



HCCA's 12TH ANNUAL COMPLIANCE INSTITUTE

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IT'S 10 PM: *DO YOU KNOW WHERE YOUR DATA IS?*

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The Problems

- Lots of third-parties want your data (not just the government)
- What are you disclosing, why, and where is it going?



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Huge Implications Of Correct Data Reporting

“We are reviewing assorted sources of quality [and other] information on your facility to see what it says.... You should be doing the same.”

James G. Sheehan (formerly Associate U.S. Attorney for Civil Programs in the Eastern District of Pennsylvania; currently New York State Medicaid Inspector General) Health Care Policy Report, Vol. 15, No. 6.



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The Challenge of Data Collection and Reporting

“Providers continue to struggle with staffing shortages, tighter reimbursements, and pressures to accomplish more with less making their ability to meet these various requirements and increasing concerns. Not only are there a large number of organizations demanding data, but each requestor of data has its own set of requirements and specifications to comply with. One quality measure could have varying specifications among two or more requesting organizations. A healthcare provider must dispense each measure’s numerator and denominator statements, data elements and abstraction specifications, allowable data sources, date of submission deadlines, analytic specifications, and the list goes on. So, you can have one measure – for instance, diabetes hemoglobin A1B -- that is requested from five different performance measurement requestors and they could all have different specifications. “

Kallem, Crystal, David Gans, and Allison Viola. “Burden of Data Collection.” Testimony to the National Committee on Vital and Health Statistics Work Group on Quality, June 19, 2007. Washington, DC.



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Agenda

In this presentation, we will:

- Present a hypothetical
- Understand how data typically flows, and the risk areas
- Present an overview of well-known and less-well-known initiatives
- Consider how to protect your patients and your institution from problems arising from inappropriate data use or disclosure



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Hypothetical/Small Private Collection Initiative

The administrator of your hospital's cuticle clinic tells you that the clinic wishes to participate in a data collection effort sponsored by the American Cuticle Association. The data request asks for information on:

- What kind of procedures performed
- How many positive outcomes
- How many negative outcomes (minor, moderate, severe)
- Process for reviewing negative outcomes
- Steps taken to analyze severe, negative outcomes
- How many patient complaints
- How many patients returned with medical issues following procedures



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Hypothetical (cont.)

- Information collected from the report will
 - Be merged with information from other cuticle clinics and facilities, and analyzed
 - Be publicly reported, with no individual patient or reporting institution identified
 - Belong to the ACA following disclosure, per a contract between your hospital and the ACA
- *The chief of your cuticle clinic is requiring participation, because she is the President-elect of the ACA*



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Hypothetical (cont.)

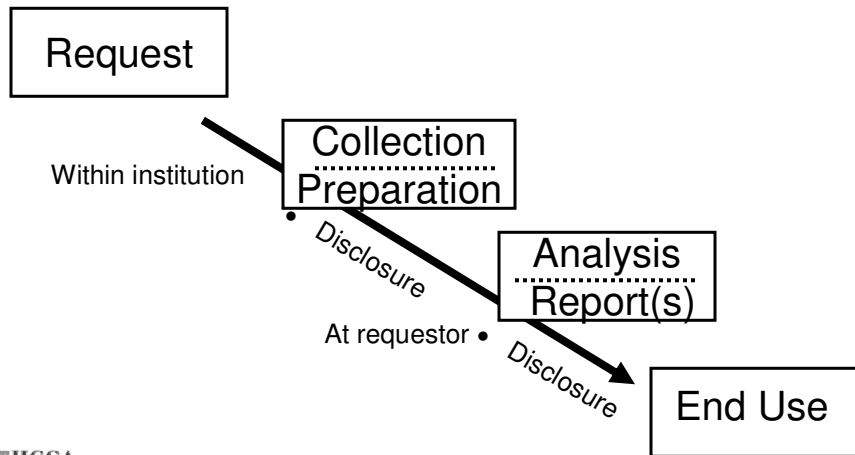
- This hypothetical is not unrealistic: many groups working in clinical areas (e.g., cystic fibrosis, heart, kidney, etc.) are and have been collecting this kind of information
 - See discussion regarding Cystic Fibrosis Foundation data collection project in Gawande, Atul. Better: A Surgeon's Notes on Performance. (Henry Holt, 2007).
- Facility administration may not know that departments are participating in discrete data collection efforts



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Data Flow Chart



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Principles

- The data request must be known and understood.
- The data must be accurate and reliable.



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Getting Started: Know the Request

- Who is requesting the data?
 - Is it a legitimate organization?
 - What time period does the data cover?
 - When is it due?



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Getting Started: Know the Request (cont.)

- Why is the data being requested?
 - Is the disclosure for a useful purpose?
 - Useful to whom – patients/public, payors, media, investigators, etc.?
- What will happen to the data?
 - Will it be used as background for a report?
 - Will it be published as is?
 - Will it be aggregated and/or de-identified?



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Getting Started: Know the Request (cont.)

- Is the data disclosure required?
 - By whom (the law, accreditation association, trade association)?
 - For what purpose?
 - Payment
 - Sanctions
 - Licensure/accreditation
 - Litigation



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Getting Started: Guidelines for Knowing the Request (cont.)

- Is the disclosure prohibited or restricted by law?
- Could the disclosure negatively impact your organization (confidentiality, payment/finances, reputation)?
- Will/could there be any downstream uses that are not known, e.g., sale of the data?
- Can the data be corrected?
- Was the data requested as a result of whistleblower activity?



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Getting Started: Guidelines for Knowing the Request (cont.)

- Does the data collection and disclosure support your mission and vision?
- Does the data collection and disclosure reflect good business practice?
 - Consider the importance of transparency vs. the disclosure of misleading or erroneous information



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Getting Started: Know the Request (cont.)

- Legal issues to consider before you get started:
 - Confidentiality issues
 - HIPAA, other privacy laws
 - Intellectual property issues
 - Who will own the data once it is disclosed?
 - Antitrust issues
 - Are there any pricing or boycotting issues involved?
 - Whistleblower activity



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Data Collection

Within the institution:

- Determine which area(s) will provide the data
 - Consider whether data is coming from an outside source or a vendor, e.g., a billing company
- Depending on request, data could come from
 - Clinical department(s)
 - Billing
 - Medical records
 - Patient complaints
 - Quality assurance
 - Peer review
 - Patient safety
 - Legal counsel
 - One or more of the above



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Data Preparation

- Is the data accurate and from the appropriate time frames? (*Simple question, but often the answer is no*)
 - How closely has it been reviewed?
 - Should it be subject to additional review (by other departments, legal counsel)?



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Data Preparation (cont.)

Review the data for legal and other issues, including:

- Confidentiality issues
 - Patient confidentiality
 - HIPAA, State law, etc. – do you need patient consent?
 - Institutional confidentiality
 - HIPAA
 - Trade secrets
 - Statutory protections, peer review, patient safety reporting
 - Agreements with payors, other third-parties
 - Attorney-client privilege
- Antitrust issues
 - Be careful about disclosing pricing information to third-parties



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Disclosure to Requester

- Is the data transmission secure?
- Does IT need to be involved?
- Should receipt be confirmed?
- Should there be follow-up regarding the use and disclosure of the data by the requester?



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Application of These Guidelines to the Hypothetical

- The hypothetical American Cuticle Association request was permissible, for the most part
- The institution
 - Carefully considered whether to provide data on pricing; because request was general disclosure was permissible (e.g., did average payments increase over the last year?)
 - Reviewed and tried to change (but couldn't) certain contract terms
 - Wanted some control over the data; where would the data be in 5 years?
 - Double-checked the responses by department committee
 - Cleared responses with compliance officer, QA committee
 - Legal also cleared responses, but compliance officer could handle future, similar responses



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Overview of Kinds of Initiatives

- Federal Programs
- State Programs
- Quasi-governmental Programs
- Private Programs



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CMS Programs/Hospital Compare

- CMS data collection programs are numerous
- Hospital Compare was developed by Medicare and the public-private Hospital Quality Initiative (“HQA”)
- Hospital Compare disseminates data collected through other quality programs via hospitalcompare.hhs.gov
- Implications
 - Financial losses or rewards
 - Over-collection of documentation?
 - Practice for things to come?



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CMS Programs/HCAHPS

- “Hospital Consumer Assessment of Healthcare Providers and Systems”
- Data generated from patient surveys
- Implications
 - ‘Voluntary’ is a relative term
 - Annual payment update (APU) may be reduced in some hospitals by 2%



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CMS Programs/30-Day Mortality Measures

- Sponsored by CMS and the HCA
- Uses existing claims data, risk-adjusted
- Publicly reported
- Implications
 - Requires thorough documentation on claims
 - Underscores unpredictable uses of data



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CMS Programs/Medicare's RACs (Recovery Audit Contractors)

- Demonstration project to collect overpayments
- Expanding to all states
- Uses data algorithms to identify payment errors
- Implications
 - May look for medical errors
 - Bounty hunter approach for finding payment errors



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State Patient Safety Reporting

- Pennsylvania was one of the first states with laws to mandate reporting “serious events” & “incidents” to the Patient Safety Authority (a quasi-gov’tal agency)
 - Events and incidents may be reported by the PSA to the Department of Health for licensure purposes
- Other states have similar programs, like Tennessee’s Unusual Incident Reporting System
- Implications
 - Data not to be disseminated publicly
 - Whistleblower protections



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Joint Commission

- Joint Commission requires accredited institutions to report “sentinel events”
- Implications
 - Impacts accreditation
 - Overlaps with state initiatives
 - State-specific issues concerning whether disclosure violates peer review laws
 - Provides hospital level data via the Internet



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Private Organizations

Examples of private quality initiatives:

- Clinical specialty associations, e.g., Cystic Fibrosis Foundation, American College of Surgeons
- Trade associations, e.g., Michigan Health and Hospital Association's Keystone project
- Payors, e.g., National Quality Assurance Committee ("NCQA")
- Provider-payor initiatives, e.g., Pennsylvania Healthcare Quality Alliance (hospitals and large insurers)
- Public-private initiatives, e.g., Medicare-HQA



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Crisis Management

Two kinds of crises:

1. Data inappropriately disclosed.
2. Data inappropriately used by requester.



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**Crisis Type 1:
Data Inappropriately Disclosed**

- **Patient data:**
 - Review HIPAA, State law, and institutional requirements for responding to the disclosure, including mitigation
- **All data:**
 - Seek to have it returned
 - Consider who has to be notified:
 - Management
 - Payors per contractual confidentiality provisions
 - Counsel



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**Crisis Type 2:
Data Inappropriately Used**

- **Complaint (formal or informal) to requester, e.g.,**
 - Informal action by hospitals against Joint Commission in 2005, concerning Commission's intent to sell facility quality data to payors
 - Whistleblower involvement?
- **Complaint to government agency, e.g.,**
 - Recent NY Attorney General action against payors regarding how physician data reported
 - Formal appeal against Pennsylvania Health Care Cost Containment Council regarding methodology for health facility-acquired infection reporting



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Conclusion

- SURVEY INSTITUTION TO DETERMINE WHO IS PROVIDING DATA
- KEEP UP-TO-DATE
- PARTICIPATE IN DEMONSTRATION PROJECTS WHERE POSSIBLE AND APPROPRIATE



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