Principles for Safe Implementation of ICD Codes for Human Trafficking

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Abstract: Human trafficking is associated with a variety of adverse health and mental health consequences, which should be accurately addressed and documented in electronic health records.

Introduction

Human trafficking (HT) involves forced labor exploitation of adults or children, forced commercial sexual exploitation of an adult, or the commercial sexual exploitation of a child.[1] Global studies demonstrate serious health conditions associated with trafficking.[2] While significant barriers to accessing health care and disclosing victimization exist,[3] some trafficked persons seek medical and mental health treatment and their abuse remains undocumented.[4]

Accurate electronic health record (EHR) documentation of HT is critical for understanding, providing and improving patient care. In addition, it allows researchers to identify, characterize, and track health and mental health adversities associated with exploitation.[5] EHR data have been effectively mined to improve patient quality of life and prevent future abuse in other areas, including intimate partner and youth violence.[6] To conduct effective quantitative research, investigators must be able to identify trafficked patients within the health system. This may be done through use of new human trafficking diagnostic codes from the International Classification of Diseases (ICD).[7]

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Challenges in Documentation and Use of ICD Codes

Challenges in implementing ICD codes for HT fall into the following categories: patient concerns, clinical practice, and organizational adoption.[8] Many of these challenges are mirrored in concerns around documentation of sensitive information in other vulnerable populations (e.g. HIV+ patients, victims of sexual assault or domestic violence).[9] These challenges include:

Patient Concerns of

- Potential bias/discrimination by staff who view ICD codes and other sensitive information.
- Possible violations of confidentiality among healthcare staff and others with access to patient information.
- Possible immigration repercussions (e.g. arrest and deportation).
- Physical and psychological danger if a trafficker gains access to the EHR/Patient Portal.
- Disclosing trafficking experiences.

Clinical Practice

- Many providers lack
  - an understanding of HT
  - experience in the trauma-informed, culturally-responsive approach to exploited patients
  - knowledge of ICD Codes on HT
  - time for screening and assessment of potential HT
- Providers may fear negative impacts related to patient safety, privacy, and confidentiality if a patient is flagged as "trafficked/exploited," while recognizing information can support continuity of care.
- Difficulties in "masking" sensitive data within the EHR, as well as accessing and releasing "masked" information when legally required.
- US requirement that information to determine HT ICD codes is restricted to that which is documented by the health care practitioner legally accountable for establishing the patient's diagnosis, which may cause valuable information from other staff to be excluded from consideration.

Organizational Adoption

- Lack of
  - organizational policies and procedures on how to record and protect sensitive data.
  - reimbursement and time for providers and coders to use HT codes beyond those describing basic physical conditions related to HT.

Principles in the Development of Safe Strategies for ICD Implementation

To meet the challenges inherent in EHR documentation of HT and all other forms of violence, several principles for safe implementation must be considered. These include the following:

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1. Patients must be empowered to participate in decisions about accessibility of sensitive information in their EHR, including ICD codes. They need clear, culturally-responsive and linguistically appropriate counseling about EHR documentation, differential access to records, and use of ICD codes. They should be encouraged to ask questions and voice their opinions.
2. Input from survivors of HT, as well as professionals internal and external to the health organization is critical to developing patient-centered, rights-based[10] and trauma-informed strategies for EHR documentation.
3. Strategies for safeguarding sensitive EHR information should be monitored and evaluated continuously.

Safe Strategies for Implementation of ICD Codes Related to Trafficked Patients

The following strategies are based on prior efforts by experts working with other vulnerable populations[11] and multidisciplinary expertise shared at a convening hosted at the Department of Health and Human Services in Washington, DC in December 2019. The latter involved national experts from government agencies, anti-trafficking non-profit organizations, the health

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sector (clinicians, coding experts, administrators), and information technology.[12]

Staff and Organizational Capacity Building

1. Develop a HT response plan for the organization, providing for annual staff training; protocols articulating roles and responsibilities for front line, management, and administrative staff; strategies for community engagement, and a continuous quality improvement plan.
2. Train HCPs on labor and sex trafficking, as well as the trauma-informed, culturally-responsive and linguistically appropriate response to suspected exploitation. Online training for HCPs is available through the Office on Trafficking in Persons (https://www.acf.hhs.gov/otip/training/soar-to-health-and-wellness-training). Consider incorporating electronic prompts or clinical reminders within the EHR, which some studies have identified as resulting in increased screening for intimate partner violence, sexual assault, and other health issues.[13]
3. Train all professionals creating or accessing medical records about confidentiality policies and practices.
4. Train healthcare professionals and coders on the new ICD codes for HT and on the specific organizational practices to mask sensitive information in the EHR.
5. Train clinicians how to discuss with patients the confidentiality measures included in EHR documentation and use of ICD codes to promote informed consent by patients regarding management of sensitive information.

Clinical Practice

1. Routinely inform patients of the confidentiality measures included in EHR documentation for sensitive information, as well as who may have limited access and under what circumstances. Engage the patient in the discussion and accommodate reasonable requests related to how documented information may be used or shared (within requirements of the law, concerns of patient safety and health, and public health considerations). In the case of children, patient involvement and consent regarding documentation of sensitive information should be sought as developmentally appropriate and consistent with applicable state law. Mandatory reporting laws require clinicians to contact authorities for suspected child sex trafficking,[14] and the limits of confidentiality associated with these laws should be reviewed with the child prior to discussing sensitive issues. Although the patient does not have a choice in the decision to report, the provider should explain the reasons for reporting (legal obligation, concern for patient safety), listen to the child's worries and concerns about the report, and work to minimize any potential harm that may result from reporting (for example, if the child fears retaliation by the trafficker, the clinician should make sure police and child protective services are aware of the concern and there is a safety plan in place). Further, the child should be encouraged to help determine the way the report is made (for example, whether the clinician makes the call to authorities privately, or in the presence of the child, or whether the child and clinician together speak with authorities).

   Additional considerations may be required in instances of suspected or confirmed forced labor or sexual exploitation of children perpetrated by a parent or guardian. Involvement of guardians in care decisions and disclosure of health information to guardians absent informed consent of the minor may be limited by applicable law and providers may be permitted to refuse guardians otherwise entitled to access to sensitive information to protect the safety and well-being of their patient.

In some states, there are mandatory reporting laws regarding adults who have experienced inflicted injury and/or human trafficking,[15] so if such laws are relevant in the care of a trafficked patient, the clinician should review the reporting procedure with the patient and answer questions. While the patient cannot choose whether or not the report is made and documented in the health record, they can and should, have input into documentation of other sensitive information in the health record (for example, substance misuse, details of trafficking experiences).

2. Implement a zero-tolerance policy for staff explicit bias, stigmatization, or discrimination against patients.[16] Educate staff on implicit bias, as well as codes of conduct and implement a system whereby staff, patients or visitors can safely report bias/discrimination experienced or witnessed in the healthcare setting.

Infrastructure Development

1. Develop facile EHR systems that allow differential access to sensitive information, weighing patient confidentiality with the need to guide continuing health care. Selective "masking" of sensitive information may allow the clinician to block visibility of all or portions of clinical notes, or items

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on problem lists. Some designated aspects of the EHR may have default settings that automatically limit viewing access.[17] For example, a health facility may make a policy decision to omit sensitive ICD codes from discharge paperwork and online patient portals. Important in this strategy to differentially mask sensitive information is the ability of the provider and the patient to alter accessibility, and override default privacy settings.[18]

Working with government and third-party payors, policies may allow ICD codes to be omitted from EOB and billing statements or to be listed without descriptors. Clear policies must be in place to ensure that all appropriate documentation is released in response to subpoenas and court orders.

2. Create or further develop national clinical and data standards and health facility policies for EHR data protection, consent, and provenance to share practices. Clearly define the: 1) types of information that may be hidden; 2) patient context (e.g. patient is at risk of suicide); 3) persons allowed access to masked information, 4) process by which that information may be accessed; 5) purposes for which the data can be collected and used; 6) process for correcting data that has been incorrectly recorded; and 7) the process for modifying accessibility to sensitive information.

Policies and procedures should comply with all applicable laws and guidance on privacy and disclosure of sensitive patient information. Legal requirements surrounding mandated reporting laws, patient consent, and subpoenaed records, including state laws that may provide confidentiality protections to victims of HT must be addressed.[19]

Further, to the extent that applicable law or policy limits a provider's ability to implement effective policies and procedures, multidisciplinary stakeholders should collaborate to develop the applicable statutory, regulatory, and subregulatory framework. A multidisciplinary group includes (but is not limited to) survivors of HT, medical, nursing and mental health clinicians, social workers, risk management specialists, billing and coding experts, insurance representatives, health information management and privacy experts, EHR analysts, victim advocates, prosecutors and defense attorneys, and relevant government agency representatives.

Conclusion

Documentation of sensitive patient information in the EHR, including ICD codes for HT, carries major benefits, but introduces the potential for risks to patient privacy and safety. Health professionals and administrators must make every effort to anticipate and minimize unintended adverse consequences. Ensuring adequate protection of patient privacy and confidentiality can be achieved by

- Taking disciplined and consistent steps to maintain a secure EHR,
- Implementing and overseeing specific policies describing data protection, consistant with the 21st Century Cures Act and other policy and legislation, create or further develop national clinical and data standards and health facility policies for EHR data protection, consent, and provenance to share practices,
- Providing adequate staff training regarding management of sensitive information, and
- Facilitating open conversations between provider and patient about how information is documented in the EHR and who is granted access.

To promote safe documentation principles, facilities should assess existing policies and procedures to operationalize best practices specific to the needs of trafficked patients. Relevant law should be further developed, where necessary, with input from multidisciplinary stakeholders, including HT survivors.[20] Much can be learned from work accomplished by those caring for other vulnerable populations, and from multidisciplinary collaboration among experts from all fields related to EHR and human trafficking.

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Note

The authors have no conflicts to declare.

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18. See Society for Adolescent Health and Medicine, *supra* note 11.
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