Corporate Compliance for Health Center Board Members

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Why Have a Compliance Program?

Compliance programs have become a “necessity” in today’s healthcare industry.

- Technically, compliance programs have been voluntary, but the government views them as a requirement.
- Under the new Affordable Care Act, a compliance program is mandatory for an organization to bill Medicare.
- A Compliance Program can help improve quality of care.
- A Compliance Program can help identify and resolve potential issues.
Why Have a Compliance Program?

The Government continues to focus its enforcement efforts on fraud and abuse within Medicare and Medicaid, specifically related to claims development, submissions and reimbursement.
Compliance Program

There are seven elements to an Effective Compliance Program

1. Compliance Officer(s) and Committee;
2. Written Standards of Conduct;
3. Effective Training and Education;
4. Effective Lines of Communication;
5. Auditing and Monitoring;
6. Publicizing Disciplinary Guidelines; and
7. Responding to Detected Offenses and Taking Corrective Action.
Risk Assessment

• Annual assessment to determine areas of high risk

• Based on interviews, past audit results, OIG Annual Work Plan, Advisory Opinions, CMS Updates, etc.
  – Develop the annual compliance and audit Work Plan

• Continuous assessment of compliance risks and identification of areas for improvement
Top Items

• Initial, ongoing, and specialized education
• Designated compliance officer
• Anonymous hotline and whistleblower policy
• Exclusion checks
• Proactive auditing and monitoring
• Supported committee structure
• Policies/procedures and a Code of Conduct
• Effectiveness of Compliance Program
• Reporting
Fraud, Waste and Abuse

• Prevention and detection of fraud, waste and abuse is a central aim of an effective Compliance Program
• Employees have a duty to report any suspicions of fraud or abuse.
Fraud and Abuse Laws

- Anti-Kickback Statute
  - Prohibits asking for or receiving anything of value to induce referrals of Federal health care program business
  - Penalties: fines, prison time, program exclusion

- Stark Law
  - Limits referrals when physician has a financial relationship with an entity
  - Penalties: payment denial, monetary penalties, program exclusion

- False Claims Act
  - Prohibits submission of false or fraudulent claims to the Government
  - Penalties: monetary penalties, prison, program exclusion
Fraud, Waste and Abuse

- **Fraud**: An intentional act of deception, misrepresentation or concealment in order to gain something of value.
- **Waste**: Overutilization of services and misuse of resources.
- **Abuse**: Excessive or improper use of services or actions that are inconsistent with acceptable business or medical practice.
Examples of Medicare Fraud

- Incorrectly reporting diagnosis or procedures to maximize payments;
- Billing for services not furnished and/or supplies not provided;
- Billing both Medicare and the beneficiary and/or other insurer for the same services;
- Billing non-covered or non-chargeable services as covered items;
- Misrepresenting dates and descriptions of services furnished or the identity of the beneficiary or individual who furnished the services; and
- Providing unnecessary services.
Recent Compliance Investigations

• Oklahoma based FQHC submitted false claims to Medicaid for behavioral health services
  – Services were for patients of non-FQHC health care providers
  – $825,000 settlement; entered into a Corporate Integrity Agreement

• Pennsylvania based FQHC employed excluded provider for seven years
  – $275,000 settlement
2016 OIG Workplan

• Grant requirements of Affordable Care Act
• Duplicate discounts for 340B drugs
• Oversight of vulnerable health center grantees
• Compliance with Maternal, Infant, and Early Childhood Home Visiting requirements
• Documentation and coding
• Dental services to children
BOARD OVERSIGHT
Practical Guidance on Compliance Oversight

• The “Practical Guidance for Health Care Governing Boards on Compliance Oversight” was developed by
  – Office of Inspector General (“OIG”)
  – Association of Healthcare Internal Auditors (“AHIA”)
  – American Health Lawyers Association (“AHLA”)
  – Health Care Compliance Association (“HCCA”)

• Educational resource to help Board members understand how to be fully engaged in their oversight responsibility
Board Oversight Responsibilities

“A critical element of effective oversight is the process of asking the right questions of management to determine the adequacy and effectiveness of the organization’s compliance program.”

- Roles and relationships between the organization’s audit, compliance and legal departments (functions)
- Mechanism & process for issue-reporting
- Approach for identifying regulatory risk
- Method for encouraging enterprise-wide accountability for achievement of compliance goals and objectives
Board’s Duty of Care

• Board has a duty to act *in good faith*
• Duty of care requires Board members to ask questions to ensure:
  - Corporate information and reporting system exists
  - Reporting system is adequate to ensure that the Board will receive information related to compliance in a timely manner
• Use benchmarking resources:
  - Federal Sentencing Guidelines
  - OIG voluntary compliance program guidance
  - OIG Corporate Integrity Agreements (“CIAs”)

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Board Inquiries

• Board members should inquire about **scope** and **adequacy** of the Compliance Program in light of the size and **complexity** of the organization
  - OIG recognizes that the design of an organization’s Compliance Program will depend on the size, resources, and complexity of the organization.
  - Organization must still demonstrate the same level of commitment as a larger organization, but may do so with less formality and fewer resources
• Guidance recommends that developing a formal plan for staying engaged and informed
Compliance Expertise

• The Board may raise its level of expertise by adding to the Board, or periodically consulting with, an experienced regulatory, compliance or legal professional
  - Sends a strong message about the organization’s commitment to compliance
  - Provides a valuable resource to the Board members
  - Helps the Board better fulfill oversight responsibilities
Oversight of Roles and Relationships

The Board should evaluate the adequacy, independence and performance of different functions on a periodic basis.

✓ **Compliance** - promotes the prevention, detection, and resolution of actions that do not conform to legal, policy or business standards

✓ **Legal** - advises on the legal and regulatory risks of business strategies and represents the organization in legal proceedings

✓ **Audit** – Provides objective evaluation of risk and internal control systems and framework within the organization

✓ **Human Resources** – manages hiring process, coordinates employee benefits and provides employee training

✓ **Quality Improvement** – promotes consistent, safe, and high quality practices within the organization
Oversight of Roles and Relationships

• The Board should receive regular reports regarding compliance efforts to reduce and/or address potential risk.

• Reporting may include:
  – Information on internal/external investigations,
  – Serious issues raised in internal/external audits,
  – Hotline activity,
  – All allegations of material fraud or senior management misconduct, and
  – All management exceptions to the organization’s Code of Conduct and/or expense reimbursement
Reporting to the Board

The Board should receive regular reports regarding compliance efforts to reduce and/or address risk. Reporting may include:

- Information on internal/external investigations;
- Serious issues raised in internal/external audits;
- All allegations of material fraud or senior management misconduct; and
- All management exceptions to the organizations Code of Conduct and/or expense reimbursement.
Identifying and Auditing Risk Areas

• Ensure strong processes for identifying risk areas. Identify regulatory risks from:
  » Hotline reports
  » Internal audits
  » Professional organization publications
  » OIG-issued guidance
  » Consultants
  » Competitors
  » News media

• Ensure consistent review of risks and audits of risk areas

• Ensure development, implementation, and monitoring of corrective actions.
The “Yates Memo”

- Department of Justice issued guidance September 9, 2015 regarding accountability for corporate wrongdoing
- Strives to ensure consistency between Department attorneys
- Provides 6 “key steps” in DOJ pursuit of individual wrongdoing
- Also provides information for governing board members related to attorney-client privilege and conflict of interest
Tips for Board Oversight

• Develop benchmarks or use benchmarks from public compliance resources to assess performance
• Stay informed about scope and adequacy of the Compliance Program (for the size and complexity of your organization)
• Develop a formal plan for staying abreast of regulatory changes and the status of your Compliance Program
• Add an experienced regulatory, legal or compliance professional to the Board membership (or consult with a professional on compliance matters)
• Ensure documentation in meeting minutes of compliance discussions includes pertinent compliance terms
• Review the organization’s process for identifying risks
Compliance as a “Way of Life”

The Board is responsible for ensuring that Compliance is an enterprise-wide responsibility.

- Assess employee adherence to Compliance requirements
- Evaluate whether the compliance systems and processes promote and encourage communication
Questions

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