Be Ethical and SMART with your Documentation and Billing

TSHA Business Management Committee

2022 TSHA Convention - Ft. Worth

Disclosures: No relevant financial or non-financial disclosures to report

- **Mendi Lancaster** MS CCC-SLP, PNAP, CBIS
- **Cathleen Lochte Swallows** MS CCC-SLP
- **Stephanie O'Silas** MS CCC-SLP
- **Ronda Polansky** MS CCC-SLP
- **Pam Ragland** MS CCC-SLP

TSHA Business Management Committee

Mendi Lancaster, Co-Chair

Cathleen Swallows, Co-Chair

Pam Ragland

Ronda Polansky

Stephanie O'Silas

Janice Silva-Aranda

Sara Newman

Amy Cantu

Erin McDaniel, Student Volunteer

Jordan Rudd, Student Volunteer

Objectives

Apply the principles of the ASHA Code of Ethics to our role in effective, thorough, and timely documentation to prevent denials, support our practice act, and protect yourself during litigation.

Apply the principles of the ASHA Code of Ethics to our role to code to specificity and protect confidentiality.

Identify medical necessity, skilled need, functional and objective gains through objective measures, skilled documentation, and functional goals in establishing a plan of care.

Professional Responsibilities

- Every SLP, audiologist, intern, and assistant who holds a Texas state license and those holding CCC's must adhere to:

Texas Department of Licensing and Regulation:

- SLPs and Audiologists Administrative Rules

ASHA's Code of Ethics

ASHA's 4 Principles of Ethics relate to documentation and professionalism:

1) to persons served professionally and to research participants

2) for one's professional competence

3) to the public

4) for professional relationships

Principle of Ethics I:

Individuals shall honor their responsibility to hold paramount the welfare of persons they serve professionally or who are participants in research and scholarly activities, and they shall treat animals involved in research in a humane manner.

Principle of Ethics II:

Individuals shall honor their responsibility to achieve and maintain the highest level of professional competence and performance.

Principle of Ethics III:

Individuals shall honor their responsibility to the public when advocating for the unmet communication and swallowing needs of the public and shall provide accurate information involving any aspect of the professions.

Principle of Ethics IV:

Individuals shall uphold the dignity and autonomy of the professions, maintain collaborative and harmonious interprofessional and intraprofessional relationships, and accept the professions' self-imposed standards.

Skilled vs Unskilled Intervention:

(ASHA Code of Ethics Principle of Ethics I: Rules D, E, F, G)

Rule D. ***not misrepresent the credentials*** of others under their supervision, and ***inform those they serve of the role and credentials*** *of persons providing services.*

Rule E. ***may delegate tasks to*** those persons ***adequately prepared and appropriately supervised***

Rule F. ***not delegate tasks that require the unique skills, knowledge, judgment, or credentials that are within the scope*** *of their profession to aides, assistants, or any* ***nonprofessionals***

Rule G. ***may delegate to students*** tasks within the scope of practice of their profession *only if those students* ***are adequately prepared*** *and are* ***appropriately supervised***

- Original license must be displayed or available: office, clinic, or carry your license in your wallet if work multiple places
- Post information on where to direct complaints to the state: sign, handout, or bill
- Prepare patients for hand-off to other clinicians; talk them up
- Explain importance of student training and our responsibility as licensed clinicians

Skilled Care

- Use expert knowledge for clinical decision-making
- Develop and modify treatment and maintenance programs
- Provide treatment that is medically necessary
- “Train” and instruct others vs “educate”
- Analyze medical/behavioral data and select appropriate assessment tools to determine diagnosis and prognosis

Develop/deliver therapy activities following hierarchy of complexity to achieve target skills for functional goal

Modify activities to maintain patient motivation and facilitate success (complexity of task; cueing)

Introduce new tasks to evaluate patient's ability to generalize skill

Conduct ongoing assessment of progress to design and modify POC

Explain rationale for treatment and expected results

Unskilled Care: Assistants, Qualified Personnel, Caretakers

Perform activities as instructed

Report observations and behaviors without interpretation, analysis or clinical judgment

Report on activities without connecting performance to patient's goals

Maintenance: Jimmo vs. Sebelius Settlement Agreement: 1/24/2013

- Determined coverage NOT dependent on *potential for improvement* but rather on ***NEED FOR SKILLED CARE***
  - *To improve patient's current condition*
  - *Maintain current condition*
  - *Prevent or slow further deterioration of abilities*
  - *Carry out communication or feeding activities*
  - *NOT COVERED if maintenance care needs can be addressed through unskilled personnel or family*

Documentation should reflect ***skilled intervention***

Description of skilled intervention

Changes made to treatment due to assessment of patient's needs, patient's progress or regression

Reason for lack of progress and justification for continued therapy if therapy will continue after plateau

Rationale (how service relates to functional goal), type, and complexity of activity

Feedback about the performance including subjective changes

Patient/caregiver's accuracy, frequency of performing activities

Documentation examples of ***unskilled intervention***

Documentation of a treatment task with **no goal to support** task

Repetition of the **same activities as in previous sessions** with no notation of modifications, cueing level, or observations

Report on performance during activities with **no description of** modification, cueing level, feedback or caregiver training

Report on performance that reflects patient's skill level is **static**

Report on observation of family with **no discussion of training, feedback or carryover**

Treatment must be ***medically necessary*** and within a ***reasonable timeframe***

ASHA Code of Ethics Principle of Ethics 1 Rule K: shall evaluate the effectiveness of services provided, and they shall provide services **only when benefit can reasonably be expected.**

TDLR Administrative Code

§111.153 Recordkeeping and Billing: (g) A licensee shall comply with the Health and Safety Code §311.0025, which prohibits **improper, unreasonable, or medically unnecessary billing**

- Document ***why*** you are seeing the patient; **the *medical necessity.***
- Design plan of care in a ***reasonable timeframe***.
- Create **goals** that are ***reasonable*** and ***achievable***.
- Don’t pick up patients for service for: employer ***productivity*** demands, ***family pressures***, or that the patient is “precious and hardworking”

Document training and competence:

111.155, 111.212

- Engage in only those that are within the scope of competence, education, training, and experience;
- Not delegate any service requiring competence to anyone not licensed;
- Not provide services if the services cannot be provided with reasonable skill or safety;
- Not misrepresent training or competence;
- A provider shall only utilize technology that they are competent to use

1: A; 2: A, E; 3: A

- Provide all clinical services competently.
- Engage in aspects of the professions that are within the scope and competence
- Admin/supervisors shall not require or permit their staff to provide services or conduct research that exceed certification, competence, education, training, and experience.
- Not misrepresent their credentials, competence, education, training, experience, and scholarly contributions.

- Design, implement and document competencies for new hires and for all specialty procedures.
- Update competencies annually.
- Develop a process for referring to specialists when beyond the scope of practice or skill set.
- Provide and document training and competence for multi-skilling during COVID or when short-staffed.

INFORMED CONSENT & PATIENT-CENTERED CARE

https://twitter.com/anetto/status/696369999095689216/photo/1

TDLR Standards of Ethical Practice includes.....

provide accurate information to clients and the public about the nature and of communication disorders and about the profession and the services rendered;

fully inform clients of the:

- (A) **results** of an evaluation within sixty (60) days, upon request;
- (B) **nature and possible effects** of the services rendered; and
- (C) **nature, possible effects, and consequences** of activities if the client is participating in research or teaching activities.

https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=16&pt=4&ch=111&rl=155

ASHA Code of Ethics

Principle I, Rule H

- *Informed Consent regarding*
  - nature and possible risks and effects of services provided, technology employed, and products dispensed.
  - possible effects of not engaging in treatment or not following clinical recommendations.

Principle I, Rule Q

- *Individuals shall maintain timely records and accurately record and bill for services provided and products dispensed and* ***shall not misrepresent services provided, products dispensed, or research and scholarly activities conducted.***

Informed Consent

- Adhere to ASHA's Code of Ethics and guidelines of employer
- Obtain prior to treatment
- Have patient document informed consent OR a designated individual if patient unable to understand
- Telehealth informed consent
- May need specific consent for invasive procedures such as TEP, FEES, endoscopy due to increased risk

Patient Bill of Rights

- ASHA Model Bill of Rights
- “This model bill of rights is an official statement of the American Speech-Language-Hearing Association (ASHA) approved in 1993. It provides guidance, but is not an official standard of ASHA.”
  - The **Right** to receive a clear explanation of evaluation results; to be informed of potential or lack of potential for improvement; and to express their choices of goals and methods of service delivery
  - The **Right** to accept or reject services to the extent permitted by law
  - The **Right** to present concerns about services and to be informed of procedures for seeking their resolution

Patient-Centered Care

Benefits include:

- improved clinical decision making that is based on better information;
- a greater understanding of the individual's and family's strengths and needs;
- better follow-through when the treatment plan is developed collaboratively;
- more effective communication leading to fewer misunderstandings; and
- better outcomes and greater satisfaction with services (American Academy of Pediatrics, 2012).

https://www.asha.org/practice-portal/clinical-topics/aphasia/person-and-family-centered-care/

Functional and **Patient-Specific** Goals

Functional: The practical or “real-life” change your treatment aims to make in the patient’s life.

Patient-Specific: No two patients, even if they have the same diagnosis, are the same.

How do we achieve this?

- Patient should be involved with goal setting from the start
- Information other than formal testing results should be factored into goal-setting

WHO ICF

World Health Organization's framework for the description and classification of health and health-related conditions.

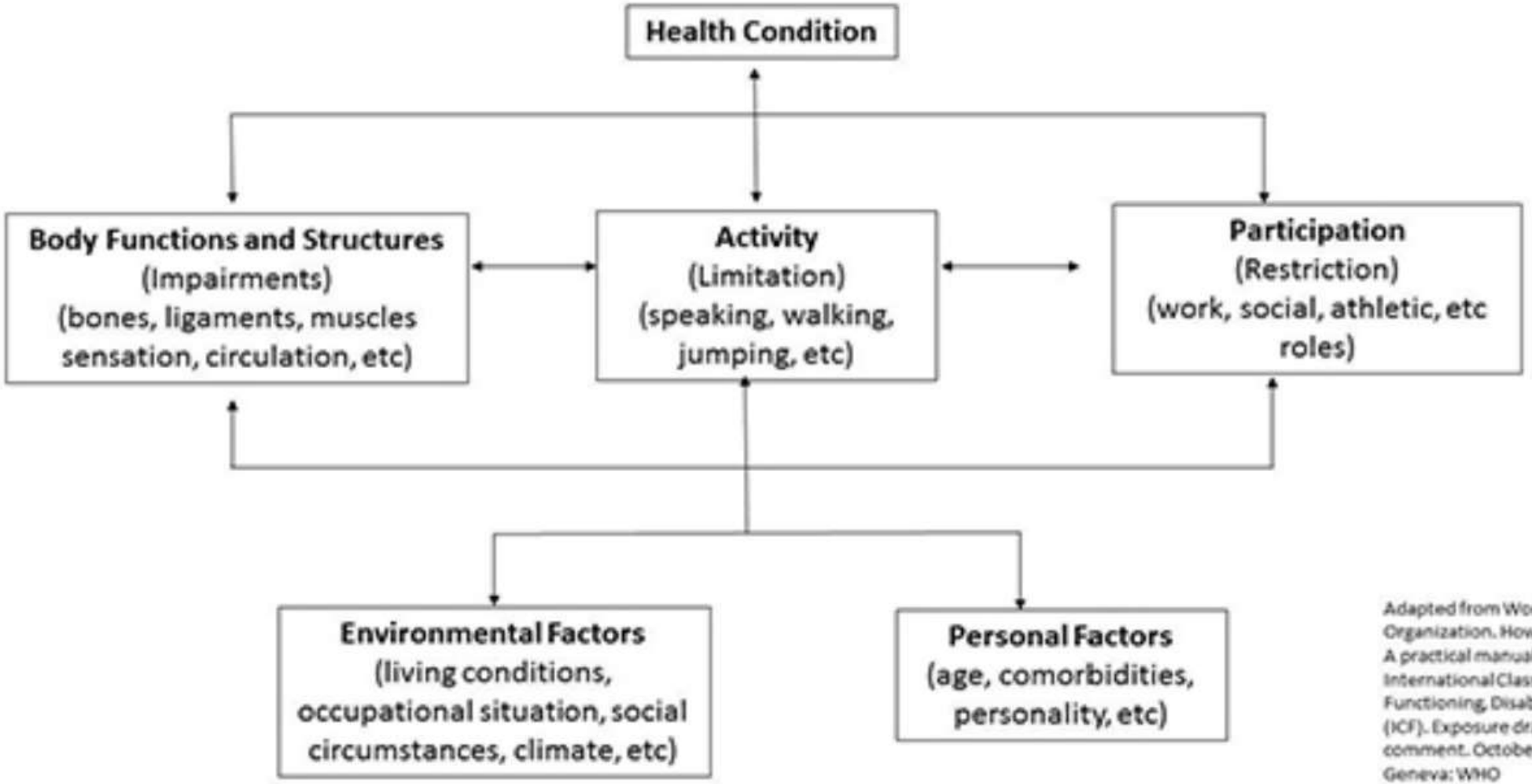
Focuses on health and functioning instead of disability

- *Combination of Medical and Social Models of Disability*

Framework for the field in both the Scope of Practice for Speech-Language Pathology (2001) and the Scope of Practice for Audiology (2004).

Should be used to guide personalized POC and goal setting decisions.

Figure 1: ICF Model



Adapted from World Health Organization. How to use the ICF: A practical manual for using the International Classification of Functioning, Disability and Health (ICF). Exposure draft for comment. October 2013. Geneva: WHO

International Classification of Functioning, Disability, and Health (ICF)

The ICF is a classification of health and health-related conditions for children and adults that was developed by World Health Organization (WHO) and published in 2001. The ICF framework can be used in interprofessional collaborative practice and person-centered care.

ICF Webinars

- Overview of the ICF
- Speech-Language Pathology
- Occupational Therapy
- Physical Therapy

Functional Goal Writing Using ICF

- AAC for Adult with Amyotrophic Lateral Sclerosis [PDF]
- AAC for Child with Cerebral Palsy [PDF]
- Acquired Apraxia of Speech [PDF]
- Adult Stuttering [PDF]
- Adult Swallowing [PDF]
- Aphasia [PDF]
- Cleft Lip and Cleft Palate [PDF]
- Dementia [PDF]
- Dysarthria [PDF]
- Hearing Loss in the School-Aged Child [PDF]
- Language Disorder [PDF]
- Pediatric Feeding and Swallowing [PDF]

ASHA Resource

Person-Centered Focus on Function: Aphasia

Case study: Mr. L

Health Condition: Broca's aphasia post-CVA

Assessment Data

Body Functions and Structures

Spoken Language Function (WAB-R[a])

- Aphasia quotient: 67.8
- Naming: 37/60
- Word fluency: 5/20 (1- to 2-word utterances)
- Sentence comprehension: 5/10
- Responsive speech: 3/10
- Word finding: 50/100

Reading comprehension (non-standardized assessment)

- Words: 80%
- Sentences: 60%
- Paragraphs: 50%

Activities and Participation

(ALA-2[b], interview)

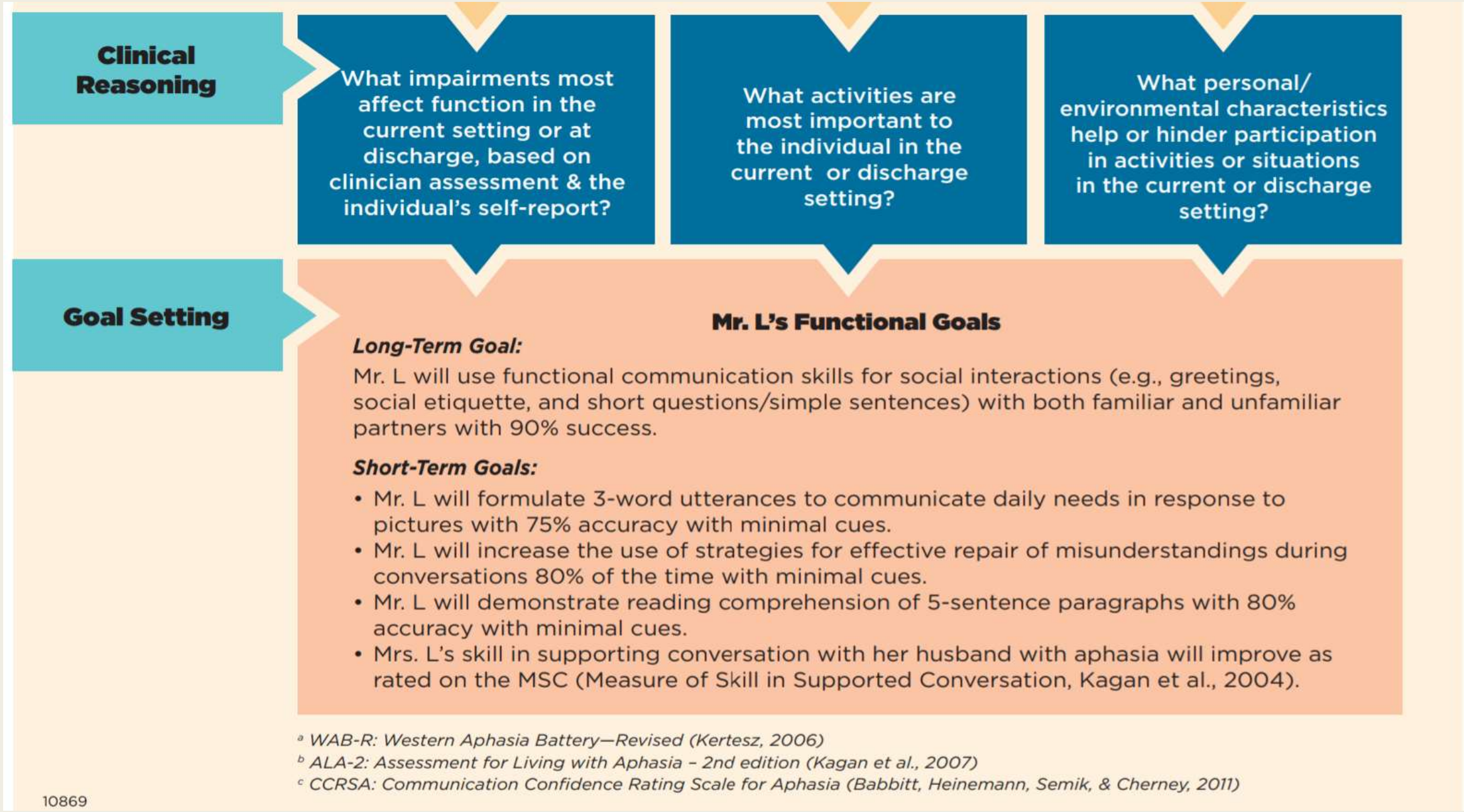
- Reduced participation in activities outside of the home (e.g., viewing or participating in sports)
- Difficulty engaging in preferred reading activities (e.g., reading novels or newspapers)
- Increased withdrawal from social interaction
- Wife reports difficulty understanding his attempts to communicate needs at home

Environmental and Personal Factors

(CCRSA[c], interview)

- Age: 64
- Comorbid chronic health conditions: right hemiparesis, hypertension
- High level of motivation
- Desire for greater independence in social interactions
- Reduced confidence in communication with familiar and unfamiliar speakers
- Supportive family & friends

https://www.asha.org/siteassets/uploadedfiles/icf-aphasia.pdf



https://www.asha.org/siteassets/uploadedfiles/icf-aphasia.pdf

21st Century Cures Act

https://www.healthit.gov/curesrule/what-it-means-for-me/clinicians

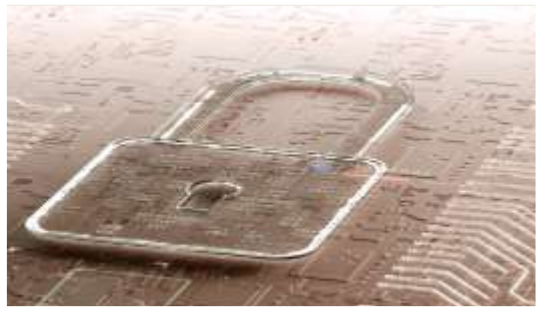
21st Century Cures Act

- **Information Blocking**: prohibits health care providers from undertaking any practice likely to interfere with, prevent, or materially discourage access to, exchange of, or use of Electronic Health Information.

- The rule includes a provision requiring that patients can electronically access all of their electronic health information (EHI), structured and/or unstructured, at no cost.

8 exceptions including:

Withholding information to prevent risk of harm to the patient



Protecting patient privacy

Infeasibility of request (e.g., weather event)

https://www.healthit.gov/sites/default/files/cures/2020-03/InformationBlockingExceptions.pdf

“By failing to prepare,
you are preparing to fail”

Benjamin Franklin

“Planning is bringing the future into the present so that you can do something about it now.”

Alan Lakein, author

Specific Goal Writing Saves Time

- Principles of Ethics I, Rule Q: Individuals shall maintain ***timely records*** and ***accurately record*** and ….shall not misrepresent services provided..

Goals direct treatment = Planning your Goals Plans your Treatment

- Principles of Ethics I, Rule M: …use ***independent*** and ***evidence- based clinical judgment***, keeping paramount the ***best interests of those being served***.

To write a good goal you have know what is missing: Interview, Evaluate, Make a List…

- Tell the client/parent/spouse: “Make it your own”
- List specifics, then narrow it down
- Set the bar low – at least at first
- Talk about time frames
- Play the long game
- Be flexible in your definition of success

Research In Progress: Objective Data

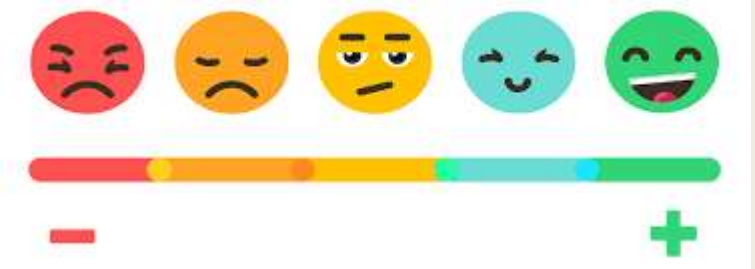
- ASHA.org/research/ebp/
- Asha.org/practice-portal/
- Asha.org/Evidence-Maps/
- Evidence Based Apps
- Clients Perspective

Patient Reported Outcome Measures (PROMs)

Used for Treatment Planning and Documenting Treatment Outcomes

- Select a PROM based on what is relevant to the patient (pain, fatigue, depression, social function, etc.)
- Select a PROM based on caregivers priorities for the patient
- Use multiple PROMs that capture multiple viewpoints (health, functional status, symptoms, behaviors, experience, etc.)

Examples:



- Aphasia Communication Outcomes Measure (ACOM)
- Communicative Participation Item Bank (CPIB)
- Voice Handicap Index (VHI-10)
- Neuro – QOL
- Eating Assessment Tool (EAT-10)
- SWAL – QOL
- Other questionnaires

Ongoing Measures / Discharge Measures Include:

- Provides objective evidence of clinical outcomes
- Redirects treatment as symptoms change
- Provides outline for goal modification and thorough documentation

Writing effective goals = SMART

Specific

Measurable

Attainable

Relevant

Timely

Produces

Clarity For Your Treatment
Planning That's Easier and Faster
Sessions That Are Focused and Flexible

SPECIFIC goals

- *Who? (child, child w/parent, child s/SLP, client w/spouse, etc.)*
- *What? (specific to strengths and weaknesses)*
- *When? (days/times during week)*
- *Where? (at SLP's office, in home, on the go)*
- *How? (any extra tools/ supplies needed)*

MEASURABLE goals:

Can you describe the skill in a way that is measurable?

(use you 5 W-Questions to identify measurable outcomes)

- **Who** is measuring the goal,
- **What** are they doing, when does it occur –
- **When** fatigued, stressed, rested, etc.,
- **Where** does this take place, in a quiet environment, with distractions, etc.,
- **How** many compensatory strategies or cues are provided

ATTAINABLE goals:

- What is a reasonable time frame for the goal?
  - *May be based on the amount of time allowed in treatment*
  - *May be based on training caregivers to learn to coach the client*
  - *May be based on trial period*
  - *Will need to be adjusted if not achievable*

If goals are not reasonably attainable you will need a different goal

REALISTIC / RELEVANT goals:

- Does the goal service a functional purpose?

  "Functional" is defined as … relating to the way in which something works or operates

  OR

  Designed to be PRACTICAL and USEFUL…

- Will it serve a purpose in the clients life:?
  - *Consider the limits and ramifications of the diagnosis, clients cultural and social needs?*

TIMELY goals:

- Does the goal have a timeframe for accomplishment?
- Is this timeframe reasonable?
- Are short-term goals steps toward the long-term goals?

Not SMART

- Client will improve receptive/expressive skills by participating in conversation

SMART

- The child will communicate to the parent (who) a single-phrase sentence (what) with single word prompts (how) during structured activities in home setting (where) on 3 out of 4 attempts within a 15 minute time period in 3 out of 4 sessions (when) to communicate desired snacks (why).

“Just because you made a good plan, doesn’t mean that’s what’s gonna happen.”

Taylor Swift

- SMART goals provides the framework for ***Goal Modification*** based on the daily or weekly outcome produced by the patient.

Document,
Document,
Document
... Why?!

- To **record** patient clinical history, problems and course of care
- **Communication** with other practitioners
- **Assure** oversight by attending physician
- **Utilization review** and **quality assurance**
- Support **license**
- **Reimbursement**
- **Evidence** in a court of law

Clear and Concise Medical Documentation is critical for:

- *Quality care and management / communication*
- *Documenting in timely manner*
- *Ensuring accurate and timely payment*
- *Mitigating malpractice risks*
- *Evaluating and planning treatment*
- *Maintaining continuum of care*

Detail Matters, It's a Timeline

As soon as treatment ends…

- Write down time of care, modalities, procedures used, and patient's response to treatment
- Document lack of progress and include possible reasons for stagnation.
- Document new episodes; indicate safety issues or concerns, family dynamics etc.

Goals Guide Patient Outcomes

- Principles of Ethics I, Rule L: Individuals may make a ***reasonable statement of prognosis***, but they ***shall not guarantee*** – ***directly or by implication*** – the results of any treatment or procedure.

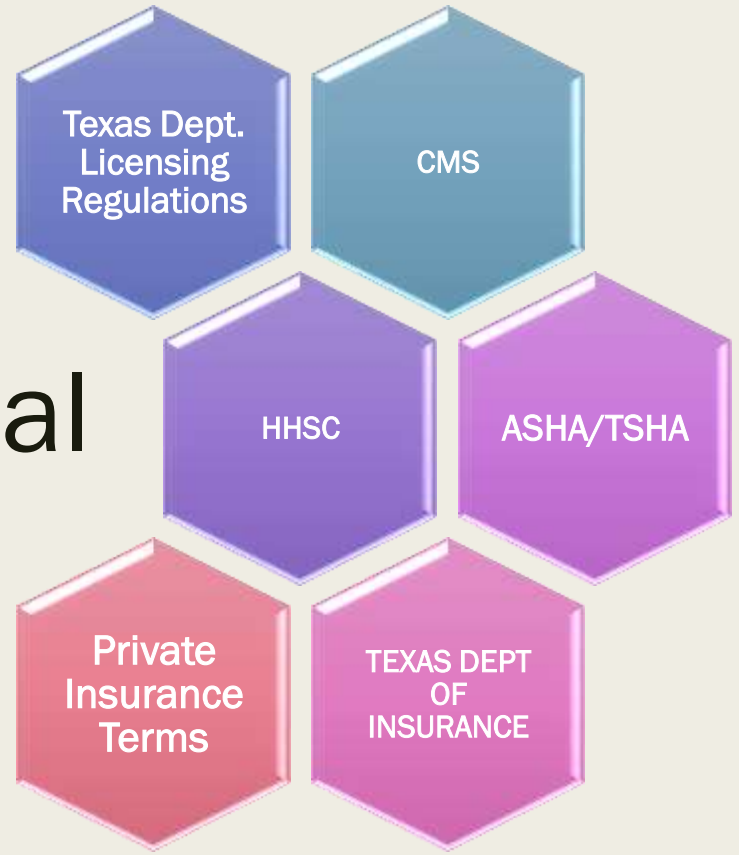
Let’s Talk: Coding & Ethics

- For most clinicians that are responsible for coding and billing—this is a category of our professional practice that requires **competence and training.**
- What are the risks to you?

1. Mistakes or unethical coding/billing can compromise your license
2. Professional reputation and integrity compromised
3. Fines and/or possible jail time
4. Mercy who?--inexperience may not always be forgiven by the law
5. Significant liabilities—not just a TDLR or ASHA “Code of Ethics” violation, but a violation against the HHSC, CMS, and other private insurance groups
    1. *Penalties can rise to the level of federal crime status*

Considerations & Review

The context for professional, ethical practice



Accountability-- License and Certification

- We are ethically bound to adhere to the code of professional conduct stipulated by both ASHA and TDLR.
- It's important for clinicians to understand:
  - *ASHA is **not** State Law*
  - *State licensure and supervision laws are of utmost importance as they are critical to practicing in the State of Texas.*
    - Examples:

1. *Staying abreast of telehealth supervision requirements for SLPAs/SLP-Interns*
2. *Clinical deficiency form requirements for new SLPAs*
3. *Maximum supervision requirements for SLPA/Interns (varies by state)*
4. *CF supervision requirements (consistent with national)*
5. *New 2-hour supervision (National) and Human Trafficking (State) CEU requirement for compliance*

Accountability-- License and Certification: translates to billing compliance and billing ethics

1. Supervision compliance is necessary to support utilization and billing of services performed by SLPA, interns (CFY), and graduate students
2. Appropriate **coding modifiers** are available to distinguish visits performed by assistants (e.g., UB Modifier)
    1. Typically seen with Medicaid services
    2. Medicare restricts the use of assistants
    3. ASHA and State restrict feeding/swallowing procedures to evaluating therapists (interns, MS-SLP)
        - ***Evaluation and swallowing CPT codes <u>should not</u> be paired with assistant modifiers***

Accountability--
License and Certification

Insurance Payors maintain an expectation for adherence to State and ASHA standards for defining qualified license holders and code of ethics.

To maintain billing/coding compliance—it's important to check with individual policies/program documentation/billing guidelines for **restrictions or *variations*** in rules.

Clinician and Supervisor Responsibilities:

Principal of Ethics I: Rule Q; II: Rule E

Maintain timely records and accurately record and bill for services provided and products dispensed and not misrepresent services provided or products dispensed.

Administrators or supervisors roles shall not require or permit their staff to provide services or conduct research that exceed the staff member's certification, competence, education, training, and experience.

Clinician Responsibilities:

Principal of Ethics III: Rule D, G; IV: Rule E

Not defraud through intent, ignorance, or negligence with obtaining payment, reimbursement, grants and contracts for services provided, research conducted, or products.

Not knowingly make false financial or nonfinancial statements; complete all materials honestly and without omission.

Not engage in dishonesty, negligence, fraud, deceit, or misrepresentation.

Insurance Fraud & Abuse

What is Fraud?

Any act, expression, omission, or concealment—the intent of which is either actual or constructive—calculated to deceive others to their disadvantage.

What is fraud in the context of billing/coding?

Knowingly submitting, or causing to be submitted, false claims or making misrepresentations of fact to obtain a health care payment for which no entitlement would otherwise exist

Common Risky Scenarios

Knowingly billing for services at a level of complexity higher than services actually provided or documented in the medical records

Knowingly billing for services not provided

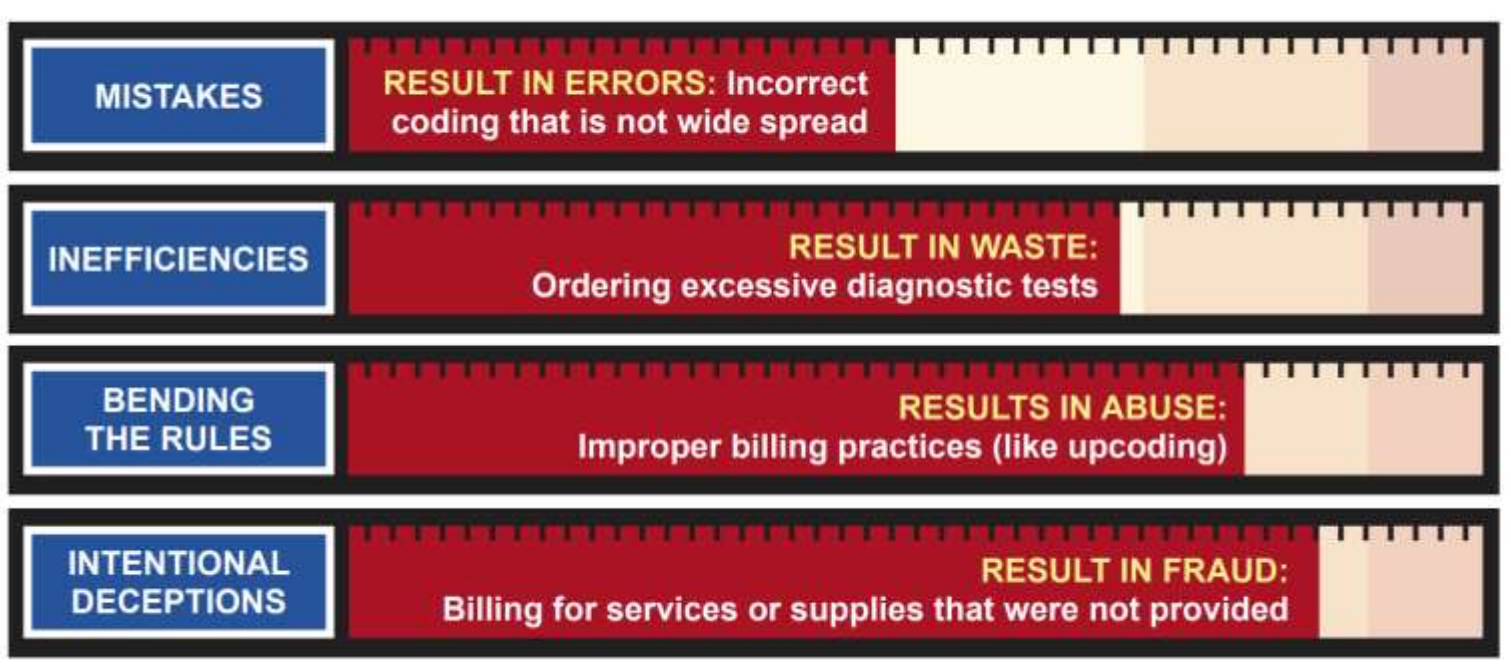
Falsifying records to show delivery of such items

Knowingly ordering medically unnecessary items or services for patients

Paying for referrals of Federal health care program beneficiaries

Billing Medicare for appointments patients fail to keep

Types of Improper Payments



Medicare Fraud & Abuse: Prevent, Detect, Report (cms.gov)

Implications: Early Learners

- There is a special need to prepare our graduate students and newer clinicians about the intricacies of coding & billing in a way that they can understand.
  - *They are not exempt from claims related to unethical billing/coding*
  - *Supervisors have an ethical responsibility to be competent and train mentees*
  - *Ignorance and inexperience is not always easily forgiven*

What are some strategies to protect newer clinicians and minimize their risk?

- -In-service training
  -Handout education
  -Audit charges routinely
  -Hands-on practice
  -Process Maps (resource: lucidchart.com)
  -Create Video Tutorial Library

Coding & Billing Essentials

Coding is a learned skill, and the coded information **tells a story**

- Information should accurately reflect underlying problem, treatment diagnosis, procedure, credentials of processional, place of service, and quantity
- Aim for accuracy to reduce risk or reimbursement delays

Understanding CPT and ICD-10 differences

- Coding to the most **specific degree**
- Professional latitude with SLP and AUD treatment diagnosis codes
- Not assuming or utilizing random or incorrect medical diagnosis codes that would aid your reimbursement
- Understanding nature of “R codes vs. F codes”

Coding & Billing Essentials

Be as specific and as honest as possible when coding:

- Choose the CPT code that best represents the procedure that was performed
- Use the most accurate modifiers—careful not to overuse -22
- Understand CPT codes available for SLPs and AUDs
  - Untimed vs. times codes (e.g., 8-minute rule)
- Understand same-day billing procedures
- For instance—92507 and 97129

Coding & Billing Essentials

It is important that there is documentation corresponding to billing/coding

Documentation should reflect medical necessity and a "skilled" nature of service

- *Demonstrate skilled vs. unskilled services*

Unbundling Codes

When there is a single code available that captures payment for the component parts of a procedure, that is what should be used.

Unbundling refers to **using multiple CPT codes** for the individual parts of the procedure, either due to misunderstanding or in an effort to increase payment.

- *Deemed unethical and a violation of reimbursement guidelines/rules set by insurance payors*
- *Procedural codes currently available for SLPs and AUDs already contain a full description for what ailments and procedures they address*

Take Ownership: Ethical Coding

- Improve knowledge of coding procedures for SLP and Audiology
- Stay informed on coding updates
- Code to the most specific degree
- Train newer clinicians and workforce appropriate coding procedures and strategies
- Pursue CEU content regarding coding & billing procedures
- Utilize billing & coding resources provided by ASHA

ADHERE TO PAYOR REGULATIONS

Ethics 1 Rule Q

Individuals shall maintain timely records and accurately record and bill for services provided and products dispensed and shall not misrepresent services provided, products dispensed, or research and scholarly activities conducted.

Adhere to Payor Regulations

Review and understand major insurance providers' policies, guidelines, and fee schedules to ease your billing process and receive correct and timely reimbursement.

Medicaid is generally the payer of last resort: by law, all other sources of coverage must pay claims under their policies before Medicaid will pay for the care of an eligible individual.

Medicare Advantage Plans must follow CMS guidelines

Medical billing standards - Health care providers must submit medical bills for payment in an electronic format unless the health care provider or the billed insurance carrier is exempt from the electronic billing.

Top 5 Billing Denials

- **Missing information**
  - ***Leaving just one required field blank on a claim form can trigger a denial***
- **Duplicate claim or service**
- **Service already adjudicated**
- **Not covered by payer**
- **Limit for filing expired**

This is your responsibility as a health care provider

- Honesty is always the best coding and billing policy
- Billing for more than what is documented is a violation
- Don’t follow the lead of others encouraging to code out of bounds such as:
  - *Being asked to charge for a service not provided*
  - *Being directed to rate functional performance as more impaired that supported by objective data*
  - *Being require to meet productivity standard's that are not realistically achievable for a typical workday*
  - *Being forced to comply with directives of “keep your job” rather than “do the right thing”*

RED FLAGS 

- Waiving copays or deductibles
- Providing patient or resident discounts or other inducements to receive services, especially for out-of-network patients
- Kickbacks or similar arrangements to induce referrals
- Billing and coding errors
- False claims
- Billing for medically unnecessary services
- Billing for services that were provided by unlicensed or uncredentialed providers or misrepresenting the provider of services
- Failing to comply with coordination of benefits or secondary payor rules
- Double payments
- Claims that lack sufficient documentation; or claims for substandard care
- Complete and detailed doctors order, specific to evaluation and treatment provided.

Examples of False Claims (this is a felony)

- A private practice speech pathologist, intentionally billed Medicare for occupational therapy and speech treatments that were never actually rendered for the purpose of fraudulently obtaining Medicare payments.
- Dr. X, billed Medicare, Medicaid, and other private insurers for services that were provided by his nurses rather than himself.
- Dr. M, knowingly submitted claims for diagnostic tests that were not reasonable and necessary and intentionally upcoded office visits and electrocardiograms to Medicare.

ACTUAL CLAIMS reported by ASHA

- SLP names in the lawsuit for failure to advise a surgeon.

  Claim paid $1,025,392.00

  This could include poor documentation, poor communication

- SLP accused of negligence in the care of a patient.

  Claim paid $136,267.00

  This could include lack of treatment, proper evaluation, aspiration precautions, poor documentation

- Patient proves that they were not diagnosed properly.

  Claim paid $159,066.00

  This could result from poor evaluations, guessing on diagnosis, poor documentation

- SLP accused of a total of six assignments of error, including treatment methods that fell outside of policy on speech therapy because it was considered to be experimental, i.e. SLP misrepresented services. **Reimbursement of $27,807.26 for the cases that were involved in the audit and revoking of license to practice as a speech-language pathologist.**

Documentation

COMPETENCY, LITIGATION, AND REPORTING ETHICAL ISSUES

Basic Fundamental of Professional Communication

- The basic fundamental to professional communication is our **clinical documentation**
- Having the proper knowledge and skill is critical to minimize the liability risks
- Principle of Ethics II - Individuals shall honor their responsibility to achieve and maintain the highest level of professional competence and performance.

- Medical malpractice cases and money are lost when documentation fails to represent the situation clearly.

Paperwork

- Therapists unfortunately often discount documentation as “paperwork” instead of the opportunity to tell a story.
- Orders, evaluations, treatment plans, progress and daily notes should tell a story of the individuals current condition, challenges and any improvement made because of a well qualified SLPs knowledge and skill level.
- We are consulted for our professional opinion, therefore our job is to present our clinical recommendations in a way that allows the interdisciplinary team to consider all options for proper management of the patient’s care.
- Weak documentation shows an obvious detachment of ownership to the case. Excellence in medical documentation reflects and creates excellence in medical care.

Ethics 1 Rule J - Individuals shall ***accurately represent the intended purpose*** **of a service**, product, or research endeavor and shall ***abide by established guidelines for clinical practice*** and the responsible conduct of research.

Documentation and Malpractice Litigation

- Professional clinical actions and/or inactions are determined primarily from clinical documentation which is always submitted as evidence.
- The plaintiff will look for errors and incomplete “stories” including all orders, referrals, recommendations, evaluations, results and timely communication.
- Irregularities in documentation may include allegations of unnecessary services or proper re-evals that were not completed.
- ACCURATE clinical documentation serve as primary evidence for clinical professional conduct in **any** legal proceeding.

Ethics 1 Rule K - Individuals who hold the Certificate of Clinical Competence shall ***evaluate the effectiveness of services provided, technology employed, and products dispensed,*** and they shall ***provide services*** or dispense products ***only when benefit can reasonably be expected.***

Confidentiality:

ASHA Ethics 1 Rule P – Protect ***confidentiality of any professional or personal information.***

HIPAA and FERPA are **both federal laws designed to protect the privacy and security of individuals**.

- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) applies to the healthcare industry
- Family Educational Rights and Privacy Act of 1974 (FERPA) applies to the education industry

Whether you need to make your email HIPAA compliant will depend on how you plan to use email with ePHI.

- Internal emails: may not be necessary to make your email HIPAA compliant. If your email network is behind a firewall, it is not necessary to encrypt your emails.
- Email ePHI externally – **beyond your firewall** – you will need to make your email HIPAA-compliant. Ensure you have **end-to-end encryption** for email

Confidentiality – whenever we engage with a patient: DX, results, meds, age, address

Ethical Standards and Confidentiality

- Ethical standards, confidentiality and the highest level of professionalism in healthcare **HAS NEVER** changed, no matter what your age is or how technology has advanced.
- Have you ever seen medical doctors personally vent on a FB platform? Likely **NEVER,** but Speech Pathologists do it daily……which behavior gains more respect in the healthcare community?

Social Media is a form of documentation that you are 100 % liable for.

- Posting to people who do not have a need to know is **violating ETHICS 1 RULE P.**

ASHA Ethics 1 Rule P - Individuals shall **protect the confidentiality of any professional or personal information about persons served professionally or participants involved in research** and scholarly activities and **may disclose confidential information only when doing so is necessary to protect the welfare of the person or of the community, is legally authorized, or is otherwise required by law**

- Posting on social media is a very blurred line of personal and professional liability
  - *Therapists seem to have confusion between the patients rights to disclose information and disclosure of information without a care-related need to disclose.*
  - *Social media **is** disclosing information without a care related need*

The SLP community is VERY small

COMMON SOCIAL MEDIA HIPAA VIOLATIONS

- Posting **ANY** images and/or videos without written consent
- Posting gossip about patients
- Posting **ANY** information that could allow an individual be identified by ANYone
  - *Age, DOB, DX, location, gender*
- Sharing photographs or images taken inside a healthcare facility where patients are visible

“Oh, its ok I never identified the patient by name”

- A patient can be identified by descriptors
- Members of a group know where you live, where you work and can possibly identify a patient, now or later.
- Patients, friends, family relatives may recognize behaviors, descriptors, characteristics, age, gender, dx, type of rehab, location of rehab etc.
- HIPAA has well spelled out guidelines
  - *Past, present, future physical information can lead someone to **believe** it can be identifiable. That is a HIPAA violation.*

ASHA Ethics 1 Rule M

Individual who hold CCC **shall use independent and evidence-based judgment**, keeping paramount the **best interest of those served.**

Seeking information on Facebook

- *WHO decides it is evidenced based and if this is sound clinical judgement?*
- *Does majority rule? Just because everyone is doing it, does not make it right for this patient.*
- *Getting this type of support and feedback from peers is not include in the term, Confidentiality.*

If you get documented Informed Consent…

- Does the patient have the capacity to make a decision? This will be evaluated in a court of law
- You need to be clear on explaining the use of the social media post
  - *Who is the audience?* – ***THE ENTIRE WORLD***
  - *What is this post used for?*
  - *What is the intent?*
  - *Will there be pictures?*

Ethics III, Rule B - Individuals shall **avoid engaging in conflicts of interest** whereby **personal, financial, or other considerations** have the **potential to influence or compromise professional judgment and objectivity**.

Current **real world examples** of social media HIPAA Violations

- **Pictures showcasing body parts only and posted the images online. Authorization was not obtained from the patient. Thus, a judge ruled that the HIPAA privacy rule was not followed. Fines and termination of employment.**
- **Organization immediately suspended healthcare staff for a discussion held in a private Facebook group with her colleagues. The conversation mentioned that the hospital she worked at turned an entire floor into one for treating patients with a disease. It was determined that the hospital, HCA, could discipline or terminate staff for posting information on the social web about treating patients with COVID-19.**
- **Texas hospital fired a healthcare employee who posted details of a patient's conditions to a Facebook group. While she did not include the child's name, her Facebook profile listed where she worked. One parent in the group had a child at the same hospital. Worried about exposure to the disease, the parent posted screenshots to the hospital's Facebook page. The hospital launched an investigation and immediately found and suspended the employee.**
- **One month after the passing of a patient, a hospital's employee commented on a news story posted on Facebook about the patient. The comment contained "limited information" about the victim's medical status. The hospital found out about the post from a complaint that launched an investigation. They determined that the employee accessed medical information that was not on a need to know basis. Corrective action taken with the employee.**
- **A nurse uploaded a photo of a room where she had treated a man who got hit by a subway train. The photo had the caption, "Man vs. train. She is no longer employed.**

Documentation effects others
Respect Your TEAM…… your colleagues

Ethics IV – Individuals shall **uphold the dignity and autonomy of the professions, maintain collaborative and harmonious interprofessional and intraprofessional relationships, and accept the professions' self-imposed standards.**

- Rule A - Individuals shall **work collaboratively**, when appropriate, with members of one's **own profession and/or members of other professions** to **deliver the highest quality of care**.

Simply Stated – This is talking about other professionals

Defamation or Disparagement in documentation.

Defamation

- *False factual statement about the aggrieved party*
- *Heard or **read** by a third party*
- *Causing economic injury to ones reputation (loss of income or sponsorship)*

Disparagement

- *The act of speaking or **writing** about someone in a negative or belittling way*
- *Remarks made with intent*
- *Reasonable belief the statement will have financial loss or harm reputation*

Are you responsible to report ethical issues and violations?

Ethics IV

Rule M - Individuals with evidence that the ***Code of Ethics may have been violated*** have the ***responsibility to work collaboratively to resolve the situation where possible or to inform the Board of Ethics*** through its established procedures.

Rule N - Individuals ***shall report*** members of other professions who they ***know have violated standards of care to the appropriate professional licensing authority or board, other professional regulatory body, or professional association*** when such violation ***compromises the welfare of persons served and/or research participants.***

What to do when ethical issues arise

Reporting fraud or unethical activity requires moral courage.

- Encourage staff to report any potential HIPAA violations to **supervisors and/or company compliance department.**
- A document, Compliance Reporting, developed by AOTA, ASHA, APTA and the National Association for the Support of Long Term Care outlines considerations and steps to take reporting fraud, abuse and other non-compliance incidents.
- The Department of Health and Human Service Office for Civil Rights has issued guidance on HIPAA social media regulations

  OCRMail@hhs.gov

  800-447-8477


RESPECT IS EARNED.
HONESTY IS
APPRECIATED.
TRUST IS GAINED.
LOYALTY IS
RETURNED

Do what is right!
It is not about having the time, it is about making the time.

References

- *Medicare Fraud & Abuse: Prevent, detect, report*. (n.d.). Retrieved January 11, 2022, from https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/Fraud-Abuse-MLN4649244.pdf

- American Speech-Language-Hearing Association. (n.d.). *Documentation of skilled versus unskilled care for Medicare beneficiaries*. Speech-Language Pathology Services. Retrieved January 1, 2022, from https://www.asha.org/practice/reimbursement/medicare/documentation-of-skilled-versus-unskilled-care-for-medicare-beneficiaries/

- Kevin B. O'Reilly News Editor (2021, July 14). *8 medical coding mistakes that could cost you*. American Medical Association. Retrieved January 11, 2022, from https://www.ama-assn.org/practice-management/cpt/8-medical-coding-mistakes-could-cost-you#:~:text=Unbundling%20codes.%20When%20there%20is%20a%20single%20code,misunderstanding%20or%20in%20an%20effort%20to%20increase%20payment.

- American Speech-Language-Hearing Association. (n.d.). *Overview of documentation for Medicare Outpatient Therapy Services*. American Speech-Language-Hearing Association. Retrieved January 11, 2022, from https://www.asha.org/practice/reimbursement/medicare/medicare_documentation/

- American Speech-Language-Hearing Association. (1970, January 1). *Code of ethics*. American Speech-Language-Hearing Association. Retrieved January 11, 2022, from https://www.asha.org/policy/ET2016-00342/

- American Speech-Language-Hearing Association. (n.d.). *Billing and coding for Audiology Services faqs*. FAQs. Retrieved January 11, 2022, from https://www.asha.org/practice/reimbursement/audiology-billing-and-coding-for-services-faqs/#4

- American Speech-Language-Hearing Association. (n.d.). *Coding and payment of cognitive evaluation and treatment services: Considerations for SLPS*. Coding and Payment of Cognitive Evaluation and Treatment Services: Considerations for SLPs. Retrieved January 11, 2022, from https://www.asha.org/practice/reimbursement/Coding-and-Reimbursement-of-Cognitive-Evaluation-and-Treatment-Services/

References Continued

- American Speech-Language-Hearing Association. (n.d.). Documentation of Skilled Versus Unskilled Carefor Medicare Beneficiaries. Speech-Language Pathology Services.https://www.asha.org/practice/reimbursement/medicare/documentation-of-skilled-versus-unskilled-care-for-medicare-beneficiaries/.
- American Speech-Language-Hearing Association. (2010b). Issues in ethics: Representation of services forinsurance reimbursement, funding, or private payment. Retrieved fromwww.asha.org/Practice/ethics/misrepresentation-of-Services/.
- American Speech-Language-Hearing Association. (2016a). Code of ethics[Ethics]. Available from www.asha.org/policy/.
- American Speech-Language-Hearing Association. (n.d.). Overview of Documentation for MedicareOutpatient Therapy Services. American Speech-Language-Hearing Association.https://www.asha.org/practice/reimbursement/medicare/medicare_documentation/.
- American Speech-Language-Hearing Association. (n.d.). International Classification of Functioning,Disability and Health (ICF). Retrieved from www.asha.org/slp/icf/.
- https://www.asha.org/slp/icf/
- https://www.asha.org/practice-portal/clinical-topics/aphasia/person-and-family-centered-care/
- https://www.asha.org/public/outreach/bill_rights/
- https://www.who.int/classifications/icf/icfbeginnersguide.pdf?ua=1
- https://www.nata.org/blog/beth-sitzler/icf-model-framework-athletic-training-practice
- https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=16&pt=4&ch=111&rl=155