KEEPING COMPLIANCE WITH MEDICAL AND LEGAL ISSUES IN AN OPTOMETRIC PRACTICE

by

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ABSTRACT

Optometry has changed tremendously in the last 10 years. Optometry not only has expanded its scope of practice but has had to deal with changes in the health care arena. Practitioners are having to spend more time dealing with the business aspects of running the office and less time devoted to patient care. I have researched current issues and compiled them together in a guide to aid optometrists in complying with medical and legal issues in an optometric practice. I focused on Records Maintenance, Informed Consent, Federal Trade Rulings, and Health Insurance Portability and Accountability Act.

Practitioner's Guide

To

Keeping Compliance

With

Medical and Legal

Aspects Of

Optometric Practice

Record Keeping Practices

Record keeping is a necessary obligation in any optometric practice. Record keeping allows you, the practitioner, to maintain records, obtain reimbursement, and prevent malpractice claims. There are many important aspects to consider ensuring proper record keeping practices.

Proper maintenance of patient's records allows you, the practitioner, to facilitate management of a patient's case and provides a comprehensive account of care and treatment provided to the patient. Comprehensive documentation includes test results, communication and education, and treatment plans. A standard of care has been established involving record keeping which states that adequate documentation in a patient's record is required that supports, explains, and describes care given to a patient.[1] Here are some basic guidelines and reminders that every practitioner should follow to make sure that your records follow the standard of care.

- Records should be kept well organized. An office protocol should be established so staff and doctors know in what order a chart should be maintained.
- All records should be problem orientated in a clear, efficient, and thorough manner.
- When recording information in the chart descriptive terminology must be used to describe findings. Avoid words such as within normal limits, normal, and unremarkable.
- Proper documentation should include procedure performed, equipment used, technique applied, and drugs used.

- Informed consent should be given to all patients when procedures or treatment options require it.
- Follow up appointments need to be documented including if a patient cancels an appointment. If a patient does not show to an appointment an office procedure needs to be established to notify the patient. Either a phone call or letter needs to be used to get in touch with the patient.
- A referral appointment must be documented in a patients chart when made. This should include date, time, location, who the appointment is with, and who made the appointment.

There are also certain management issues that must be considered when dealing with records. Often the question arises, who actually owns the records? The individual practitioner or owner of the practice owns the records. If a doctor is employed by another doctor or office, they do not own the records but the employer does. Another common question deals with the retention of records. The law does vary depending on state, but the universal law states that no patient records should be thrown away. Patient's records need to be kept in a safe place to prevent damage when stored. Each state can establish their own laws concerning record keeping and can have an affect on how practitioners should also manage their records according to the state they are practicing in.

Informed Consent

Informed consent is the obligation for practitioners to provide information to the patient regarding risks, benefits, and possible complications of a procedure. The fundamental principle behind informed consent is based on the fact that a person's body cannot be violated and the unconsented touching of one person by another violates that person in which damages can be rewarded.[2] The patient has the right to be informed of the potential risks and complications of the procedure or treatment and to accept these before a procedure or treatment is started. In the past optometrists have been taken to court due to the failure of properly informing the patient on a variety of cases. Some of these include: failure to inform of suspicious findings, failure to advise of elevated intraocular pressure, symptoms precluding to retinal detachment, as well as the fitting and use of contact lenses.[2] As a result of the expanded scope of practice for optometrists, you will find a greater need for informed consent in your office. For an optometric practice informed consent needs to be given for contact lens patients, ophthalmic lenses, minor office procedures, ophthalmic medications, and surgery.

Informed consent requires more than verbal communication but also written documentation that the patient received consent. A variety of forms should be created to satisfy the informed consent needs of your practice. For contact lens patients the informed consent must include the options and recommendations given to patients regarding what type of lenses would be appropriate, complications that are associated with everyday wear of the lenses, description of signs and symptoms that are associated with complications, and documentation that you instructed the patient how to insert, remove, and care for the lenses.[2] You may also include in this document fitting

agreements, cost of services and materials, and appropriate follow-up appointments. A consent form should be established for those that decline polycarbonate lenses when they are recommended and required for a patient. Polycarbonate lenses are required for those monocular patients, those patients that are involved in sports, patients whose occupation poses a threat of an eye injury, those that have undergone surgery, and children.[3] For minor office procedures or surgical procedures the informed consent form should include the procedure being performed, risks and complications that the patient could encounter, and any post-operative instructions. When putting a patient on ophthalmic medications patients must be informed of potential side effects and a follow-up schedule must be constructed to monitor care and progress. The two most common drugs that are known to cause legal claims are steroids and glaucoma agents.[3] The patient should sign the informed consent form, the original copy should be placed in the patient's file and a copy should be given to the patient.

Federal Trade Rulings

The Federal Trade Commission was established in 1914 for consumer protection and to create a competitive marketplace for the United States. The Federal Trade Commission enforces federal consumer protection laws and antitrust laws to prevent fraud and unfair business practices. The Commission is also responsible for conducting economic research and analysis to support their laws and consumer protection.[4] The Federal Trade Commission currently has two laws that affect how eye care practitioners deliver care to their patients. These two laws place requirements on how eye care providers release the patient's eyeglass and contact lens prescription. The first law, The Ophthalmic Practice Rules, was signed into law in 1978.[5] This law also contains the Eyeglass Prescription Release Rule. The second law, The Fairness to Contact Lens Consumers Act, was signed into law on August 2004.[6] These two FTC rulings have important implications for how eye care providers must release patient's prescriptions.

The Ophthalmic Practice Rule or Eyeglass Rule was put into effect to allow patients to comparison shop for eyeglasses and give options to patients regarding eye care services. This law has allowed for a competitive market place for the eye care industry and allowed for technological and material advancements required for the optometric industry.[5] The Eyeglass Rule requires an eye care provider to provide a patient with a free copy of their spectacle prescription at completion of an eye examination. This law requires that eye care practitioners automatically release a copy of the spectacle prescription whether the patient requests it or not. However, a prescription does not need to be released if after determination of refractive error a prescription is not required. A

prescription is still required to be released to a patient even if there is no change in the spectacle prescription.

The eyeglass prescription released to the patient must contain certain pieces of information. The prescription must include the patients name, refractive error correction, information needed to correctly make the spectacles, and signature of the doctor.[5] The prescription may also include the expiration date. The expiration date must be within a reasonable time period, generally either one or two years. Failure to act in accordance with the law results in a fine up to $10,000 per offense.

The Fairness to Contact Lens Consumer Act was put into effect to enhance consumer choice and allow greater competition among contact lens practitioners. The act has various requirements, which must be upheld. The law requires eye care providers to provide a patient with a copy of their contact lens prescription upon completion of a contact lens fitting. A contact lens fitting is considered complete "when a successful fit has been achieved or in case of a renewal prescription, ends when the prescriber determines no change in the prescription is required.[6]" The prescription is good for one year from the issue date or sooner if medically necessary and documented in the medical record. It also requires sellers of contact lenses to verify or have a copy of the patient's contact lens prescription before selling the lenses, which goes in accordance with the law that requires prescribers to verify and provide a copy of the prescription upon requested. The prescription can be verified by direct communication. Direct communication can be considered telephone, fax, or electronic mail. The contact lens prescription must include certain requirements. The prescription must have the patient's name and address, contact lens power, manufacturer, base curve, and diameter, quantity of lenses ordered, date of

patient request, date and time of verification request, name of contact person and seller's information.

HIPAA

Health Insurance Portability and Accountability Act was passed in 1996 to protect workers so that they would not lose their health insurance when they changed jobs. The law also included privacy policy issues for health care information as well as increasing the use of electronic billing. The act also strengthened federal fraud and abuse laws, authorized penalties for embezzling health care dollars, created medical savings accounts, and allowed for administrative simplification. All optometric practices have been affected by HIPAA and many of the deadlines have already passed in order to meet compliance. HIPPA is and will be an ongoing concern for optometrists.

How do you know if you have to comply with the administrative simplification requirements under HIPAA? Covered entities are those persons who must comply with HIPAA regulations. A health care provider that transmits health information electronically in connection with a HIPAA standard transaction is considered a covered entity.[7] Under the privacy standards a health care provider is defined as anyone who furnishes, bills, or is paid for health care services in the normal course of business.[7] More than likely most optometrists are considered covered entities and are required to comply with HIPAA.

There are five main sections of the Health Insurance Portability and Accountability Act that affect how optometrists must run their practice. These five sections have compliance deadlines and specific regulations for optometrists to follow.

The first section is the HIPAA Privacy/ Rule, which had a compliance deadline of April 14, 2003. The first step in this process was to appoint a privacy officer who is responsible for HIPAA compliance. The second step was to identify all protected health

information, which is individually identifiable health information that relates to past, present, or future health conditions, treatment, or payment for services.[8] Proper authorization forms are required to disclose information and a notice of the privacy practices for your office are to be given to each patient and posted in your office. The staff must be trained to enforce and comply with the privacy rules and regulations for your office. The practice must also establish a grievance procedure for patients to make complaints or inquires regarding their records and privacy information. There are a few exceptions where patient authorization is not needed to release information. Mainly these are situations where it has been determined that the benefits of disclosing the information outweigh the benefits of confidentially. Public health activities, reporting to government agencies when there is a suspicion for abuse, and subpoenas are exempt from obtaining patient authorization.[8]

The second section is the HIPAA Electronic Data Interchange Rules, which had a compliance deadline of October 16, 2003. This section requires that Medicare claims must be submitted electronically for billing services provided by the practitioner. Standards were established for organizing electronic health transactions such as claims, enrollment, eligibility, payment, and coordination of benefits.[8]

The third section is the HIPPA Unique Employer ID Rule, which had a compliance deadline of July 30, 2004. This section requires health plans to assign standard health identification numbers to those who provide healthcare services and to its suppliers. A health plan is considered a Federal program ex. Medicare, private health care plans, and Medicaid state programs. These standard unique health identification numbers were issued to improve the efficiency and effectiveness of the health care system.[9]

The fourth section is the HIPAA Security Rule, which has a compliance deadline of April 21, 2005. This section of the rule applies to any health care provider who has completed health care financial or administrative transactions using electronic media. The idea behind this section is to safeguard or protect the integrity, confidentiality, and availability of patient information that is stored or transmitted in electronic form.[10] Practitioners are required to install computer hardware and software to protect information from being damaged or compromised, adopt policies and procedures to protect information, and erect physical barriers for communication.[10]

The fifth and final section is the HIPAA National Provider Identifier Enumerator, which has a compliance deadline of May 23, 2005. This section now recognizes the National Provider Identifier (NPI) as the standard unique health identifier for all health care providers. Health care providers will only have one number to identify themselves with one or more health care plans. The NPI contains 10 digits, all numerical, that can be used in all standard transactions. An application form can be submitted over the internet or on paper. Providers do not need to apply for their NPI until May 23, 2005. The compliance date for all covered entities except small health plans is May 23, 2007, small health plans have an additional year until May 23, 2008.[11]

REFERENCES

1. Classè J, Thal L, Kamen R, Rounds R. Business Aspects of Optometry. Philadelphia: Butterworth Heineman, 2004.

2. Classè JG. Informed Consent and Contact Lens Practice. Journal of the Optometric Association 1996; 67(3):132-134.

3. Classè JG. How to Be Sued for Malpractice. Review of Optometry 2004; 141 (10): 29-34.

4. Muris T. February 10, 2005. <[illegible]>.

5. "Federal Trade Commission Ophthalmic Practice Rules, Rules and Regulations." Federal Register 69 (4 February 2004): 5451-5454.

6. McCann N. Fairness to Contact Lens Consumers Act-Public Law 108-164 What it Means for Your Practice. Administrative Eyecare 2004; Spring: 49-51.

7. Spangler L. The Health Insurance Portability and Accountability Act (HIPAA): Standards for Privacy. Comprehensive Ophthalmology Update 2004; 5(1): 41-50.

8. Lax J. An Outline for HIPAA Compliance. Optometry 2002; 73(11): 711-717.

9. Unknown. An Overview of the HIPPA Security Rule. Optometry 2004; 75(10): 654-657.

10. Phoenix Health Systems. Standard Unique Health Identifier for Healthcare Providers. 2000-2004. April 14, 2005. <[illegible]>.

11. Phoenix Health Systems. National Provider Identifier Final Rule Published. 2000-2004. April 14, 2005. <[illegible]>.