



**Happy Healthy Plan of America (HHPA)
Board of Directors
Annual Legal and Compliance Report;
Annual Legal and Compliance Training**

PRESENTED BY:
David Orbuch
Chief Compliance Officer, and
Steve Lokensgard,
General Counsel

Agenda



- Approve Minutes
- General Counsel Annual Report
- General Counsel Education
- Compliance Officer Annual Report
- Compliance Officer Education
- Executive Session
- Test

Ethical Framework



HHPA Mission Statement:

Stay healthy and happy, because you only go around once.

Ethical Framework



- Compliance Program Promotes an Ethical Culture
 - Tone at the Top
 - Code of Conduct
 - Compliance Awareness Week
- 2013 Goal
 - Review and Revise Mission, Vision and Value

Success Measures



- Aligned Board
- Effective Compliance
- Increased Performance
- Decreased Risk Profile

General Counsel Report



- Report will be under Attorney Client Privilege
- Minutes will be kept separately

Current Enforcement Landscape



- OIG Semi-Annual Report to Congress, from October 1, 2011 – September 30, 2012
 - \$6.9 Billion in recoveries by the HHS OIG
 - 3,131 exclusions of individuals and entities
 - 778 criminal actions against individuals or entities
 - Nine Medicare Fraud Strike Forces
 - May 2, 2012 – Nationwide Takedown involving 200 agents in 7 cities
 - Charges against 107 individuals; \$452 million in false billing
- 1997 – 2011, HHS returned \$20.6 billion to the Medicare Trust Fund
 - ROI of \$7.2 for every \$1 spent during the last three years
- DOJ Goal in FY13
 - Increase health care fraud caseload by 5 percent

Recent Investigations/ Enforcement



- GlaxoSmithKline – \$3 Billion in July, 2012
- OIG Audits of CY07 RADV Payments
 - PacifiCare of Texas – May – \$115.5 Million (point estimate)
 - ParamountCare, Inc. – September – \$18.2 Million (point estimate)
- Fraud Settlements:
 - WellCare Health Plans, Inc. – April – \$137.5 Million
 - SCAN Health Plan – August – \$322 Million

Enforcement Focus on Individuals



- December, 2012 – Peter Madoff, Chief Compliance Officer for Bernard L. Madoff Investment Securities, LLC, sentenced to 10 years in prison.

“Peter Madoff was a gatekeeper, who was supposed to guard against fraud, but instead enabled it – facilitating his brother Bernie’s breathtaking scheme by falsifying compliance records and lying to both regulators and clients of BLMS. The decade he will spend in prison and the disgorgement of his assets are a just result. Our efforts to hold to account anyone and everyone who played a role in this unprecedented Ponzi scheme continue.”

- Manhattan U.S. Attorney Preet Bharara

Enforcement Focus on Boards



- NY Office of the Medicaid Inspector General 2009-2010 Workplan
 - If an audit or investigation reveals significant compliance or control weaknesses OMIG will inquire into the board's actions and determine whether the board exercised reasonable oversight over information and reporting systems
 - In appropriate circumstances, OMIG will consider sanctions, including censure and/or exclusion against individual members of the governing body for "significant failures" to comply with their duties with respect to compliance and oversight

Fundamental Duties of Directors



- A director has three basic duties:
 - Duty of Loyalty
 - Duty of Care
 - Duty of Obedience
- This means a director must perform his/her duties:
 - In *good faith*
 - In a manner he/she reasonably believes to be in the *best interests of the corporation* and
 - With the *care an ordinarily prudent person would exercise* under similar circumstances.
- A director can reasonably rely on information presented by officers, employees, legal counsel, accountants and other experts, unless he/she knows such reliance is unwarranted.

Business Judgment Rule



- Courts will not second-guess board decisions (no matter how wrong) if directors are disinterested, reasonably informed, and rationally believe the decision to be in the company's best interest
- Presumption of good faith absent "reckless indifference or deliberate disregard"
- Reasonably informed requires reasonable inquiry, NOT "roving reporter"

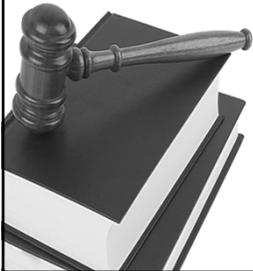
Federal Sentencing Guidelines



"The organization's governing authority shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight with respect to the implementation and effectiveness of the compliance and ethics program."

- *Federal Sentencing Guidelines*, "Sentencing of Organizations" at §8B2.1(b)(2)(A).

In re Caremark Decision



"[A] director's obligation includes a duty to attempt in good faith to assure that a corporate information and reporting system, which the Board concludes is adequate, exists, and the failure to do so under some circumstances, may, in theory at least, render a director liable for losses caused by non-compliance with applicable legal standards."

14

Walt Disney Co. Decision



- Aug. 9, 2005 decision by Del. Chancery Court was strong affirmation of business judgment rule
- Presumption that directors acted in good faith unless plaintiff presents evidence of "reckless indifference or deliberate disregard"
- Directors' adherence to reasonable process is key:
"Compliance with a director's duty of care can never appropriately be judicially determined by reference to the *content* of the board decision that leads to the corporate loss, apart from consideration of the good faith or rationality of the *process* employed."

What Is Your "Reasonable Process" For Compliance?



- ANSWER:
"My company's compliance program!"



Oversight of Compliance



- Structural Questions:
 - Compliance Structure
 - Reporting Mechanism
 - Goals of the Compliance Program
 - Risk Analysis Process
 - Adequate Resources
- Operational Questions:
 - Code of Conduct
 - Policies and Procedures
 - Compliance Infrastructure
 - Measures to Prevent Violations
 - Measures to Respond to Violations

Oversight of Compliance



- Oversight
 - Structure
 - Structure measures refer to the *capacity* of a health care organization to ensure compliance
 - Process
 - Process measures refer to the *manner* in which an organization actually provides compliance coverage
 - Outcomes
 - Outcome measures refer to *observable, measurable* compliance outcomes
- Corresponding Tools
 - Compliance Officer/Compliance Committee/Reporting Relationships
 - Ask For Documentation – Execution of Plans
 - Demonstrated Outcomes (Score Cards)

Action Plan – Structure



- Senior Management Oversight
 - Create a committee charter to identify the scope of the compliance program, and the duties and responsibilities of the compliance committee
 - Meet quarterly
- Compliance Officer should make quarterly reports to the Board
- Board members should continually ask:
 - How does our compliance reporting system work?
 - What are the goals of the compliance program?
 - Does the compliance program address risks?
 - How are new risks identified?
 - How does management evaluate resources necessary for compliance?

Action Plan – Structure



- Compliance Program Resources
 - Ensure that the Compliance Officer has adequate resources to:
 - Identify and disseminate changes to regulations
 - Draft necessary policies and procedures
 - Draft and conduct compliance education
 - Investigate alleged compliance issues in a timely manner
 - Conduct periodic audits of claims
 - Track and preserve documentation relating to compliance issues

Action Plan – Processes



- Exercise Adequate Oversight of Compliance Program
 - Review OIG's Suggested Questions for Directors
 - Is the Code of Conduct understood across the organization?
 - Has management effectively implemented policies and procedures designed to counter vulnerabilities?
 - Does the compliance officer have sufficient authority and resources to implement an effective compliance program?
 - Have compliance-related responsibilities been assigned across the organization?
 - Are employees accountable for meeting compliance-related objectives?
 - What is the scope of compliance education and training?
 - How is risk assessed and communicated to management?

Action Plan – Outcomes



- Monitoring and Auditing
 - Conduct an audit of claims submitted to the government
 - Develop and implement corrective action plans if necessary
- Measuring Compliance Program Effectiveness
 - Consider requesting a Compliance Scorecard
- Questions To Ask
 - What is the organization's audit plan?
 - How do we compare to peer companies?
 - How does the organization test its response to reported misconduct?
 - Do we know if error rates are improving?

Compliance



- Compliance Officer's Report
- Overview of HHPA Compliance Program

Compliance, Ethics and Privacy Report



- Action Items:
- Reporting Metrics:
- Structural Elements:
 - Resources
 - Staffing
 - Management Oversight/ Governance

Compliance, Ethics and Privacy Report



- Process Elements:
 - New "Material" Policies and Procedures
 - Education/ Training Workplan
 - Internal Audit Workplan
 - Risk Assessment and Monitoring strategies
 - Reporting Mechanisms

Compliance, Ethics and Privacy Report



- Outcome Measurements:
 - Internal Audits
 - External Audits
 - Corrective Action Plan Remediation
 - Compliance Training Completion Rates
 - Employee Engagement Results
 - Operational Compliance Metrics
 - Regulatory Compliance Notices
 - CMS Negative Performance Points
 - Privacy and Security Disclosures
 - Fines/ Penalties/ CMPs
- Other Issues:

Compliance Program



- According to the U.S. Sentencing Guidelines, the purpose of a compliance program is twofold:
 - Prevent and Detect Crime
 - Promote an Ethical Culture

Structure	
<ul style="list-style-type: none"> • Compliance Committee • Compliance Department Staff <ul style="list-style-type: none"> – Chief Compliance Officer – Director, Sales – Director, Marketing – Director, Operations – Director, Privacy – Director, Regulatory Affairs – Director, Internal Investigations – Director, Special Investigations Unit 	

Process	
<ul style="list-style-type: none"> • Risk Assessment Process <ul style="list-style-type: none"> – Annual Cycle • Risk Mitigation Plans <ul style="list-style-type: none"> – Business unit accountability • Compliance Hotline <ul style="list-style-type: none"> – Advertised to employees – Complaints investigated in a timely manner • Screening of Employees and Contractors <ul style="list-style-type: none"> – Excluded provider list and other lists • Compliance Education <ul style="list-style-type: none"> – Code of Conduct, HIPAA, High Risk Compliance Issues 	

Outcome	
<ul style="list-style-type: none"> • Annual Audit Program <ul style="list-style-type: none"> – Review of Sales and Marketing Materials – Review of RADV scoring – “Secret Shoppers” to review sales events • Corrective Action Plans <ul style="list-style-type: none"> – Required when deficiencies are identified – Business unit accountability for CAPs • Scorecard <ul style="list-style-type: none"> – Quarterly scorecard – Reported to senior management and the Board 	

Executive Session



- Company executives will be excused to allow Chief Compliance Officer and General Counsel to meet privately with Board Members
 - Questions of the Chief Compliance Officer?
 - Questions of the General Counsel?

Executive Session



Executive Session



- Questions that should always be asked in executive session:
 - Is there anything you did not feel comfortable saying while management was in the room?
 - Are you getting the support you need to be successful (staff, dollars, leadership support)?
 - Are there any actions you need from us to support your efforts?

Test



1. For every \$1 spent by the Department of Health and Human Services on fraud and abuse detection and prevention, how much has been returned to the Medicare Trust Fund in the past three years?
 - a. \$4.25
 - b. \$7.20
 - c. \$20.50
 - d. \$100.00

Test



2. The goal of the Department of Justice in 2013 is to increase its health care fraud caseload by:
 - a. 2 percent
 - b. 5 percent
 - c. 10 percent
 - d. 20 percent

Test



3. The highest settlement for a health care fraud case in 2012 included payment by the company of:
 - a. \$45 million
 - b. \$250 million
 - c. \$755 million
 - d. \$3 billion

Test



4. The highest settlement for a health care fraud case in 2012 paid by a health plan was:
- a. \$1.2 million
 - b. \$25 million
 - c. \$128 million
 - d. \$322 million

Test



5. A board member could be held personally liable for breach of the board member's duty of good faith and loyalty, which could result in:
- a. Exclusion from participation in the Medicare and Medicaid program
 - b. Personal financial liability
 - c. Public humiliation
 - d. Buying drinks for all conference attendees

Test



6. The Caremark case requires board members to:
- a. Ensure that a company has a compliance program in place
 - b. Periodically investigate whether misconduct is occurring within the corporation
 - c. Attempt in good faith to assure that a corporation's information and reporting system, which the board concludes is adequate, exists
 - d. Ensure that corporate officers are not engaged in conflicts of interest or self-dealing

Test 

7. The purpose of a compliance program is:

- a. To identify and refund overpayments received from the government
- b. To serve as the face of the company to government regulators
- c. To ensure compliance with all laws and regulations that the company is required to comply with
- d. Prevent and detect crime and promote and ethical culture

Test 

8. Which of the following issues are within the scope of the company's compliance program?

- a. Compliance with state insurance regulations
- b. Compliance with Medicare marketing guidelines
- c. Compliance with laws applicable to the use of credit cards
- d. Compliance with the HIPAA Privacy Rule
- e. Compliance with Antitrust laws

Test 

9. Which of the following are Outcome Measures tracked by the compliance department and reported to the Board?

- a. External Audits
- b. Repayments to the Government
- c. Employee Engagement
- d. Corrective Action Plan Remediation
- e. Growth
- f. Privacy Violations

Test



10. The effectiveness of HHPA's compliance program is measured by which of the following?
- a. Process Elements
 - b. Outcome Elements
 - c. Structural Elements
 - d. Profitability

Questions?



Contact Information



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