Compliance in the Post Acute Environment

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Objectives

The participant will learn:

- How to Create, Implement and Maintain a Compliance Program

- The Affordable Care Act compliance program elements Strategies for improving communications between counsel, compliance, operations and leadership

- The importance of identifying compliance metrics, auditing and monitoring for post acute providers

- Specific compliance program challenges from the viewpoint of the compliance officer and the complimentary roles of counsel and compliance teams in creating and implementing critical components

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Compliance Before the Affordable Care Act

- March 2000, the OIG published Compliance Program Guidance (CPG) for Nursing Facilities
- September 30, 2008, the OIG released the first Supplemental Compliance Program Guidance for Nursing Facilities

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Compliance Before the Affordable Care Act

- Together, the two CPGs provided facilities with a roadmap to understanding the OIG's expectations about what an effective compliance program looked like at that time.
  - The OIG recognized compliance is not "one-size fits all", but necessary, regardless of structure.
  - The OIG specifically suggests that long-term care providers other than skilled nursing facilities ("SNFs"), *such as assisted living providers,* should find the Supplemental CPG "useful."

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ACA's Impact

- Affordable Care Act (ACA), Sections 6102 and 6401
    1. Requires compliance and ethics programs by March 3, 2013
    2. Statutory provisions are self-implementing
        1. CMS required to issue regulations thirty-six months after passage of ACA
        2. Regulations have not been issued but CMS will not enforce through survey and certification until rule in place

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ACA's Impact

- The requirements echoes U.S. Sentencing Commission (USS) Guidelines:
    - "Minimal" requirements of an effective compliance program is that the organization takes steps to:
        - Ensure the organization's compliance and ethics program is followed, including monitoring and audit to detect criminal conduct;
        - Evaluate periodically the effectiveness of the organization's compliance and ethics program

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Is Compliance Really Mandatory?

- Programs must be effective at promoting quality of care

- Establishing minimum required statutory elements which are based on OIG CPGs and USSC Guidelines

- States are now focused on Compliance Programs for Medicaid Provider

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Is Compliance Really Mandatory?

- External Entities are inquiring about compliance and have their own compliance requirements
  - IRS (Form 990) for exempt organizations
  - Financial institutions including REITs
  - Auditors
  - Insurance brokers and companies for general and professional liability
  - Accrediting agencies: JC, CARF, CACC
  - Medicare Advantage Provider Agreements

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Can We Predict Content of CMS Regulations?

- Medicare Managed Care Manual, Chapter 21 – Compliance Program Guidelines (2013).
- Prescription Drug Benefit Manual, Chapter 9 – Compliance Program Guidelines (2013).

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Compliance Program Elements

1. Code of Conduct/Written Policies and Procedures
2. Compliance Officer and Compliance Committee
   - Must be high level personnel of organization with sufficient resources and authority to assure compliance
3. Sanction Screening
   - OIG List of Excluded Entities and Individuals available at http://oig.hhs.gov/exclusions/
   - System for Award Management (SAM) available at www.sam.gov
   - Applicable State Exclusions Databases
4. Effective Education and Training

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Compliance Program Elements

5. Internal Auditing and Monitoring and Effective Lines of Communication
   - Use of a confidential Compliance Hotline is highly recommended
   - Emphasize prohibition of retaliation or intimidation of those reporting noncompliance
6. Enforcement System and Disciplinary Measures
   - Include reporting requirement
   - Emphasize that noncompliance can lead to disciplinary action up to and including termination
7. Effective Measure to Respond to Detected Noncompliance
8. Periodic Reassessment of Compliance Program

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Choosing Compliance Officer

1. "High level person"
2. Multiple roles in smaller organizations
3. Relationship to General Counsel/Legal and Chief Financial Officer
   - Government perceives conflict of interest for compliance to be subordinate to or combined with legal or finance
   - Most corporate integrity agreements prohibit subordinated or combined roles

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Choosing Compliance Officer

4. Outsourcing
    - Viable option for small organizations in some states
    - New York requires an employment relationship
        - Employee must be vested with responsibility for the day-to day operation of compliance program
        - Employee's duties may solely relate to compliance or may be combined with other duties so long as compliance responsibilities are satisfactorily carried out
        - Employee shall report directly to the entity's chief executive or other senior administrator and shall periodically report directly to the governing body on activities of compliance program

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Choosing Compliance Officer

5. Skills:
    - Communication and Collaboration
    - Understanding of organizations operations
    - Objective and independent
    - Ability to cross all business lines
6. Consider the size of the organization and what reporting structure provides the greatest ability to be independent and transparent
    - Compliance transcends across the organization and individual must have enough knowledge of each functional lines operations to be effective

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Risk Assessments

1. Establishes baseline
2. Helps identify risk areas as well as complaint areas
   1. Monitor Internal operations
      - Trends, spikes, additional development requests (ADRs), claims denials, complaints
      - Program for Evaluating Patterns:
        - Payment Electronic Reports (PEPPER)
        - Licensure and certification survey results
        - Medicare Comparative Billing Reports (CBR)
        - Quality indicators- falls, weight loss, pressure ulcers, return to hospitals

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Risk Assessments

1. Monitor external sources
   - OIG Work Plan, advisory opinions, fraud alerts
   - Medicare Recovery Auditors (RAs), Medicaid Integrity Contractors (MICs), Zone Program Integrity Contractors (ZPICs), Payment Error Rate Measurement (PERM) Program, and Comprehensive Error Rate Testing (CERT) reports and settlements

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Risk Assessments

- NY and other State Compliance Programs cover wide range of areas similar to OIG;
- Billing, payments, medical necessity and quality of care, governance, mandatory reporting credentialing, licensing, and other risk areas that are or should, with due diligence be identified- loan covenants, HUD requirements, resident refunds and other state regulatory requirements
- Useful to create dashboards and annual work plans

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Risk Assessments

- Often conducted by internal staff or external consultants
  - To provide privilege conduct under direction of counsel
  - Attorney may engage consultants to assist them in providing legal advice to their clients, potentially extending attorney client privilege and attorney work product protection
  - No accountant "privilege"—communications and work papers are discoverable
    - o Accountants have a duty to disclose if they identify violations and are not satisfied by the company's response
    - o "10A" obligation to report company misconduct internally and externally if the company does not satisfactorily resolve the issue
    - o If there are identified concerns on a compliance audit- a privileged investigation may be initiated

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Risk Assessments

- Compliance and Performance Improvement and Quality Assurance Committee should be synergistic
- Confidentiality and Transparency
  - Inherent conflict
  - Determine what needs to be protected, and from whom
  - Be deliberative in deciding how and what to share
  - Beware of e-mails and careless communications

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Compliance Metrics
2014

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Effective Measures for Each Element

- ➢ Creation of Dashboard
  - Inclusion/coordination with other operational reporting
- ➢ Reporting Structure
  - Transparency and Availability
  - Review with Key Leadership
- ➢ Usage of Data
  - Background Screening
  - Physician Screening
  - Education/Training Metrics
  - Disclosures Data
  - Monitoring Scores
  - Overpayments and Other Corrective Actions
  - HIPAA Incidents and Breaches

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Sample Dashboard

Location	Name			
Compliance Leader	Name			
Prepared By	Compliance Department/Compliance Director			
As of Date				
Date Reviewed with Operational Leader				
Date Review by Compliance Committee				

Element/Metric	Q3 2011	Q2 2011	Q1 2011	Q4 2010
Leadership				
% Compliance Liaison Reports Completed	100%	90%	87%	100%
Compliance Element Outliers	Education	Education	Background Screening Prior to Hire	Posters
Code of Conduct/Policies and Procedures				
% Completion of Attestations - Employee	98%	98%	98%	98%
% Completion of Attestations - Physicians	78%	78%	50%	45%
% P & P Adoption and Sign-off	98%	98%	97%	96%
Background Screening				
% OIG/GSA Prior to Hire	100%	100%	100%	100%
% OIG/GSA Monthly	100%	100%	100%	100%
% Screening Completed Prior to Hire	97%	90%	87%	86%
% Open Screening/rRequires Additional Documentation	2%	3%	12%	2%

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Sample Dashboard

Education				
% Code of Conduct Training Completed with 30 days of hire	98%	98%	96%	94%
% Completion of HIPAA Training	65%	76%	76%	87%
% Completion of Specific Training	78%	76%	74%	72%
Annual Re-training		98%		

Disclosures Program				
SQL Count	40	25	59	43
CFL Count	39	26	24	22
Direct Inquiry Count	13	14	21	16
SUBTOTAL	92	65	104	81
Annual Surveys	17	37	12	3
TOTAL*	109	102	116	84
Average Days to Call Closure	13	18	23	17
Substantiated Count	11	22	7	8
Partially Substantiated	13	21	31	16
Unsubstantiated Count	45	58	34	48
Pending	27	2	-	-
Top Three Concerns	Inappropriate Patient Care - 27	Inappropriate Patient Care - 49	Dissatisfaction w/Supervisor - 25	Dissatisfaction w/Supervisor - 17
	Administrative/ Management - 16	Administrative/ Management - 20	Administrative/ Management - 15	Administrative/ Management - 12
	Dissatisfaction w/ supervisor - 16	Patient Rights - 13	Inappropriate Patient Care - 15	Patient Rights - 6

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Sample Dashboard

Monitoring/Auditing				
Quality Monitoring Average Score				
MDS Audit Average Error Rate				
Reported Overpayments #/%				
State Survey Average # Deficiencies				
HDI				

Outlier Centers	Reason (Frequency/Severity)
South Dakota	Explanation
Georgia	Explanation

Systemic Issues/Repeat Inquiries

Comments/Suggested Action Items

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Compliance Program Outcomes

➢ Two broad expectations
- Reduction of fraud
- Improvement in overall quality of care

➢ Results in:
- Cost savings to government and center/company
- Overall satisfaction with services

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Quality Audit / Operational Audit

➢ Sample Selection
- Random vs. Risk-based Selection: Locations, Controls and Residents

➢ Independence/Objectivity

➢ Expertise

➢ Inter-rater Reliability

➢ Protocols and Tools

➢ Tests: Documentation/Observation/Interview

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Quality Audit / Operational Audit

➢ Risk Assessment – What to Test?
➢ SNF Focus Areas – OIG Work Plan 2014
- Medicare Part A
  - REHAB
  - *Accuracy of the MDS*
- Medicare Part B Services During Part A Stay
- Rehospitalization
- State Verification of Deficiency Corrections

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Quality Audit / Operational Audit

➢ Phase VIII: Response and Prevention
- Follow up to Audit

➢ Performance Improvement
- Validation of Corrective Actions
- Validation of Effect of Corrective Actions

➢ Adjustment to Audit Protocols
- Feedback
- Determination of Effectiveness

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RUGs Audit

➢ Regulatory Overview

➢ Review Process
  - Selecting audit sample
  - *Medical Necessity*
  - MDS Review
  - RUG Calculation

➢ Common Areas of Concern
  - Rehab Support
  - ADLs
  - Certifications and Orders

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Compliance Officers' Views

- Specific Compliance Challenges
  - Being given the opportunity to be proactive, rather than reactive
    - Perceived reluctance of leadership team to include compliance in strategic planning and initiatives
  - Obtaining buy-in and respect- the forum to be pro-active and participatory
  - Gaining knowledge about the day-to-day operations of the organization
  - Turf battles with "operations" and overlap with regulatory and risk management – requires collaboration
    - Difference between the need to "know" (monitor) and the need to "act" (when plan is ineffective)

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Compliance Officers' Views

- Specific Compliance Challenges
  - Identifying metrics to monitor to be predictive
  - Criteria for calling counsel
  - Ability to conduct a complete and credible investigation
  - Educating who do not know how to conduct investigations when it is not a core part of their job
  - Dual/multiple roles of many compliance officers
  - Maintaining objectivity, independence and sanity
  - Criteria for counsel to engage Compliance assistance

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Program
Implementation Considerations

Role of Counsel

- Regulation Interpretation- Specific Issues, assistance with policy and procedure language and review
- Updates regarding new or revised statutes and regulations
- Attorney/Client Privilege
  - Compliance committee activity generally is not protected
  - Having attorney attend every meeting does not extend attorney-client protection
  - If issue is significant, consider calling counsel to assist and assess and direct investigation to obtain privilege
  - Assistance with interactions: OIG, Department of Justice (DOJ), Office of Civil Rights (OCR), State or Federal Agencies, Recovery Audits
  - Legality vs practicality

Communicate and collaborate!

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Role of Compliance Teams

1. Implementation/oversight/risk analysis and revision of the compliance program----monitor effectiveness of programs and policies

2. Independent investigation

3. Participating with counsel in reporting State/Federal agencies

4. Reporting to management (highest level)

5. Coordination of compliance committee

Monitor effectiveness, independence, communication, collaboration and education!

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Strategies For Improving Communications Between Counsel, Compliance, Operations and Leadership

- Education and re-education
  - Staff turnover
  - Complacency
- Non-punitive environment
- Mutual understanding of roles and transparency
- Can this matter be protected and how do we protect it AND did we educate all those involved
- Reporting structure
- Communication, collaboration, patience

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