



News Update

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Indian River County
Medical Society

Patient Care - Our Highest Priority

May-June
2009

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Message from the President

I would like to take a moment to update our members on important developments and new administrative burdens to our practices. The Indian River County Medical Society can't make them go away, but we can help you prepare.

Members planning to update their computer systems should be careful. A few weeks ago the Certification Commission for Healthcare IT published on its website its 2009 criteria, as well as a new "Concise Guide to CCHIT Criteria." If you do not meet the criteria, your electronic health record systems will not be eligible for up to \$44000 in reimbursement under the economic stimulus package. They also include specifications for stand-alone electronic prescribing systems and add-on EHR features for pediatrics and cardiology.

Many physicians are not yet enrolled in HCNN. Most physicians are familiar with the FDA email-alert system called MedWatch that sends out notices about a variety of health-safety issues, but the iHealth Alliance system will distribute alerts that are more targeted to the individual recipients' needs. To join Health Care Notification Network (HCNN), the only secure online service that delivers urgent patient safety alerts to healthcare providers, visit the website www.HCNN.net or call 866 925 5155.

Some practitioners are risking serious fines and disciplinary action from regulatory agencies. The Florida Board of Medicine audits physicians and physician assistants to ensure compliance with CME requirements. A recent random audit of 791 physician assistants by the Florida Department of Health found that only 53% were able to document compliance with CME requirements. Physicians are also subject to audit, and penalties are possible. If you need more information, or are audited and need help, please let us know right away. Be aware that IRCMS members have reported ongoing audits as recently as May 2009.

Medicare's Recovery Audit Contractor (RAC) program is expanding in 2009. If you bill Medicare, you are subject to audit, and the contractor is paid on a contingency basis - if you lose, they get paid. They are more likely to look at high-dollar services. IRCMS urges you to be thoughtful in your response to a RAC request. You have 45 calendar days to respond. Fourteen percent of over-payment decisions during a demonstration period were appealed; a full one-third of these appeals were successful. (Four percent of all Medicare denials are appealed and 59 percent of appeals are successful.) If you are a solo practitioner, they can only request 10 records per 45-day period.

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(Message from the President continued)

If you add a partner, move your office, or have an event that requires re-enrollment in Medicare, you are at serious risk of Medicare expulsion for non-payment for certain events. Starting April 1, CMS cut the time-frame under which physicians can bill Medicare retroactively for services after a successful enrollment or re-enrollment. The window was 27 months but is now only 30 days. Also, practices must alert contractors of any changes in practice locations within 30 days, or risk expulsion from Medicare for as much as two years. In other words, we're talking about serious stuff here so please be careful.

Medicare payments to physicians will remain private despite a move to make them public information. Physicians privacy was upheld in a recent ruling by the United States Court of Appeals. The American Medical Association fought against public disclosure of Medicare payments to physicians. The court found there is no public interest in the disclosure and the release of personal physician payment data does not meet the standard of the Freedom of Information Act. This is another example of the AMA commitment to help physicians focus on what we do

best - care for people.

FMA members are eligible to receive a free 49-page guide to evaluation and selection of EHR systems (Electronic Health Record). The free code to download the book is on page 17 of the Spring 2009 edition of the FMA periodical Florida Medical Magazine. If you are an FMA member and need a copy of the guide but have misplaced your copy of the magazine, call the IRCMS office and ask our executive director Shelly Stiven for your code. You can also purchase the book directly.

The Florida Department of Health offers CE Broker to help you document compliance with CME requirements. It is optional, and the limited module is free, but the cost of full access for one year is \$35, which allows you to log on and view the balance. The free version allows you to self-submit completed CME, and you will not receive an audit letter if you post the required CME credits. The search engine provided by the site to locate CME is quite limited and probably not useful to most IRCMS members, however. For more information call CE Broker at 1-877-434-6323, log on to www.cebroke.com, write to Demarcus Holden of the Practitioner Continuing Education Auditing Service Unit of the Florida Department of Health or call the unit directly at 850 245-4262.

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Gastroenterology Clinic at We Care

The We Care program held a gastroenterology clinic at Indian River Medical Center on Saturday, May 16th. Fourteen patients who would have not otherwise received vital colonoscopies and upper endoscopies without this volunteer program were scheduled. A heartfelt thank you to those who gave up their Saturday morning, many of whom started the day at 6:00 a.m.



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Liability Issues Associated with Electronic Physician-Patient Communication

by Cliff Rapp, LHRM
Vice President Risk Management



The Internet continues to open new avenues for communicating. Over forty-million Americans access the Internet for healthcare information and services.(1) Recent data further evidences the growing demand by patients for specific healthcare information and directives as well as increasing expectation for online interactivity.

In tandem with the benefits of electronic communications are emerging liability issues and sobering legal concerns. To date, legal waters are largely untested. Consequently, it is important for pediatricians who communicate electronically to address fundamental risk management issues evolving for Internet-based communication entailing patient privacy, confidentiality of patient information, security and encryption, parental informed consent, use of disclaimers, opportunities for patient education, and the implications of website linkage.

Electronic communication systems encountered in the healthcare delivery system are fairly abundant and include practice-based Internet web pages, electronic prescribing systems, wireless personal data, drug formularies, e-mail transmission, voice mail, and internal, intranet web sites. Approximately four-million patients communicate with their physician via e-mail and over three-million Americans access physician office-based websites.(2)

There are many advantages in communicating electronically with patients. Electronic transmission of information is faster than traditional modalities, and in some cases, instantaneous. In addition to meeting growing expectations for quick and precise information exchange, electronic communication has the advantage of informing and educating patients, confirming delivery of information exchange, provides automated follow-up, enhances informed consent, facilitates compliance with treatment regimens, and documents the sequence of communication. However, such advantages are not without consequences liability-wise.

The inherent risks in communicating electronically include online malpractice exposure, unintended creation of a physician-patient relationship, inadvertent

extension of the physician-patient relationship, and inappropriate disclosure of confidential patient information under potentially draconian HIPAA and civil monetary penalties. Courts have ruled that when used in connection with patient care and treatment, electronic communication is a medical record. Seemingly intangible electronic communication is likely to become evidence should a legal proceeding arise. In this context, consider whether the communication would support a defense or facilitate a malpractice claim against the physician? Such evidence could include notes that you author, records made by others, correspondence, e-mail transmissions, answering service records, staff notations, the content of websites and their links as well as messages and insurance and billing statements.

Meeting ever increasing expectations for online interactivity should be coupled with a modicum of risk management foresight and savvy.

- (1) iHealthcareweekly.com
- (2) [Cyber Dialogue](#)

Cliff Rapp, a licensed health care risk manager, is Vice President of Risk Management with First Professionals Insurance Company, a leading medical professional liability insurer. Rapp is widely published and a national speaker on loss prevention and risk management.

Information in this article does not establish a standard of care, nor is it a substitute for legal advice. The information and suggestions contained here are generalized and may not apply to all practice situations. First Professionals recommends you obtain legal advice from a qualified attorney for a more specific application to your practice. This information should be used as a reference guide only.

NEWS YOU CAN USE

SB 1122 Signed into Law

On June 10, 2009, Governor Charlie Crist signed Senate Bill 1122 into law, signaling to citizens across Florida his continued commitment to honoring patient choice and improving efficiency and access to care.”

“On behalf of the physicians who provide care to the patients of Florida, we thank Governor Crist for his demonstrated commitment to putting patients first and signing SB 1122 into law,” said Steven R. West, MD, President of the Florida Medical Association (FMA).

SB 1122 requires insurance companies to honor a patient’s request to send the payment for services directly to the physician rather than routing the payment through the patient. Currently in Florida, if a patient goes out-of-network to see a physician, some insurance companies choose to not honor the patient’s request to send the payment to the physician and instead send the check directly to the patient.

“While routing the payment through the patient may seem like a minor inconvenience, unfortunately, this practice is driving up the cost of health care, imposing hidden fees and limiting access,” said Timothy J. Stapleton, FMA Executive Vice President. “This common sense legislation will put a stop to this and allow physicians to spend more time and resources on direct-patient care.”

“We also want to acknowledge the leadership of Senator Don Gaetz and Representative Marcelo Llorente who sponsored this pro-consumer, pro-patient legislation,” added Stapleton. “They recognized that this legislation would greatly improve health care in the State of Florida.”

Scope of Practice issue upheld

After months of aggressive lobbying on both sides, the issue of whether optometrists should be allowed to prescribe oral medications finally came to a head in the Senate Health Regulation Committee during this past session. After an hour of testimony, the committee voted against SB 326 by a vote of 5 to 3 – an action that makes passage this session highly unlikely. While such a sudden ending may lead one to believe that this was an easy victory, the truth is that it was anything but. The Florida Medical Association (FMA) lobbying team, working in lock step with the Florida Society of Ophthalmology, expended a tremendous amount of time and political capital to ensure this bill’s defeat.

Workers’ Comp Reform

The Workers’ Comp reform bill was signed by Gov. Charlie Crist on May 29th. The law will help keep worker’s compensation rates lower for Florida employers.

In October, the Florida Supreme Court threw out a limitation on attorneys’ fees, which had helped bring a 60 percent drop in premiums over the past five years. The new law restores the cap, fixing the glitch that led to the high court’s ruling.

Based on the new law, Florida’s worker’s comp rates rolled back a 6.9 percent increase that took effect on April 1. This is expected to save the state’s employer’s \$172 million in policy premiums

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What's New with the Florida Board of Medicine

Medical Records

Crystal A. Sanford, CPM Program Operations Administrator
Florida Board of Medicine www.FLHealthSource.com

Part two in the Top 10 Tips to Avoid Problems with Your License series is about relocating your practice. However, we cannot talk about relocating your practice without talking about medical records, which is tip number 4.

General information

All too often the Board sees physicians facing disciplinary action because the patient record does not adequately reflect what care was actually provided and why it was provided. Here is a SECRET: in deciding disciplinary cases, the Board of Medicine relies in large part on independent, credentialed experts in a variety of specialties to provide standard of care opinions. That expert opinion relies in large part on the clarity and detail of the patient record. To best protect your patient and yourself, look at the record you are preparing and ask yourself: would another Florida physician in my specialty have enough information to decide whether appropriate care was provided to this patient?

Retention of medical records

Physicians are responsible for maintaining the medical records of their patients. These records must remain confidential and

whether the records are kept in the physician's office file cabinet, a clinic's record room, or in electronic format in a computer data storage bank, the prudent physician will follow policies, standards and procedures to ensure the confidentiality of the medical records.

A common call to the Board Office involves who is responsible for records after the physician leaves the practice or the practice suddenly closes and the owners are not there to provide patients with copies of their records. The best way to ensure that the patient records are maintained by an appropriate custodian is to make very clear, in writing, who the custodian is if the practice/clinic is closed or the licensee leaves the group/practice/clinic. The custodian of records is covered in 456.057 and bears a careful review by practitioners. Physicians who are part of an HMO or group practice should carefully consider who to designate, in the employer contract with said entities, as the records owner.

Timing is everything: medical records must be maintained at least five (5) years from the date of last contact with the patient. Failing to comply with this requirement could result in disciplinary action pursuant to section 458.331(1)(m), Florida Statutes. *(Continued on page 6)*



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(Florida Board of Medicine Continued from page 5)

)Furthermore, the requirement to maintain medical records for five (5) years may be less than what is necessary to protect the physician. The physician should contact his/her medical malpractice carrier for their retention requirements.

Release of Medical Records & Relocation/ closing practice

If a physician is relocating or terminating practice and is no longer available to patients, the physician must complete the following steps:

- Publish a notice in a newspaper in the area of the physician's practice with the greatest circulation.
- The notice must contain the date the office is closing and the address at which patients may receive copies of their medical records
- The notice must run at least one day per week for four (4) weeks
- Submit a copy of the notice to the Board of Medicine within 1 month of the closing date

A physician may also place a sign at the practice and/or send individual letters to the patients with the notice information.

If a physician closes his/her practice and would like to appoint someone as custodian of the records, the appointee must be an allopathic or osteopathic physician.

Costs for reproducing medical records

Medical records should only be provided in response to a written request from the patient or the patient's legal guardian and/or legal representative.

The Board would encourage physicians to provide their patients with at least one (1) copy of their medical record for no fee. However, a physician may charge the following fees for reproducing medical records to patients and governmental bodies:

- For the first 25 pages, \$1.00 per page
- For the subsequent pages (after 25), \$0.25 per page
- For other types of records, such as X-rays, the actual cost of reproduction including materials, supplies, labor costs and overhead costs associated with reproduction.

Physicians may charge the following to any entity other than the patient or governmental bodies:

- \$1.00 per page
- For other types of records, such as X-rays, the actual cost of reproduction including materials, supplies, labor costs and overhead costs associated with reproduction.

Certain confidential records are very sensitive and must only be provided upon written request and only to certain entities.

These records include HIV/AIDS records, sexually transmitted disease records, alcohol and drug abuse records, and psychiatric

and psychotherapeutic records. For example, psychiatrists may provide a report in lieu of copies of the psychiatric medical record. However, if the patient is seeing a new treatment provider, the psychiatrist should forward copies of the entire medical record directly to the new psychiatrist.

Furnishing of reports or copies of medical records shall not be conditioned upon payment of a fee for services. However, furnishing of the report or medical records may be conditioned upon receipt of the payment for reproduction of the records.

Additional information regarding medical records can be found, but is not limited to the following laws and rules:

- Rule 64B8-10 - Medical Records Retention, Disposition, Reproduction - Florida Administrative Code
- Section 456.057, Florida Statutes
- Section 458.331(1)(m), Florida Statutes

Medical records are governed by both state and federal laws. If you have any specific questions or are unsure about medical records, you should contact your legal representative.

Electronic medical records

If a physician has elected to maintain electronic medical records, the same principals of content, confidentiality, retention, and release apply. In addition, physicians need to ensure they have a backup of their electronic medical records and have accounted for the confidentiality of these records as well. Remember the SECRET above regarding the role of experts in your specialty... well that applies here too. If an electronically stored patient record is erased or lost, that expert in your specialty would be asked if the steps you took to safeguard the electronic records were appropriate.

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