Compliance and quality of care

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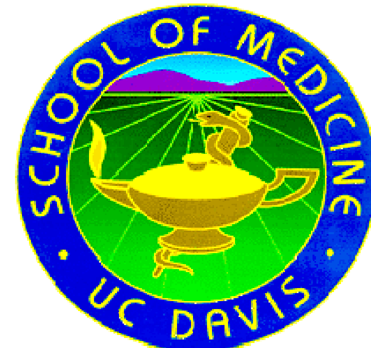
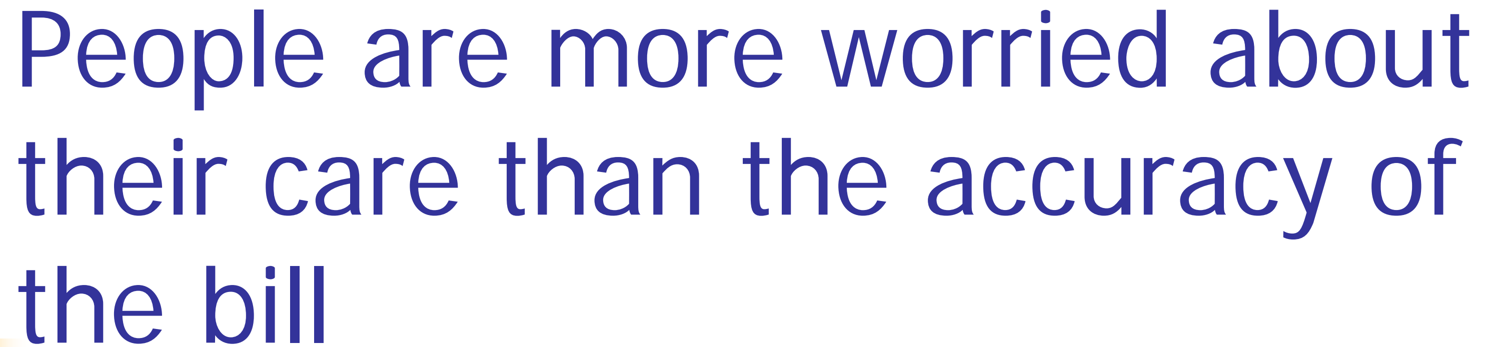


Quality is job one

- Health care's primary goal is health care
- Billing is a necessary evil
- Health care problems much more serious than billing problems

Consequences of failure

- Billing
  - Temporary harm
  - Fix by paying it back
  - Temporary bad publicity
    - Little public interest
- Quality
  - May cause permanent harm or death
  - May not be fixable
  - Undermines public trust in the institution

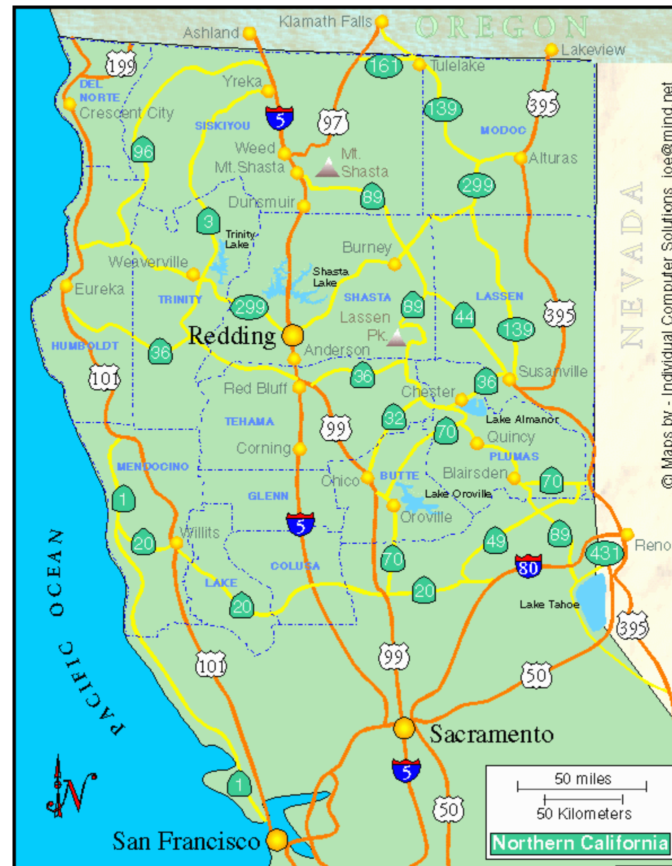


People are more worried about their care than the accuracy of the bill

Are you spending more time worrying about billing than about care?

- Sacramento
  - Billing scandal
- Redding
  - Quality scandal

The two cities



Sacramento: CHW

- Two payments by local hospital chain to settle fraud allegations by whistle-blowers
  - $10.25M and $8.5M
- False cost reports
- Charged for preventive care, consults instead of referrals

Defense

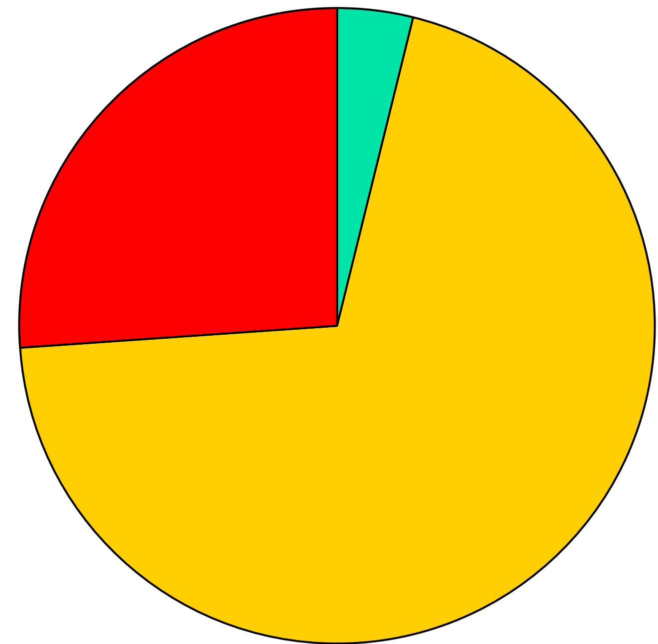
- Simply errors
  - Poor billing quality
- How would that defense work in a quality of care issue?
- A few newspaper articles
  - Little interest
  - Lying to insurers is socially accepted

The toll

- $18.75M
- CIA

Survey of potential jurors

- In response to restriction of health care, a physician should
  - accept restriction,
  - appeal restriction, or
  - misrepresent a patient's condition to obtain the desired service.



Redding Medical Center

- The following deals with allegations, nothing yet proven
- October 30, 2002: 40 FBI agents, many of them armed, descend upon Redding Medical Center
- Unnecessary procedures
  - About 50% of all procedures

The toll

- Tenet market value plunged $4.8B
- 167 patients died, many unnecessarily
  - Not from poor technique
  - Inherent risks of unnecessary procedures
- Moon and Realyvasquez not practicing
- Cardiac program shut down
- 12.5% of hospital's work force laid off

The lawyers' response

- http://www.reddingmedicalcenter-lawsuit.com/
- http://www.heartlaw.info/

- 850 plaintiffs by March 2003, more than 1800 requests for medical records

Should they have known?

- Warnings to hospital for 5 years
  - Dismissed as jealous competitors' complaints
  - Reluctance to endanger a cash cow?
- Top billers in the state, even though in a small town with another hospital
- Bypasses per capita 7X state average

Is the hospital at risk?

- Tenet spokesman: “The decision to perform any medical procedure at a hospital is the decision of the attending physician. Our hospitals, like all hospitals, must rely upon the professionalism of the physicians who practice there in making these kinds of evaluations.”

Is the hospital at risk?

- Lawyer representing 600 patients: “It is our belief that the corruption within Redding Medical Center is not limited to Drs. Moon and Realyvasquez, but reaches all levels of the hospital up to Tenet Healthcare, its owner.”

Yes, the hospital is at risk

- Settled August, 2003, Medicare, Medicaid, and Tricare
- $54 million
- Unnecessary heart procedures 1997-2002
- Largest in history of medical necessity fraud

Payments to patients

- To 769 patients
- Tenet Healthcare: $395,000,000
- Cardiologists (Moon, Russ, Fletscher, Chandramouli): $24,000,000
- Surgeons: trial date July 2005

Further fallout pending

- Federal grand jury in Sacramento weighing criminal charges against the physicians

Getting involved in quality issues

- OK, so now what?

What should a compliance officer do?

- Don't do other people's jobs
- If a serious gap exists, make sure it gets filled
- Find a champion
  - Particularly if you are not a clinician

Don't do other people's jobs

Don't do other people's jobs

- Many organizations already have a quality of care review process
- Intervention by compliance officer may be seen as ill-informed interference
- If you do it, others won't
- Refer findings with potential quality issues

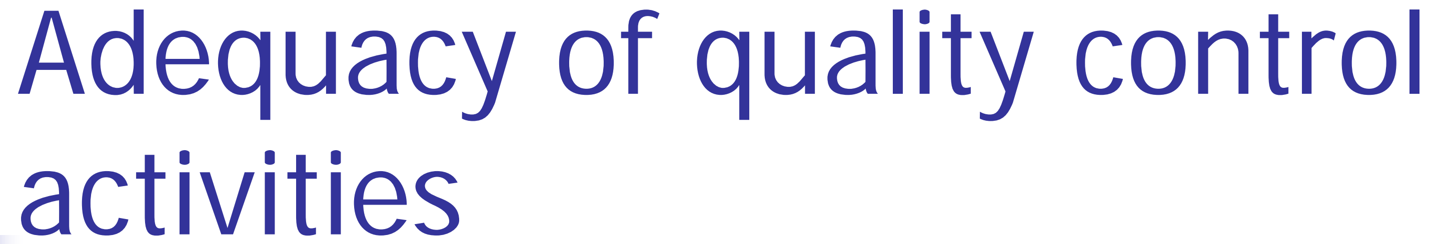
Crossover issues

- Incorrect documentation
  - Insufficient
  - Invented
- Incorrect utilization/medical necessity
  - Underutilization
  - Overutilization
- EMTALA

If a serious gap exists, make sure it gets filled

Fill the gaps!

- First step is to find them
  - Learn what quality control activities occur
  - Find out what *should* occur
  - Evaluate adequacy of the activities



Adequacy of quality control activities

- Group think
- Conflicts of interest
- Domination by problem person
- No frank discussions
- No statistics
- Nothing happens

Keep a finger on the pulse

- Sit on quality oversight committee
- Meet periodically with person(s) responsible for quality of care monitoring

Find a champion

Find a champion

- Clinicians don’t think a bean counter knows beans about health care and won’t obey
- Why can’t you be effective by yourself?

Power and influence

- "Power is … the potential ability to influence behavior, to change the course of events, to overcome resistance, and to get people to do things that they would not otherwise do. Politics and influence are the processes, the actions, the behaviors through which this potential power is utilized and realized."

Pfeffer, Jeffrey. **Understanding Power in Organizations**

Power sources

- Hierarchical: organizational position
- Reward: ability to give out rewards
- Coercive: ability to mete out punishment
- Expert: superior skills and knowledge
- Referent: others′ respect and admiration

Hierarchical

- Ban on corporate practice of medicine
- Clinicians typically in separate hierarchy
  - Medical staff
- Compliance officer typically has no hierarchical power

Reward

- Typically not in the purview of compliance officers
- Might get “compliance bonuses” built into compensation structure

Coercive

- Can you directly punish a physician?
- Can you affect her income?
- Can you fire a physician?
- State laws may have special protections for physicians, e.g., hearing rights
- Faculty have special protections

Expert

- Physicians view themselves, not you, as having superior skills and knowledge
- What you know doesn't count: it's how much they value your knowledge that does

Referent

- Do physicians view you as a role model?
- Do you have charisma?

Champion traits

- Seek a provider who has the power
- Most clinicians are passionately committed to good health care
- Cultivate allies
- Understand the power structure
  - Respected, knowledgeable
  - Active in medical staff organization
  - Has the "hammer"

Worst case scenario

Nuclear war

- When you have good reason to believe that serious quality issues are ignored
- Cannot win by yourself
- Must confirm suspicions
  - Outside the area of expertise for most compliance officers
- Avoid MAD (Mutually Assured Destruction)

Get outside opinion

- Try to identify outside expert acceptable to both parties
  - Agreement to abide by results
- Sources:
  - State medical societies
  - Universities
  - Well-respected practitioners from outside the region

Benefits

- Obtain buy-in of involved doctors
- Validate your findings
- Avoid being sole target of anger
- Defensible conclusions
- Similar to obtaining outside legal counsel

Peer review

Peaking behind the curtain

Peer review protections

- Vary from state to state
- Comments specifically refer to California law
  - Evidence Code §§1156, 1156.1, 1157
  - Medical staff committees
  - Medical or psychiatric quality of care committees
  - Peer review

Why peer review privilege?

- "[The] legislature intended to encourage full and free discussions in hospital committees in order to foster … improvement, and to remove disincentive to voluntary … participation in peer review by exempting participating physicians from burdens of discovery and involuntary testimony"

USC v Superior Court (App. 2 Dist. 1996) 53 Cal.Rptr.2d 260, 45 Cal.App.4th 1283

Why peer review privilege?

- Not an “entitlement” for physicians
- Benefit to society, conferred by many states (and federal government)

Covered by peer review privilege

- Proceedings and records of the peer review committee, except:
  - lawsuits challenging staff privilege decisions
  - certain actions against insurance carriers
  - investigative subpoenas by state agencies (but the information is not subsequently discoverable in a private civil lawsuit)

Not covered by peer review privilege

- Ad hoc groups that are not formally organized
- Original medical or dental records
- Evidence relevant in a criminal action
- Statements made outside of the peer review context to non-participants in the peer review matter

Getting information from peer review

- Patient records were never protected
- What you learn or see will probably not be privileged, unless attorney is directing investigation
  - Conduct compliance review under attorney's direction if there is reasonable chance of litigation
- Receive "minimum necessary"
- Develop overall communication plan in conjunction with counsel versed in medical staff laws in your state

Conclusions

- Quality of care is a primary compliance concern
- The compliance officer must monitor, but cannot control, the process
- Reach out for help

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Redding stories

- http://www.sacbee.com/content/news/ongoing/heart/