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The transformation of healthcare compliance: How COVID-19 revolutionized the compliance officer's role

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The year 2020 proved that a compliance officer needs to be highly organized, detail oriented, and extremely adaptive. The pivot in requirements during the pandemic involved logistics with new methods that were unproven. Compliance officers found themselves responsible for validating virtual training, tracking onboarding new staff to systems, and responding to both employees and compliance issues remotely. The compliance transformation took place as you handled the day-to-day of the new normal. It was a transformative time in healthcare compliance. What are some of the challenges facing you as you move toward a post-COVID-19 era? The digital transformation that has taken place provided automation with some cost-saving measures, but was there a price to the change and advances that occurred almost overnight? The change was accelerated and unknown. How does the industry level set after a pandemic that nobody was prepared for? As compliance officers seek better, faster ways to effectively manage compliance issues, potential solutions may have been initiated because of the pandemic. They may be here to stay. Consider capitalizing on how a remote environment might better enable you to be more compliant in ways you never considered before.

Telehealth and reimbursement

Embracing the challenges set forth almost a year ago took initiative. It was not only important to have strong project management skills, but you had to be able to work with a remote team. Having the ability to learn new systems, tools, and technologies quickly became a priority in a dynamic work environment. Never in the history of our profession did you need to be more comfortable communicating in a variety of formats, including phone, email, video chat, and possibly in person but masked. Now more than ever, compliance officers are demanding a more careful examination of their sites' prototype. Policies and procedures for disasters, communication plans, accountability of remote staff, technology use, and engagement from staff all have become high priority in a paradigm shift.

One of the largest areas experiencing rapid movement is virtual or digital healthcare through telemedicine. The definition of telemedicine is "the practice of medicine using technology to deliver care at a distance. A physician in one location uses a telecommunications infrastructure to deliver care to a patient at a distant site."^[1] Telehealth is used more broadly as the "electronic and telecommunications technologies and services used to provide care and services at-a-distance." The switch to telehealth occurred quickly at the start of the pandemic. Each site used telemedicine for virtual visits prior to the pandemic at differing levels, which was mandated by state regulations. But once the lockdowns started, telemedicine became common.

No matter what your site calls it, digital healthcare by virtual visit comes with compliance challenges. When the pandemic hit, telemedicine became a must-have, not a desired goal, for healthcare providers. Along with the adjustment came discrepancies with who had access to that type of care and how the payers would reimburse for

the virtual visits. Incorporating telemedicine was not as easy as flipping a switch. Going forward, applicable laws as to licensure of the physicians, as well as payer rules and mandates, must be reviewed. This will become more of a compliance oversight issue in the future as telemedicine grows. While states managed temporarily with COVID-19 emergency policies being updated from their permanent telehealth policies, states will be updating and refining telehealth policies to deal with service, location, and reimbursement modalities in the future.

The Centers for Medicare & Medicaid Services realized immediately that there were barriers to telehealth when the pandemic started. Geographic considerations and distinct circumstances created a disparity in both coverage and payment. In addition, the Health Insurance Portability and Accountability Act (HIPAA) does not have any specific requirements related to telehealth. HIPAA guidance with newer technology will need to be evaluated sooner rather than later. Services rendered via a webcam or internet-based technology that are not part of a secured network and do not meet HIPAA encryption compliance are considered noncovered.^[2] Unfortunately, all of these issues occurred rapidly, and over the next few months, we will begin to see the fallout from the reaction of pivoting to telehealth quickly. The Centers for Medicare & Medicaid Services quickly expanded access to Medicare telehealth services for clinicians.^[3] Thankfully, it encouraged telehealth care during the pandemic, which increased access to care. Challenges with racial discrepancy in the virtual health experience will not only necessitate the site being cognizant, but sponsors will also be demanding that participant diversity be evaluated and telehealth be a source of care.

“Blanket Waivers of Section 1877(g) of the Social Security Act Due to Declaration of COVID-19 Outbreak in the United States as a National Emergency” was effective March 1, 2020.^[4] “Under section 1135 of the Act, the Secretary may grant waivers to ensure, to the maximum extent feasible, in any emergency area and during an emergency period that: (1) sufficient health care items and services are available to meet the needs of individuals in the emergency area enrolled in the Medicare, Medicaid, and [Children’s Health Insurance Program] programs; and (2) health care providers that furnish such items and services in good faith, but that are unable to comply with one or more requirements described in section 1135(b) of the Act, may be reimbursed for such items and services and exempted from sanctions for such noncompliance—including sanctions under section 1877(g) of the Act—absent any determination of fraud or abuse.”

The blanket waivers remain in place until the emergency declaration ends. A compliance officer’s objective is to ensure that eligible practitioners are following the guidelines, while ensuring compliant claims processing with appropriate reimbursement for telehealth visits both now and in the past. The goal is to be ready once the emergency declaration is lifted so there are no surprises.

Waivers were also issued for the Stark Law solely related to COVID-19, as well as the Anti-Kickback Statute.^[5] As further changes evolve, compliance needs to be aware of how to address these changes as they are pulled back or modified.

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