Making Compliance Work For Your Organization

April 29, 2012

Health Care Compliance Association

The Concept of Risk

Risk = (Probability of An Event Occurring) X (Impact of the Event Occurring)
**RISK IS EVERYWHERE**

- Lawsuit
- Whistleblower
- Investigation
- Denials
- Audit
- False claims
- Abuse
- Conflict of Interest
- Theft
- Survey
- Five Star
- Background Check
- PROBE
- Medical Necessity
- Kickback
- Referral
- Disclosure
- Falsification
- Supplementation
- Class action
- Labor
- Exclusion
- Controls Staffing
- Consolidated Billing
- Resident Trust
- Triple Check
- Reimbursement Coding
- HIPAA RUGS HR RAC MDS MAC PAC POC EEOC SOD SEC CMP OIG CMS DOJ AR PPD EIEIO

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**RISK**

... “exposure to the chance of injury or loss”

1. Business Risk
2. Healthcare Company Risk
3. Quality Risk
The 4 “C”s of Compliance Programs

Government Audit Analytics

FERA/PPACA – Keeping Overpayments

A failure to return any Medicare or Medicaid overpayments by the deadline may result in false claim liability
Overpayment or False Claim

**Overpayment**
- No intent or knowledge requirement
- Must be repaid within 60 days of identification of overpayment
- No indication that fraud was involved, simply a mistake

**False Claim**
- Must have knowledge that claim submitted was false
- Involves some fraud in submitting the claim, not simply an error in billing

Suspension of Payment Authority

- Section 6402(a) of PPACA expanded HHS authority on when suspension of payment may be initiated
- Proposed rules September 23, 2010
- Affects both Medicare and Medicaid payments
Suspension of Payment - Key Terms

- Suspension of Payment
- Credible Allegation of Fraud
- Indicia of Reliability

Credible Allegation of Fraud

- Complaint Hotline
- Claims Data Mining
- Patterns from audits or FCA investigations
Indicia of Reliability

- Indicia of Reliability is not a term defined in the regulations
- How will government interpret/enforce when the information is solid enough to act upon?

4 “C”s of Compliance Programs

- Communication
- Commitment
- Coordination

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What else have we learned?

- The biggest obstacle to effective compliance programs is programs that are overly-complex, hard to develop, manage, teach and revise as law and practices change.

- We also know more about NF operations and have lots of new data and tools to help measure the industry’s performance.

- Facilities continue to fail to identify operational issues that result in various enforcement actions.
**Dashboard Formats**

**Dashboard Development**

- Get constituent buy-in and allocate funds
- Select project team
  - In-house
  - Consultant/vendor
  - Combination
- Determine data to be “rolled-up”
  - Don’t create new data
- Select dashboard format based on ease of data import (manually or through IT)
- Wide-distribution to constituents
  - Act on indicators
Auditing & Monitoring Is Just:

- Reliable, periodic systems to audit or check on identified “risk areas” in corporate/facility operations
  - Not overly complex
  - But comprehensive & reliable
  - That specifies how it works and who’s responsible for auditing
  - With reviews of systems for reliability

Specifically target and identify what you are auditing

- “An unexamined life is not worth living”
- Possible audit “targets” come from:
  - OIG “risk areas” (later webinars)
  - Your own operations experience
    - Internal/external finance or business audits
    - Survey results, QI scores, QA meetings, complaints, hotline calls, satisfaction surveys
Poor “Targeting” = Poor Results

- With multiple targets, failure to clearly define, and give team clear direction = disorganization, missed issues & ineffective auditing
- Am I targeting med error rates, contract compliance with illegal kickbacks, improper MDS coding and resulting improper payment claims?

Design the Specific Auditing Steps You’ll Employ

- What source information/processes am I examining?
  - Unlocked med carts in hall, sample of payment claims, facility contracts, hotline responses?
- Where is the information I’m testing located in terms of operations?
Design the Specific Auditing Steps You’ll Employ

How will we audit those sources?
- Pulling/reviewing resident charts?
- Interviewing nursing staff, families, residents?
- Observing staff with residents?
- Observing compliance officer interactions with Board members?

How will we gather and report our findings?
- Preparing written reports, charts, or making oral reports?
- To whom?
  - Maybe internal reporting and/or external to consultants/counsel
The 4 “C”s of Compliance Programs

Design the Specific Auditing Steps You’ll Employ

- How frequently are we accessing our information sources?
  - Annual audit of financial records?
  - Quarterly review (med. regimen) ?
  - Time-limited review of med error rates (spike in rates)?
    - Followed by periodic check on the “fixes”
    - The findings dictate frequency

Design the Specific Auditing Steps You’ll Employ

- Who’s responsible for the audit to make sure it’s targeted, examines the sources we’ve identified, on the schedule we’ve established?
  - For internal/external audits, put one person in charge
    - Even with audit “teams”
    - Including for reporting function
Decide How We’ll Use the Audit Results Obtained

- Depends on the issue and company
  - External CPA audit goes to CFO
  - Care plan audit to DON, administrator, consultant, Quality Assurance Committee
- Purpose: spot an issue, analyze it, repair it, communicate repair, consider legal reporting requirements

Conducting the Investigation

- Who controls it?
- Who does it?
- How to do it?
- What is the scope?
- Who gets the results?
- What happens from results?
Attorney Client Privilege

- Confidential
- Communication
- By a client
- To an attorney
- To obtain legal advice

Attorney Work Product Doctrine

- Prepared by or at the direction of counsel
- Thoughts and mental impressions
- In anticipation of litigation