Guide to CMS Compliance

Ruth M. Elzer, RN, Practice Leader, Accreditation and Compliance, Compass Clinical Consulting, Cincinnati, Ohio

Many hospitals are proud of their improvement in quality, as indicated by core measures or other quality metrics. However, potential quality problems still exist. In recent years, media coverage of "never events" (or harmful medical incidents) and the availability of such information on the Internet have made patients and families better informed and more keenly focused on the quality of clinical care. When patients and families complain about nursing care, medication errors, poor infection prevention, or patient rights violations, the Centers for Medicare & Medicaid Services (CMS) and state agencies are expected to investigate the validity of those complaints. An increased number of hospitals have recently received CMS surveys directly related to complaints from patients and families. These complaint investigations are likely to be more frequent in 2010. When surveyors can substantiate the complaints, on the basis of detailed information provided by families, condition- and standard-level violations rise, bringing more hospitals close to CMS's Immediate Jeopardy and even Medicare termination.

Hospital executives should not assume that prior survey achievement will guarantee future success. The government is investing in discovering noncompliance and thus expects justification for this focus. To keep up with the demand for compliance surveys and to address governmental concerns about healthcare quality, CMS (2010) is enlarging its compliance survey staff in Fiscal Year 2010. This move likely forecasts a rise in the number of surveys this year.

Executives and managers will no doubt want to take measures to understand CMS's Conditions of Participation for Hospitals (CoPs) and to ensure these requirements are met.

CONSEQUENCES OF NONCOMPLIANCE

Failure to demonstrate compliance during a survey can have a major effect on a hospital's bottom line. Several cases have emerged—some public, others not. In one case, a community-based hospital was experiencing a well-deserved period of expansion and success, recruiting physicians, and investing in capital improvements. The hospital was well respected in the community, with its quality data exceeding national benchmarks and a national quality award within its reach. By the following year, however, CMS and the State Department of Health issued the hospital a finding of Immediate Jeopardy following a complaint survey. Within 23 days, it was terminated from Medicare. Before termination, the hospital's cash reserve exceeded $18 million. During the period of regaining participation in CMS programs, that reserve dwindled by nearly $15 million.

Photocopying and distributing this PDF of the Journal of Healthcare Management is prohibited without the permission of Health Administration Press, Chicago. For permission or reprint, please contact the Copyright Clearance Center at www.copyright.com.

Fines offer another compelling reason to take CMS compliance seriously in 2010. California has passed a bill that allows for fines up to $100,000 to be levied against hospitals that fail to meet quality expectations and place patients' lives in "immediate jeopardy" (Senate Bill No. 541). While other states have fined hospitals for poor quality, the penalty per violation ($5,000 in New Jersey; $2,000 in New York) has been less than that in California (NJDOHSS 2010; NYDOH 2001; Hackney-Redman 2009). As the fines assessed since 2007 in California top $3.675 million, other ailing states may be tempted to impose similarly steep fines to make up for their budget shortfalls (CADOPH 2010; *Health Leaders Media* 2010). In addition, hospitals will have to deal with the negative publicity associated with such a penalty.

At its heart, compliance with the basic standards depends on frontline caregivers. What many healthcare leaders and clinicians forget is that the CoPs are written to outline the *minimum* expectations for safe patient care. Thus, CMS expects "100% compliance, 100% of the time." Hospitals that meet these expectations can participate in the Medicare and Medicaid programs. The burden is on hospitals to show that compliance is maintained for all cases at all times. The challenge lies in ensuring that individual nurses and other caregivers demonstrate compliance with basic care principles at the point of care.

PRACTICAL STRATEGIES

CMS standards focus on *how* care is delivered rather than *what* care is delivered. They are not aimed at regulating medical decision making. For instance, surveyors will not evaluate the wisdom of a medical plan for a rare gastric condition. Rather, they will investigate whether the nurse follows correct procedures for identifying the patient, checking the medication, wearing gloves to administer the drug through the gastrotomy tube, and caring for the wound around the invasive tube. Documentation of the activity will also be scrutinized.

Following are recommendations for understanding CMS requirements and delivering compliant care:

- Discuss at employee orientation and training the aspects of care that are absolute and the caregiving habits that are considered best practice.
- Build in employee accountability mechanisms early in the intake process, and reinforce the importance of accountability through regular checkups. Include in such a program rewards for exceptional effort.
- Educate managers and leaders on CMS expectations for their specific areas. Some crossover exists between CoPs and standards of The Joint Commission and other accrediting bodies, but survey processes and select requirements are different.
- Establish mechanisms for responding to compliance issues and trends identified through publications and other networking, and establish ways to document this proactive activity. Set a regular schedule for rigorously reviewing

Photocopying and distributing this PDF of the Journal of Healthcare Management is prohibited without the permission of Health Administration Press, Chicago. For permission or reprint, please contact the Copyright Clearance Center at www.copyright.com.

CoPs rather than placing disproportionate attention on one "standard of the week."

- Conduct internal or external mock surveys to test readiness. Consider hiring a consultant with experience in CMS surveys to help in such an exercise. Also, consider performing an unannounced test of all systems.

CMS holds the governing body—usually the hospital's board—responsible for all activities in the organization, from hiring the CEO to managing care at the bedside. Similarly, the responsibility for compliance lies in the hands of governance. Executives should help the board fulfill this responsibility by keeping the members informed about the hospital's compliance status and problems. Executives should teach the board how to suspect "perfect" performance and to question how compliance on paper translates to compliance at the bedside.

Surviving Poor Surveys

In the wake of negative survey results, executives and managers are pressured to take corrective action and provide evidence of compliance. A hastily prepared response, however, can derail the best intentions. Approach corrective plans methodically, identifying realistic, attainable strategies that can be verified, adopted, and practiced by frontline staff.

A common mistake is to think that state or regional hospital associations, politicians, and other industry leaders can overturn the poor results of the survey. While CMS is a governmental agency, the rules and regulations associated with Immediate Jeopardy and termination are not politically influenced. After all, what politician would want to read about his or her effort to get CMS to overlook poor clinical practices? Furthermore, judging from the experiences of hospitals in recent years, such political maneuvering does not work and delays an effective response. Violations in basic patient-safety activities, such as handwashing, infection control, and building maintenance, are not likely to be refuted through political intervention. In fact, this approach may backfire, making the surveyors feel the need to demonstrate unbiased judgment by adhering strictly to process timelines. The use of intimidation tactics can also damage the relationship between the hospital and local surveyors.

Healthcare organizations can best overcome a poor survey by acknowledging the fact that problems exist and by quickly addressing the findings. Executives should engage clinical leaders in ongoing monitoring, coach staff to improve compliance, and refine mechanisms for governing-body oversight. Other essential steps for protecting the organization from adverse outcomes include the following:

- Recognize compliance failures early.
- Seek advice from experts or experienced peers about how to identify high-visibility targets.
- Develop a system for preparing for a survey and a resurvey.

Photocopying and distributing this PDF of the Journal of Healthcare Management is prohibited without the permission of Health Administration Press, Chicago. For permission or reprint, please contact the Copyright Clearance Center at www.copyright.com.

CONCLUSION

While the likelihood of more CMS surveys in 2010 is real, it should not cause panic among executives. Taking CMS compliance seriously, understanding the CoPs, and implementing monitoring and education strategies can ensure quality care from all staff and enable hospitals to meet CMS's demands for "100% compliance, 100% of the time." Finally, healthcare delivery organizations should not be lulled into a false sense of security about their excellent core measures. There is a difference between high visibility but limited focus and consistent, compliant practice.

REFERENCES

California Department of Public Health (CADOPH). 2010. "CDPH Issues 16 Administrative Penalties to 13 Hospitals." [Online information; retrieved 1/30/10.] www.cdph.ca.gov/Pages/NR10-006-cdphissues16administrativepenaltiesto13hospitals.aspx.

Centers for Medicare & Medicaid Services (CMS). 2010. *Justification of Estimates for Appropriations Committees.* [Online information; retrieved 1/30/10.] www.cms.hhs.gov/PerformanceBudget/Downloads/CMSFY10CJ.pdf.

Hackney-Redman, K. 2009. "Lubbock Heart Hospital Fined by State." [Online information; retrieved 1/30/10.] http://lubbockonline.com/stories/013009/loc_382967742.shtml.

Health Leaders Media. 2010. "California Hospitals Fined for Alleged Immediate Jeopardy Mistakes." [Online information; retrieved 1/30/10.] www.healthleadersmedia.com/content/QUA-245624/California-Hospitals-Fined-for-Alleged-Immediate-Jeopardy-Mistakes.

New Jersey Department of Health and Senior Services (NJDOHSS). 2010. "Oversight of Acute Care Health Care Facilities." [Online information; retrieved 1/30/10.] www.state.nj.us/health/healthfacilities/hospfines/hfines.shtml.

New York Department of Health (NYDOH). 2001. "Health Department Fines Parkway Hospital $32,000 for Performing Unnecessary Surgeries on Patients from Leben Home." [Online information; retrieved 1/30/10.] www.health.state.ny.us/press/releases/2001/parkway.htm.

Senate Bill No. 541. [Online information; retrieved 1/30/10.] http://info.sen.ca.gov/pub/07-08/bill/sen/sb_0501-0550/sb_541_bill_20080930_chaptered.pdf.

For more information on the concepts in this column, contact Ms. Elzer at relzer@compassgroupinc.com.

Photocopying and distributing this PDF of the Journal of Healthcare Management is prohibited without the permission of Health Administration Press, Chicago. For permission or reprint, please contact the Copyright Clearance Center at www.copyright.com.