Survivor 2014: How to Thrive Under a CIA with an IRO

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Lessons from the Trenches

• Own your CIA
• Top Down Culture of Compliance
• As the Compliance Officer
  - Be Available
    – To Patients and Customers
    – To Employees
    – To Contractors
    – To the Board of Directors
Lessons from the Trenches

• The SouthernCare Story
  – January 2009: Conclusion of an investigation resulting in a $24.7 million settlement and a 5 year Corporate Integrity Agreement. Only 2nd hospice to have a CIA.
  – March 2009: New CEO brought in
  – April 2009: New Compliance Officer starts
    • So much to do, so little time…
      – Compliance Committee
      – Compliance Training
      – Policies/Procedures/Code of Conduct
      – Exclusion Checks
      – Select IRO
      – Implementation Report

Lessons from the Trenches

• The SouthernCare Story (cont.)
  • Outside counsel to the rescue – extension!
    – Reputation for working well with the OIG and DOJ
    – Experience in this area is a must
    – Experience with the company
      (prior to Compliance Officer arrival) is a plus
Lessons from the Trenches

– May 2009: Get to Work!
  • Put new infrastructure in place
  • Downsize the organization
  • Compliance Department of one
    – lean on your friends!
  • New QAPI program
    – monitoring and auditing function
  • Get to know IRO Monitor
    – over report and ask lots of questions
  • Get to know co-workers and start the culture change

Lessons from the Trenches

• The SouthernCare Story (cont.)
  – December 2009/January 2010: Year One IRO Review
    • Unallowable Cost Review (Year One Only)
    • Eligibility Review
      – 16 SouthernCare agencies chosen at random
      – From those 16 agencies – random selection of 162 patient charts to review
        » 81 New Admission patients
        » 81 Long Length of Stay patients
Stories from the Frontline

• An IRO Review can be a very positive experience

• IRO Report justifies the hard work the Company put in to implement new processes and procedures

• Doing the Right Thing yields positive results and success

IRO OVERVIEW

• CIA Specifies IRO Activities

• Provider Choice in Selection of IRO

• OIG Approval
Defining IRO Activities

CIA Outlines IRO Activities
– Influenced by Covered Conduct Definition in Settlement Agreement
– Influenced by Provider/Supplier's prior conduct
– Influenced by experience of OIG counsel and provider/supplier’s counsel
  – Including in the specific covered conduct
– Influenced by conduct of individual actors

IRO Activities and Covered Conduct

• Influenced by covered conduct definition in Settlement Agreement
  – In consideration for entering into a Corporate Integrity Agreement (CIA) with the requirement of an annual eligibility review conducted by an Independent Review Organization (IRO) for each of the 5 years of the CIA
    • OIG agrees to release the settling party from any exclusion action based on the Covered Conduct with certain limited exceptions
  – Increases the importance of the covered conduct definition
"Are you telling me that just because something is against the law, that makes it illegal?"

IRO Activities and Prior Conduct

• Scope of IRO Review may be expanded beyond the covered conduct in multiple scenarios
  – Exclusion actions are separate from FCA litigation/investigations
    • Authority arises under SSA Section 1128 (42 USC § 1320a-7)
    • Mandatory for Convictions of
      – Program related crimes
      – Health care fraud
    • Permissive for misdemeanor convictions of
      – Health care fraud
      – Fraud in non-health care programs
      – Obstruction of an investigation

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IRO Activities and Prior Conduct

– Exclusion actions (continued)
  • Permissive for
    – Claims for excessive charges, unnecessary services or lacking quality of care
    – Fraud or kickbacks
    – Making false statements or misrepresentations of fact
    – License revocation or suspension
    – Entities controlled by sanctioned individual
    – Failure to grant immediate access
    – Failure to take corrective action
    – Individuals controlling a sanctioned entity

IRO Activities and Prior Conduct

• Prior Investigations resulting in settlement important
  – Prior CIA can lead to expanded IRO review in subsequent settlement

• Less than Stellar prior CIA performance
  – Thoroughness of Annual Reports (including IRO Report) can influence scope of IRO review
**Who Do You Want in Your Foxhole?**

**IRO Activities and Counsel Experience**

- **Experience of OIG counsel**
  - Highly experienced OIG counsel usually results in an expanded scope of review
    - BUT often results in reasonable concessions

- **Similarly, provider’s counsel experience important**
  - Where the “help from friends” in invaluable
  - Need to understand the provider’s business
    - Including the billing processes
    - Compliance Officer is invaluable in this process

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**IRO Activities**

**and Counsel Experience**

- Experience of OIG with the specific covered conduct
  - If you are in the settlement process, can be better to be first
  - OIG is not likely educated as much on the billing/claims processes
  - Can result in fewer requirements and lessen the scope of the IRO review
    - For example, systems review rather than extrapolation
IRO Activities and Individual Actors

– Scope is further influenced by conduct of individual actors

• If same management in place, likely to see an expanded scope
  – Exception where CCO has a great reputation with OIG

• Recall exclusions can be based upon individuals controlling a sanctioned entity
  – If OIG agrees not to exclude individual actors, it will come with a price

• Conversely, new management not including individual actors can lead to a more narrow scope

IRO SELECTION

“Dancing with the Stars”

• Prior Experience
• Qualified Consultants
• NO Prior Relationship
• The Right Fit
• OIG Approval
IRO DUTIES

• Activities as Outlined in CIA
  – Annual Claims Review
  – Recommendations to Provider
  – Report Observations to OIG
  – Annual Report
IRO DUTIES

• Claims Review
  – Identify the Universe
  – Select the Discovery Sample
  – Request Records
  – Review Claims for Proper Payment

IRO DUTIES

RELATIONSHIP
IRO DUTIES

• RELATIONSHIP
  – Objective Review
  – Not Adversarial
  – Resource for Education & Process Improvement
  – Allows for Provider to Produce “Open Items”

IRO ELIGIBILITY REVIEWS

  – A Year by Year Review: 2009-2014
  – Time Flies When…
YEAR ONE – More training needed

• Outcome
  – Systems Review
    • Defining it for OIG
  – Lessons Learned
YEAR TWO – Working towards common goals

- Outcome
  - Systems Review
  - Lessons Learned
YEAR THREE – Accomplishments evident

YEAR THREE

- Outcome
  - Reduced Error Rate
  - Lessons Learned
YEAR FOUR –
we are all working together!

YEAR FOUR

• Outcome
  – Continued Improvement
  – Lessons Learned

![Image of dogs in a circle]

![Bar chart showing error rate]
YEAR FIVE – Olympians!

YEAR FIVE

• Outcome
  – Results
  – Lessons Learned
Positives of a CIA and IRO from the Provider’s Perspective

• Marketing –
  – Clean company
  – Under the government’s microscope
  – Combats negative rhetoric from competitors

• Lawsuits/Investigations –
  – DOJ reviews provider’s history of compliance with its CIA when deciding whether or not to intervene
    • History of voluntary repayments
    • IRO review results
    • Reporting to OIG Monitor
  – CIA Compliance a big factor in audits/investigations
    • Shows self-monitoring
    • Shows that company “does the right thing”
Positives of a CIA and IRO from the Provider’s Perspective

• Reputation as a Compliant Provider
  – Credibility with the Government
  – Employees are proud to work for the Company
    • IRO results each year are something employees value
  – Vendors and Facilities want to do business with the Company
  – Set the bar high – Company can be compliant and successful
    • Put patients first and everything else falls into place

CONCLUSION – crossing the finish line!