active compliance program

Compliance Programs for Nursing Facilities ...

Required by March 2013

- The requirement is in the Affordable Care Act – Health Care Reform Act.
  - Affordable Care Act (ACA)
  - Nursing Home (NH) Transparency Requirements {Section 6101}
  - Accountability - Compliance Programs for NF {Section 6102}
- Changes to Federal Sentencing Guidelines and the OIG’s eight elements of an Effective Compliance Program {Section 6102}
Mandatory Compliance Programs – For Nursing Homes

- Mandatory compliance program that is reasonably designed, implemented, and enforced so that it generally will be effective in preventing and detecting criminal, civil, and administrative violations – and in promoting quality of care.

“Promoting Quality of Care”

Accountability Requirements for Facilities

- Thirty six months from March 23, 2010, the operating organization (i.e., the entity that operates the facility) of each Medicare and/or Medicaid certified nursing facility must have in operation a compliance and ethics program that is effective in preventing and detecting criminal, civil, and administrative violations and in promoting quality of care.
### ACA Compliance Program Requirements

1. The facility must establish compliance standards and procedures to be followed by its employees and other agents that are reasonably capable of reducing compliance violations.

2. The assignment of overall compliance program oversight to “high-level personnel” with “sufficient resources” and authority” to assure such compliance.

3. The exercise of “due care” not to delegate “substantial discretionary authority” to individuals whom the nursing facility knew or should have known had a “propensity to engage in criminal, civil, or administrative violations.”

4. The effective communication of compliance standards and procedures to all employees and agents, including training programs or published materials.

5. The adoption of reasonable monitoring and auditing systems reasonably designed to detect compliance violations by employees and other agents and a mechanism for employees and agents to report violations without fear of retribution.

6. The consistent enforcement of appropriate disciplinary mechanisms, including for failure to detect an offense.
ACA Compliance Program Requirements

7. Following detection of an offense, reasonable responses to include steps to prevent further similar offenses, including any modifications to the compliance program.

8. The periodic reassessment of its compliance program to identify modifications necessary to reflect changes within the nursing facility organization and its facilities.

OIG Work Plan FY2013

- “Nursing Homes—Oversight of the Minimum Data Set Submitted by Long-Term-Care Facilities

We will determine whether and the extent to which CMS and the States oversee the accuracy and completeness of Minimum Data Set (MDS) data submitted by nursing facilities. Certified nursing facilities are required to complete the MDS for all residents at specified intervals and submit data electronically to the State. States then submit data to CMS, which uses it for a number of programs, including payment, quality monitoring, and consumer information.
Insert slide about MDS data quality

SNF upcoding rampant: OIG
Nursing homes are overcharging Medicare around $1.5 billion annually, a federal report released in mid-November asserts.

The Office of Inspector General report says SNFs are upcoding claims for Medicare, either by listing more services than were done or by giving incorrect treatment. Under particular scrutiny are physical, occupational and speech therapy, and ADLs.

The OIG made the following recommendations, which were accepted by federal regulators: expand reviews of SNF claims; identify SNFs billing for higher paying RUGs; monitor new therapy assessment compliance; change the method for determining how much therapy is needed; improve MDS accuracy; and follow up on SNFs that billed in error.

Most MDS Assessments Have Issues

<table>
<thead>
<tr>
<th>Assessment with Issues</th>
<th>Assessment with No Issues</th>
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<td>70%</td>
<td>30%</td>
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OIG Potential Compliance Risk Areas: Non MDS

- Background Screening
  - Background checks r/t nurse aide registry, OIG exclusion list, crime conviction
  - Failure to terminate employment or contract with an individual or entity that has been convicted of a crime

- Hospital, Hospice, Physician and Vendor Relationships
  - Related to arrangements that offer services that may be more or less than fair market value

OIG Potential Compliance Risk Areas: MDS Related

- Quality of Care
  - The entire MDS process, physician services, inappropriate Restraints, inadequate staffing, etc.

- Resident Rights
  - Access to care, abuse, restraints, HIPAA privacy rules, financial affairs

- Billing
  - Claims management, medical necessity rules, staff training r/t case-mix data, sufficient documentation, overutilization of Part A and Part B, false or fraudulent cost reports
QUALITY OF CARE

RESIDENT RIGHTS
BILLING

Reimbursement Compliance Risk Points

- Final rule impacted
  - ARD window changes
  - COT
  - EOT, EOT-R
  - Group Therapy

- Appropriate therapy delivery based upon resident condition
Compliance Risk Points: ARD Window Change

- Reduced ARD window on the front end and back end
- OBRA MDS will most likely need to combine with the Medicare 5-day
- Medicare 5-day – ARD day 7 or 8 to avoid a COT eval window prior to the 14-day window

Compliance Risk Points: Change of Therapy (COT)

- Change in practice
  - Requires continuous monitoring of therapy intensity
  - Whenever intensity of therapy changes, COT must be submitted to alter reimbursement
Compliance Risk Points: COT

- Payment for the COT starts the **first day of the COT observation period**

- COT is mandatory if the RTM decrease/change from the billed RUG, and, optional, if there is a RUG increase

- Payment implications:
  - Payment for the COT starts the first day of the COT observation period
  - Compliance Implications

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Are You Producing Enough COTs?

**Average COT Assessments per Month**

![Bar graph showing average COT assessments per month for different number of Medicare residents.]

- Number of COT Assessments
- Number of Medicare Residents
- Average Number of COT Assessments for All Facilities
- Average Number of COT Assessments for Outlier Facilities
Compliance Risk Points: EOT and EOT-R

- Treatment end and resumption
- Specific rules for compliance
- May be completed when therapy stops for no more than 4 days and resumes on the 5th day after the last day of therapy on the EOT MDS
- Resident must resume therapy services at the same RUG level as they were before the EOT break

Compliance Risk Points: EOT-R

- Payment implications:
  - Paid at the calculated non-therapy RUG-IV group starting the day following the last day therapy services were provided through the day before the therapy was resumed
  - Payment at the appropriate therapy RUG will resume as of the resumption of therapy date noted in O0450B of the MDS.
MDS Data Quality

- MDS software vendors are primarily concerned with data capture and movement
  - Capturing data at bedside/hallway/nursing station has been “technology enabled”
  - While gadgetry doesn’t ensure data integrity it can have operational benefits
  - All MDS software vendors implement CMS data checks

- Internal reliability/validity testing
  - Research supports reliability and validity of MDS 3.0
  - Reliability testing for clinicians coding MDS assessment is key
  - Random sampling auditing for accurate data capture and cross sectional validity

Percent MDS Assessments with Issues After “Scrubbing”
Compliance: Systems and Internal Controls

- MDS accuracy
  - Internal/External auditing of MDS records
  - Manual review has merits but limited only to selected sample
  - Automated auditing of all assessments prior to state submission has proven most efficient
    - Assure balanced approach by third party auditor
    - Most major MDS software providers have interface with several auditing providers

Compliance: Systems and Internal Controls

- Financial Management
  - Establish a solid tracking mechanism that visually reminds staff of the changes for every PPS assessment completed

- Ensure that a ‘triple-check’ process is completed prior to final billing

- Explore software solutions with your vendors

- Work with therapy vendors/staff
Conclusions

- MDS 3.0 impacts clinical, regulatory, and financial processes and outcomes within the nursing facility
- There are both internal and external users of this data, along with positive and negative consequences
- Development of strategies to respond effectively while minimizing the risk of potential negative consequences begins with an awareness of the magnitude of this dataset and inherent challenges and weakness
- Compliance and Quality Improvement programs will be elevated to new levels of importance during 2013
- BE READY!

Nightmare or Nirvana?
Questions?

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