

# Missouri Radiological Society Meeting

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**Holiday Inn Executive Center, Columbia, MO**

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# I. Telehealth Services: MO HealthNet Provider Manual 13.69

- MO HealthNet has modified Section 13.69 of the provider manual to redefine “telehealth services” as follows: “healthcare services provided through information and communication technologies which facilitate the assessment, diagnosis, consultation, treatment, education care management, and self-management of a patient’s health care while such patient is at the originating site and the healthcare provider is at a distant site.”

# I. Telehealth Services: MO HealthNet Provider Manual 13.69 (cont'd)

- It goes on to state: “Telehealth offers participants, particularly those in rural areas of the state, access to healthcare services without having to travel extensive miles for an appointment.”
- Instead of the use of the “GT” modifier, providers are to use the place of service 02.
- The originating site is only eligible to receive a facility fee for the Telehealth service.

## II. HIPAA and When Business Associates Shut Down

- What happens when your business associate that has HIPAA information from your practice goes out of business?
- Unfortunately, the originator of the records is responsible for the patient records, even if the business associate is no longer able to protect them.
- Keep an inventory of your business associate relationships and ensure that you have signed, written agreements that protect your interests.
- Choose business associates carefully.

## II. HIPAA and When Business Associates Shut Down (cont'd)

- Monitor your business associates' compliance with HIPAA by reviewing their policies and procedures and monitoring their activity.
- Your practice may experience increased government scrutiny if a business associate is being investigated by the government.
- Monitor public reports to see if your business associate is running into financial trouble.
- If a business associate files for bankruptcy, you must act quickly to file a proof of claim form and to retrieve your HIPAA protected records.

### III. OIG Report: “Medicare Improperly Paid Hospitals Millions of Dollars for Intensity Modulated Radiation Therapy Planning Service

- The Office of Inspector General (OIG) reports that Medicare overpaid hospitals an estimated \$21.5 million for certain intensity-modulated radiation therapy (IMRT) planning services for calendar years 2013-2015.
- The OIG found that hospitals separately billed for complex simulations when they were performed as part of IMRT planning.

### III. OIG Report: “Medicare Improperly Paid Hospitals Millions of Dollars for Intensity Modulated Radiation Therapy Planning Service (cont’d)

- The OIG indicated that the overpayments occurred because hospitals “appeared to be unfamiliar with or misinterpreted CMS guidance for billing IMRT planning services.”

## IV. Workplace Compliance – Protecting Workers From Sexual Harassment

- While most employers are required by Title VII of the Civil Rights Act, as well as state law to guard against and respond to claims that an employee was sexually harassed by a co-worker or manager, employers can also be liable for sexual harassment of an employee by non-employees such as sales representatives, patients or referral sources.

## IV. Workplace Compliance – Protecting Workers From Sexual Harassment

- A non-employee sexual harassment (“third-party sexual harassment”) can implicate employer liability if the employer knew or should have known about the condition and failed to take immediate and appropriate corrective action.
- A good prophylactic against successful claims is to have the practice develop policies and procedures to deal with non-employee sexual harassment and to provide proper training of employees on these policies and procedures.

# V. Radiology/Imaging: Diagnostic Site Certification

- Since February 1, 2016, MO HealthNet has utilized Diagnostic Site, a standardized medical imaging safety and quality program designed to assess and credential medical imaging equipment, personnel and policies of facilities that perform diagnostic imaging services.
- Any Medicaid provider is required to participate in this program.
- Even if the provider is certified by Diagnostic Site for a payor other than Medicaid, they still must get certified for Medicaid.

# VI. Virtual Voice Assistants: Beware of the HIPAA Risks

- While voice-activated virtual assistants such as Amazon's Echo and Google Home can be helpful, they also raise HIPAA issues.
- It is estimated that a fourth of physician offices use virtual assistants in work for functions such as drug dosing questions, calendar appointments, supply ordering and diagnostic information searches.

## VI. Virtual Voice Assistants: Beware of the HIPAA Risks (cont'd)

- If these devices are integrated into the electronic health records systems, they can create compliance risks. These risks are the following:
  - Privacy violations
  - Data security
  - Security of the device
  - Unreliable or incorrect content
  - Medical record problems
  - Malpractice concerns
  - “Wake up” errors
- Physician offices should be mindful of these problems when using this technology.

# VII. National Practitioner Data Bank: Helpful Tips

- To avoid a report or to prevent a report to the National Practitioner Data Bank, the following should be noted:
  - Keep your mailing address up-to-date
  - Run a self-query for existing reports
  - Don't ignore complaints or even informal investigations
  - Make sure you do not trigger a reportable event when you leave a hospital's medical staff
  - Protect yourself by building a record in your favor
  - Try and resolve a problem before it becomes a reportable event

## VII. National Practitioner Data Bank: Helpful Tips (cont'd)

- Get outside help if the situation of concern appears to be escalating
- Be mindful of the laws of any state in which you practice that may have reporting requirements that are more stringent than the federal law.
- Be careful with your communications to colleagues about any adverse action that may be occurring.

## VIII. *United States ex. Rel. IIRT, LLC v. SightLine Health, LLC*

- Texas-based SightLine Health, LLC operates radiation therapy centers throughout the United States.
- It recently agreed to a settlement of violations alleged under the False Claims Act resulting in the filing of claims violating the False Claims Act.
- The allegations were that SightLine targeted physicians that were able to refer patients to its cancer treatment centers and pay those physicians a share of its profits pursuant to investment arrangements that were set up to allow physicians to profit from their referrals.

## VIII. *United States ex. Rel. IIRT, LLC v. SightLine Health, LLC (cont'd)*

- SightLine did this, according to the government, by forming a series of leasing companies in which referring physicians were permitted to invest, and through which SightLine allegedly distributed the profits that its physician-investors generated by referring cancer patients for radiation therapy.

# IX. 2018 Legislation

- Truly Agreed to and Finally Passed and signed by the Governor
  - House Bill 1252
  - House Bill 1617
  - Senate Bill 951

# IX. 2018 Legislation – House Bill 1252

- This bill amends § 376.382 which deals with “low-dose mammography screening.
- It adds to the existing definition “digital mammography and breast tomosynthesis.”
- It then goes on to define the term “breast tomosynthesis” to mean “a radiologic procedure that involves the acquisition of projection images over the stationary breast to produce cross-sectional digital three-dimensional images of the breast.”

# IX. 2018 Legislation – House Bill 1252 (cont'd)

- It then amends subsection 2 of § 376.382, which mandates coverage for mammography, to remove the requirement to cover mammograms for women age forty to forty-nine “inclusive, every two years or more frequently based on the recommendation of the patient’s physician . . . .”
- It then amends paragraph (3) of that subsection to change the requirement of mammograms for any woman age fifty to women age forty and over.

# IX. 2018 Legislation – House Bill 1252 (cont'd)

- Subsection 3 of the bill is amended to provide that after January 1, 2019, providers of low-dose mammography screening “shall be reimbursed at rates accurately reflecting the resource costs specific to each modality including any increased resource costs of breast tomosynthesis.”

# IX. 2018 Legislation – House Bill 1617

- This bill amends six existing statutory sections dealing with telehealth.
- Section 191.1145, the definitional section is amended in subsection 2 to make clear that nothing in the legislation prevents a health carrier from reimbursing non-clinical staff for services otherwise allowed by law.
- It amends § 208.670 to add to the definitional section of the telehealth legislation new definitions of “consultation”, “distant site”, and “originating site.”

## IX. 2018 Legislation – House Bill 1617 (cont'd)

- It also makes clear that the term “provider” has the same meaning as the term “health care provider”, as defined in § 191.1145.
- The legislation then amends subsection 2 of § 208.670 by requiring the Department of Social Services to reimburse providers for services provided through telehealth that otherwise meet the standard of care at the same rate if the service had been provided more conventionally.
- Sections 208.673, 208.675 and 208.667 are then repealed.

# IX. 2018 Legislation – Senate Bill 951

- This legislation deals with 27 sections of the law, ten of which are entirely new sections.
- It enacts the following changes:
  - New Section 9.158 which makes November “Diabetes Awareness Month”.
  - New Section 9.192 which designates the years 2018 to 2028 as “Show-Me Freedom from Opioid Addiction Decade”.
  - Amendments to § 191.227 dealing with the right of patients to have copies of their records which now requires a statement to be served in writing if no records are found responsive to a patient’s request.

# IX. 2018 Legislation – Senate Bill 951 (cont'd)

- Amendments to § 191.1145 which amends the telehealth laws similarly to what the legislature did in House Bill 1637.
- It amends § 195.070 to allow “practitioners” to accept unused controlled substances by cross-referencing to § 195.265.
- It creates a new § 195.265 to deal with the opioid crisis. It allows unused controlled substances to be taken back by pharmacies and others.
- It requires the Department of Health and Senior Services, by August 28, 2019, to develop an education and awareness program regarding drug disposal, including controlled substances.

# IX. 2018 Legislation – Senate Bill 951 (cont'd)

- It amends § 197.305 dealing with the Certificate of Need program prohibiting nursing homes from increasing the number of beds if they have class I deficiencies.
- It amends § 208.217 dealing with insurance matches and records and expands information also to and from the Department of Mental Health.
- It amends § 208.670 to enact provisions that duplicate the provisions of House Bill 1617 regarding telehealth.
- It amends § 210.070 dealing with physicians, midwives and nurses who attend to newborn infants allowing them to avoid putting eye drops in the eyes of newborns if their parents or legal guardian objects. It also expands the law regarding physician assistants to require health carriers to reimburse them for their services.

# IX. 2018 Legislation – Senate Bill 951 (cont'd)

- It amends § 334.037 dealing with collaborative practice arrangements by increasing the number of physician assistants or nurses that the collaborating physician can supervise from three to six, amends the provision relating to the prescribing of scheduled pharmaceuticals by assistant physicians to allow them to give up to a thirty day supply of buprenorphine, and makes clear that hospitals and hospital medical staff can make employment or medical staff credentialing or privileging decisions without government interference.
- It amends § 334.104 to make the same changes for nurses that it made for physician assistants or assistant physicians.

# IX. 2018 Legislation – Senate Bill 951 (cont'd)

- It amends § 334.735 which makes similar changes for physician and physician assistant teams working with certified community behavioral health clinics and increases from three to six the full-time equivalent licensed physician assistants, full-time equivalent advanced practice registered nurses, or full-time equivalent assistant physicians, or any combination thereof to be covered under a collaborative practice agreement.
- It amends § 334.747 and § 337.025 to make certain technical changes regarding accreditation and other matters.

# IX. 2018 Legislation – Senate Bill 951 (cont'd)

- It amends § 374.426 which requires entities in the business of delivering or financing health care to provide data regarding quality of patient care and patient satisfaction to the director of the Department of Insurance, Financial Institutions and Professional Registration. It prohibits the Department from “defining data standards for quality of care and patient satisfaction” or requiring patient scoring of pain control. It also requires, as of August 28, 2018, that the director of the Department of Insurance, Financial Institutions and Professional Registration discontinue the use of patient satisfaction scores.

# IX. 2018 Legislation – Senate Bill 951 (cont'd)

- It amends § 376.811 which currently contains certain mandated coverage requirements to add to those currently in existence “coverage for medication-assisted treatment for substance use disorders for use in treating such patient’s condition, including opioid use and heroin use disorder.
- It amends § 376.1550 to amend the term “mental health condition” so that it will include “chemical dependency”.
- It amends § 536.031 to permit the Department of Health and Senior Services to include in the hospital licensure regulations reference to the Medicare conditions of participation.

# IX. 2018 Legislation – Senate Bill 951 (cont'd)

- It amends § 577.029 to require physicians, registered nurses, phlebotomists or trained medical technicians acting at the request of law enforcement to draw blood either with the consent of the patient or pursuant to a warrant issued by a court of competent jurisdiction.
- It creates a new § 630.075 which is entitled “Improved Access to Treatment for Opioid Addictions Act” to allow the Department of Mental Health to create new programs to improve the treatment of persons for opioid addiction.

# IX. 2018 Legislation – Senate Bill 951 (cont'd)

- It amends § 632.005 to expand the definition of “mental health professional” to include psychiatric physician assistant, psychiatric assistant physician, and psychiatric advanced practice registered nurses.
- It repeals § 208.673 which created the “Telehealth Services Advisory Committee”.
- It repeals § 208.675 which appears to be duplicative of provisions contained in the new telehealth legislation.