THE DENTAL COMPLIANCE ALERT NETWORK

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IN THIS ISSUE

www.DentalCompliance.com

What Have You been Missing in the Compliance Alert Network?

We are ready to send to press the 6th issue of the Compliance Alert Network Newsletter! So far our newsletters have been packed with so much great information, they can hardly be contained! Our clients are getting a Masters Degree Education in HealthCare Compliance and Practice Management.

I wanted to give you a sneak peak into what you have been missing! I picked out a monster article from the last issue of the Compliance Alert Network Newsletter to share with you. It is called "**Guidance for Voluntary Compliance Program Development."** This article is basically a Compliance Primer. This is your basic education in Healthcare Compliance set to the lyrics of that most annoying pop song: It's All About the Bass!

The menu to the right is the content from our February 2015 Compliance Alert Network Newsletter. Some of my favorite articles from Newsletters Past include:

⇒ No Reason for Treason

⇒ Pros and Cons of Clinical Charting Templates

⇒ Anesthetic Carpules, Pharmaceutical Waste?

⇒ Compliance Policies Corner Consent for Treatment of a Minor*

⇒ Outliers and Auditors

⇒ Misconceptions about PPE

⇒ Ebola in the Dental Practice*

⇒ HER Incentive Programs: Is "Free" Money Worthwhile?

⇒ More on the Reclassification of Hydrocodone to Schedule II Controlled Substance

⇒ Take a Peek into the Past– Background Checks*

*Items with a * included sample polices and forms!*

That's right, you have also been missing all kinds of cool and useful policies and forms that you could have deployed in your practice! Have you had a compliance question burning in your mind lately? Well, you could have already had it answered as well. Subscribers to the Network have access to our HELP-LINE! That means you can have Tooth Cop on the line!

We also send out the occasional CD full of interviews and training to our members. It is like having a one-on–one consultation with Duane Tinker, the Tooth Cop!

Interested in learning more? Ready to join the Network?
Visit **www.ComplianceAlertNetwork.com**
Or call 817-755-0035 for more information!

Guidance for Voluntary Compliance Program Development

In October of 2000 the Federal Office of the Inspector General (OIG) published a document "Developing the Compliance Program Guidance for Individual and Small Group Physician Practices". This guidance is applicable for dental practices large and small. There are core elements or components, which include:

1. Conducting internal monitoring and auditing through the performance of periodic audits;
2. Implementing compliance and practice standards through the development of written standards and procedures;
3. Designating a compliance officer or contact(s) to monitor compliance efforts and enforce practice standards;
4. Conducting appropriate training and education on practice standards and procedures;
5. Responding appropriately to detected violations through the investigation of allegations and the disclosure of incidents to appropriate Government entities;
6. Developing open lines of communication, such as (1) discussions at staff meetings regarding how to avoid erroneous or fraudulent conduct and (2) community bulletin boards, to keep practice employees updated regarding compliance activities; and

Enforcing disciplinary standards through well-publicized guidelines.

Now that we know the 7 core elements of compliance programs lets take a closer look at each element:

Step One: Auditing and Monitoring

What to monitor:

- Expiration dates of clinical credentials of staff in the practice including
- Dental license;
- CPR/ ACLS/ PALS training;
- Sedation permits (as applicable);
- DEA registration (and state controlled substance authority, as applicable);
- Liability insurance renewal;
- Expanded Function Dental Assistant certificates;
- X-ray certification;
- Any other credentials staff may hold.
- Changing rules, regulations, government work plans and enforcement trends;
- Exclusions of your employees from participation with government programs (*I have covered this before, so I won't cover it here. However, this is increasingly important, as the government has excluded over 1600 people in the last half of 2014. The odds of having an excluded person on your staff are slim, but the consequences can be devastating to you. The only way to know is to check. If you are one of our CAP clients we check this for you every month*).

What to audit:

- Clinical documentation;
- Billing practices;
- Quality of Care/ patient safety issues;
- HIPAA compliance;
- OSHA and Infection Control compliance;
- Drug logs.

The practice's self-audits can be used to determine whether:

Bills are accurately coded and accurately reflect the services provided (as documented in the dental records);
Documentation is being completed correctly;
Services or items provided are reasonable and necessary; and
Any incentives for unnecessary services exist.

Types of Audits

Auditing and Monitoring processes must be continuous. There are different types of audits used for auditing patient/ billing records. The most common are prospective (or pre-bill), retrospective, and peer review.

Most practices are accustomed to submitting claims for reimbursement the day the claims are generated. Nearly every office manager and billing supervisor will tell you it is far easier to correct claims before they are submitted than afterward. For this reason it may be worthwhile to hold claims a day or two until you and your staff have an opportunity to verify the accuracy of your claims. Pre-bill audits should be completed daily and records of the audits should be maintained for a significant time period (I usually recommend at least 6 years).

Retrospective audits tend to be a more in-depth review of records, which involves comparing financial records with clinical notes and x-rays to verify the accuracy of financial records; the correct type, quantity and quality of radiographs; that forms like treatment consent, HIPAA, treatment plans, medical histo-

ry and et cetera are properly completed for the corresponding record. As I mentioned, pre-bill audits should be completed for every claim every day and this audit is usually handled by one or two people.

Every member of the practice should complete retrospective audits. I recommend two audits per person per month by every team member whether sterilization technician, dental assistant, hygienist, front desk or dentist. These audits provide tremendous, irrefutable feedback to dental teams or their strengths, weaknesses and mistakes. This also provides opportunities for team members to strengthen their documentation skills, which serve patients, dentists and employees alike.

Practices that have multiple dentists should consider implementing written peer review audits. I realize this occurs informally in many multi-dentist practices to some degree. However, as with anything else in your practice, if it is not written (and records maintained) it did not happen.

Audit records can serve as evidence to outside reviewers that you and your dental team members are good people who strive for continual professional growth. It demonstrates your commitment to excellence, and deters auditors and investigators from wasting their time in your office. It is said you never get a second chance to make a first impression.

All About That Great First Impression

Ever hear "All About the Bass"? Here is my 'Tinkified" version:

Because you know,
I'm all about that great first impression
'Bout a great first impression, no trouble
I'm all about that great first impression
'Bout a great first impression, no trouble
I'm all about that great first impression
'Bout a great first impression, no trouble
I'm all about that great first impression
'Bout a great first impression, no trouble

Yeah, it's pretty clear, you're good people
But you gotta prove it, prove it
Like you're supposed to do
'Cause you don't want to be the boom boom that all the feds chase
And all the right info in all the right places

Because you know,
I'm all about that great first impression
'Bout a great first impression, no trouble
I'm all about that great first impression
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I'm all about that great first impression
'Bout a great first impression, no trouble
I'm all about that great first impression
'Bout a great first impression, no trouble
Hey!

As a former government investigator I speak from experience when I tell you that when I walked into an office that was "squared away" I was quick to take care of business and move on to the next "customer" in line. Look, people are inherently lazy. Auditors and investigators are more inclined to spend extra time and attention with dentists who are disorganized and do not have their affairs in order.

I don't care how righteous and honest you are or that you have nothing to hide; it is foolish to invite any government agent into your office or give them reason to stay if they show up. You may laugh at this idea, but giving them a tour is like showing a shark their dining options while not realizing you are also on the menu. Whatever they encounter is fair game and frankly, you don't know what you don't know. There is no office anywhere that is 100% compliant with all government regulations. Don't think that just because you are a good person or that you are cooperative and have nothing to hide that you'll get a free pass.

Step 2: Establish Practice Standards and Procedures

Written standards and procedures are a central component of any compliance program. Those standards and procedures help to reduce the prospect of erroneous claims and fraudulent activity by identifying risk areas for the practice and establishing tighter internal controls to counter those risks, while also helping to identify any aberrant billing practices, mistakes and other issues that can result in recoupment by payer(s).

Dental practices that do not have standards or procedures in place can develop them by: (1) Developing a written standards and procedures manual; and (2) updating clinical forms periodically to make sure they facilitate and encourage clear and complete documentation of patient care. A practice's standards could also identify the clinical protocol(s), pathway(s), and other treatment guidelines followed by the practice.

Written standards often start with a written compliance plan, which outlines the 7 elements we are discussing and includes a code of conduct, which should be read and signed by all contractors and employees of your practice. Written standards and procedures should include, but not be limited to, OSHA and HIPAA compliance, front office and billing practices, clinical recordkeeping, clinical guidelines and standing orders, patient safety practices, and other areas of risk that are identified by the practice. The intent of written standards is to provide a playbook for contractors and employees to follow to ensure uniformity and establish minimum acceptable standards, your standards. This is how you shape what your practice looks like to your contractor, employees, vendors and patients alike.

Risk areas that should be addressed by written standards include:

- Clinical documentation;
- Billing practices;
- Sedation processes/ patient discharge;
- Establishment of medical necessity;

Treatment protocols;
Advertising/ marketing/ patient referrals;
Compliance with compliance standards (OSHA, HIPAA, Dental Board rules and regulations, DEA requirements, radiation safety and more).

Written standards need to reflect your standards, expectations, practices and processes (your way of the highway baby). Standards must be periodically reviewed and (as needed) revised to ensure they are up-to-date, consistent with acceptable practices (and continue to meet your expectations), are lawful and most important, to ensure they are relevant to the operation of your practice. Times change you and your standards need to do so as well. One-reason dentists find themselves in trouble with their state dental board is because they don't change with the times.

Purchasing an off-the-shelf book of written standards is a mistake, as (unless you customize them) they do not reflect your practice in which case they do you no good. Simply having your name on a set of generic written standards does not make them yours; they must reflect your expectations, your vision, your processes, actual practices by you and your staff.

OSHA compliance is just one part of compliance that you must address. Because is it something you can easily relate to I'll use an OSHA example to illustrate an important point. All-too-often I see dental practices have purchased an OSHA manual. Though the manual is from the ADA, or still shrink-wrapped some dentists are convinced he or she has OSHA policies. While ownership of a manual containing policies is helpful, it is as close to having an adequate OSHA program as the mere possession of endo files and a container of gutta percha is to making you an qualifed endodontist; just as having endo equipment does not make you an endodontist merely having an OSHA manual does not provide for an effective OSHA compliance program. You must take the time to read through the manual and customize your policies, so they are specific to your practice and you must ensure that your staff follows your policies through training and discipline.

Step Three: Designation of a Compliance Officer

Ideally one or more dental team members of your practice staff needs to be tasked with the authority and responsibility of oversee the practice's compliance efforts. This person (or people) should report directly to you on compliance matters; your compliance officer should not be you (unless you have a small practice and it cannot be avoided). Compliance Officers may be in charge of all compliance activities for the practice or play a limited role. In any event, this person's role is to serve as your life guard to watch your back, stay plugged in to regulatory changes, and to keep you informed of gaps in compliance, establishment of corrective action plans, and ongoing compliance efforts.

A compliance officer needs to be a sound decision maker, have the ability to communicate effectively with you and your dental team members. Sometimes compliance officers have to have tough conversations with people about right and wrong; sometimes they have to enforce matters that are quite unpopular for the greater good of the practice and all involved. Being a compliance officer is not for the faint of heart or those who are afraid of conflict.

While your compliance officer should be a person on your staff who reports to you directly regarding compliance concerns it may be helpful to outsource some of your compliance needs and get ongoing guidance and support from compliance experts, such as Dental Compliance Specialists (my shameless plug). If you are a Compliance Advantage Program client you know the value of having outside help to help keep you in the know about changing rules and regulations and to help you GSD (get stuff done).

Step Four: Conducting Appropriate Training and Education

Education is an important part of any compliance program and is the logical next step after problems have been identified and the practice has designated a person to oversee educational training. Ideally, education programs will be tailored to the dental practice's needs, specialty and size and will include both compliance and job-specific training.

Suggestions for items to include in compliance training are: The operation and importance of the compliance program; the consequences of violating the standards and procedures set forth in the program; and the role of each employee in the operation of the compliance program.

There are two goals a practice should strive for when conducting compliance training: (1) All employees will receive training on how to perform their jobs in compliance with the standards of the practice and any applicable regulations; and (2) each employee will understand that compliance is a condition of continued employment.

Compliance training should be provided in all content areas to new employees before they engage in patient care activities, answer your phone or have access to your patients' Protected Health Information or have access to handle your controlled drugs. Additionally, compliance training should be continuous and ongoing. Training content should include:
Bloodborne Pathogens (required annually)

Hazard Communications
Emergency Action Plan
Fire Prevention
Electrical Safety
Infection Control (not the same as Bloodborne Pathogens)
Personal Protective Equipment
OSHA Recordkeeping
HIPAA (and your state's regulations regarding health information privacy and security)
Code of Conduct
Compliance Plan
Medical Emergency training (beyond CPR)
Child Abuse Reporting and Awareness (required by many state Medicaid programs)
Regulatory requirements/ prohibitions
Clinical Recordkeeping
Coding/ Billing (certifications desirable)

Some examples of items that could be covered in coding and billing training include:

- Coding requirements;
- Claim development and submission processes;
- Signing a form for a physician without the physician's authorization;
- Proper documentation of services rendered;
- Proper billing standards and procedures and submission of accurate bills for services or items rendered to Federal health care program beneficiaries; and

The legal sanctions for submitting deliberately false or reckless billings.

Training does not always have to occur in a formal setting. However, all training must be documented for all participants. Someone needs to ensure that every contractor and employee in your practice completes training. Inevitably someone in the office will miss out on some training. Efforts to make up missed training must be provided and someone needs to follow up to ensure that employees who miss out make up missed training. This sounds like a great job for your compliance officer.

In addition to the content areas listed about you, your contractors and employees must read and know your written standards and you need to be able to demonstrate comprehension by your workers. Merely signing an acknowledgement may not be adequate.

Step Five: Responding To Detected Offenses and Developing Corrective Action Initiatives

Earlier I discussed auditing and monitoring, but I didn't clarify what to do when problems are identified. Audits provide substantial feedback for you and really provide a reality check of the quality of you and your staff's work. Sometimes this feedback stings when you find imperfections in your work. There is always room for improvement. Don't let your findings deter you.

Some of my clients and their staff make a game of auditing in the sense they see who can find the most mistakes. The person who finds the most mistakes gets to skip out on participating in monthly auditing the following month. Not only does the winner get a free pass, but also they get to go for an hour massage at the spa while everyone else completes their audits. What's more is the person who finds the least errors has the honor of doing the winner's audits in addition to their own. Auditing is a team sport!

Once the audits are complete the information needs to be reviewed by you and your compliance officer. Documentation errors are those that do not affect billing (incomplete forms, incorrect documentation, missing vital signs, and similar issues). Billing issues, on the other hand, involve inaccuracies that were billed out, such as billing for 4 bite wings when there only two were taken or billing for fluoride treatment when fluoride treatment was not documented in the clinical record (a very common and simple mistake).

When problems are identified they must be followed up on. Some issues may be corrected by having the provider of care write an addendum to their original note. Addendums should not be backdated and no attempt should be made to alter the original notations. On a new note on the current date the provider should indicate something to the effect of, "during a chart audit on XX/XX/XXX it was discovered the practice billed for fluoride treatment on XX/XX/XXX. However, my clinical note did not indicate I provided fluoride for the patient; this was a charting omission. As the provider of care on the above date I did actually provide Nupro 1.23% APF fluoride foam to aid with the development of permanent teeth and to lower the risk of tooth decay. Signed ***, RDH on XX/XX/XXXX at XX:XX A.M."

In the previous example, if the hygienist did not recall whether she provided fluoride for the patient billing staff should process if a corrected claim and make a note in the patient's record indicating why the corrected claim was submitted. If the claim is paid before the error is caught then your billing staff needs to process a refund to the payer. A letter explaining the reason for the repayment should accompany the repayment check. Additionally, a notation should be created in the patient's record to explain the same.

"All About That Paper"

Why such much recordkeeping?

Because you know,
I'm all about the paper
'Bout the paper, no trouble
I'm all about the paper
'Bout the paper, no trouble
I'm all about the paper
'Bout the paper, no trouble
I'm all about the paper
'Bout the paper, no trouble

Yeah, it's pretty clear, paperwork sucks; it ain't no fun
But you must do it, do it
Like you're supposed to do
'Cause you don't want to be the boom boom that all the feds chase

And all the right info in all the right places

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Hey!

When you or your staff members find a problem, the next step is to develop a corrective action plan and determine how to respond to the problem. Violations of your compliance program, significant failures to comply with applicable Federal or State law, and other types of misconduct threaten your status as a reliable, honest, and trustworthy provider of oral health care.
Consequently, upon receipt of reports or reasonable indications of suspected noncompliance, it is important that you or your compliance officer look into the allegations to determine whether a significant violation of applicable law or the requirements of your compliance program has indeed occurred, and, if so, take decisive steps to correct the problem.

Step Six: Developing Open Lines of Communication

In a small practice setting, the communication element may be met by implementing a clear "open door" policy between you and your compliance officer and other employees. This policy can be implemented in conjunction with less formal communication techniques, such as conspicuous notices posted in common areas and/or the development and placement of a compliance bulletin board where everyone in your practice can receive up-to-date compliance information.

A compliance program's system for meaningful and open communication can include the following:

- The requirement that your employees report conduct that a reasonable person would, in good faith, believe to be erroneous or fraudulent;
- The creation of a user-friendly process (such as an anonymous drop box for) for effectively reporting erroneous or fraudulent actions or conduct that does not meet your standards;
- Provisions in your written standards and procedures that state that a failure to report erroneous or fraudulent conduct is a violation of your compliance program;

The development of a simple and readily accessible procedure to process reports of erroneous or fraudulent conduct (keep it super simple).

I'm going to be frank with you (it's for your own good). There are happenings in your practice that you staff shield you from and there are many reasons why you will never know about certain happenings. Here are some common reasons:

Your staff perceive that there are some things you should not be bothered with because the matter may be beneath you;
Your staff does not want you to know when they made a mistake;
Your staff does not want to embarrass you;
Your staff feels they are protecting you from something;
Your staff feels you will not take them seriously.

Often your staff has the best of intentions, but not always. You have a substantial barrier to overcome because of these common reasons. However, you need to take down as many barriers to open, honest communication as possible between you and your staff and be willing to hear their honesty, even if it hurts your feelings. While you are the doctor odds are your staff is comprised of smart, intelligent people who care about their work, about your patients and your practice. How will you bridge this unseen divide to truly be 'in-the-know' about your practice? How will you garner an unfiltered view of your practice?

Placing a suggestion box outside your office door below your CCTV surveillance camera probably won't help you bridge the divide. Think outside the box. I'll share my ideas in a future article.

Step Seven: Enforcing Disciplinary Standards Through Well-Publicized Guidelines

Finally, the last step that you need to take is to incorporate measures into your practice to ensure that your employees understand the consequences if they behave in a non-compliant manner. An effective dental practice compliance program includes procedures for enforcing and disciplining individuals who violate the practice's compliance or other practice standards. Enforcement and disciplinary provisions are necessary to add credibility and integrity to a compliance program.

This is one area you may struggle with. You may not enjoy conflict. Perhaps you would rather have your teeth extracted without anesthetic than have to discipline an employee who shows up late for work, creates records that regularly result in improper payments to your practice, is abrasive with other employees, or fails to meet your quality standards. If you have a hard time doling out discipline then hire someone who can dole it out for you, accepts your guidance and does not also require disciplining by you.

With my clients I often get called 'be the heavy' to support our dentists who don't like or prefer not to be the disciplinarian of the practice. There is no reason you have to do everything yourself; the job has to be done though. Discipline is more about correction than punitive action. In many situations it may be appropriate to require retraining, as opposed to a suspension without pay or termination.

Here is a situation you may relate to – your hygienist will not wear a clinical jacket. She gets hot or doesn't like that they are uncomfortable. OSHA regulations (federal law) requires that you provide training on the use of personal protective

equipment. You are required to mandate the use of fluid-resistant clinical jackets whenever it is reasonable to anticipate splash or aerosols of biological matter. You must provide size appropriate clinical jackets. Your employees are required to follow the law by wearing clinical jackets, as indicated. You are required to enforce the law and your standards in this case. To control your liability you must correct this situation.

No, your hygienist cannot sign a waiver declining to follow the law. Imagine what our world would be like if we could use waivers to avoid following the law? I don't think, "I'm sorry I was speeding officer, but here is my waiver, I object to 20 mph speed limits in school zones." Chances are slim he will let you go without a hefty ticket. Just like this won't fly with the traffic cop your hygienist's refusal to wear a clinical jacket will not make it past an OSHA inspector (and you would be fined, not your hygienist. Try to pass it off to your hygienist to pay and you will have another mess to deal with).

In Closing

There is much more to a compliance program than the OSHA program you are accustomed to. You have a lot of work to do to put your program together. There is no such thing as set it for forget it when it comes to compliance. Heck no! Requirements are continually changing and there are tasks you must complete periodically do to maintain your compliance program.

Most dentists know or have heard of another dentist who has been placed on a Medicaid payment hold due to suspected fraud or overpayment issues, but have you heard of a dentist being audited and having to pay money back to PPOs and HMOs? I hear it more and more every day. The bottom line is you are accountable to the people who pay for your services; your work, their money. Payers expect you to be honest, ethical and accurate. If we are all prone to mistakes how do you know what mistakes you may be making if you don't look (often)? Compliance programs are not so much about crime prevention as they are about minimizing mistakes and striving for excellence in all that you do (and providing for your ability to prove your excellence).

Unless you participate with one or more federal healthcare programs (i.e. Tricare, Medicare, Medicaid or CHIP) you do not have to have a compliance program. Keep in mind, however, eventually all insurance will be government subsidized and unless you operate a cash only practice you will one day have to have a compliance program. You can wait for someone to drag you into the 21st century or you can be on the cutting edge of dentistry. If you are a techie, are a world-class dentist or are committed to professional excellence the information I presented may speak to you. Share your thoughts with me. My e-mail address is duane@dentalcompliance.com.

Compliance programs are a lot of work. However, a compliance program will enhance the professionalism of your practice. Having a compliance program substantially increase the value of your practice because of the enhanced professionalism. Your buyer will be buying a well-oiled machine. Conversely, practices without compliance programs are worth less (often because of needed equipment, needed training, low morale, no or inadequate business systems and processes). If you are curious I will gladly help you put pen to paper to put my theory to the test.

Resources:

Developing the Compliance Program Guidance for Individual and Small Group Physician Practices; Federal Register; October 5, 2000; http://oig.hhs.gov/authorities/docs/physician.pdf , accessed 02/02/2015.