



STRATEGIC MANAGEMENT SERVICES

**THE BOARD'S ROLE:
OVERSIGHT OF THE
COMPLIANCE
PROGRAM**

July 24, 2019

AGENDA

- **Overview and purpose of Compliance Programs**
- **Conditions of Participation**
- **Oversight role of the Board and executive leadership**
- **Government enforcement summary and highlights**
- **Work plan for development and implementation of the Compliance Program**



WHAT IS A COMPLIANCE PROGRAM?

A Compliance Program is a formal program that is set up to make sure everyone is in “compliance” – or following the laws, rules and regulations, and policies and procedures.

The purpose of a Compliance Program is to:

- **Prevent violations of laws, rules and regulations;**
- **Detect violations as they happen; and**
- **Correct any issues that could lead to future violations.**



CONDITIONS OF PARTICIPATION – COMPLIANCE REQUIREMENTS

- **Section 6102 of the Patient Protection and Affordable Care Act (ACA) required nursing facilities, as a condition of enrollment in Medicare and Medicaid, to adopt and implement a “*compliance and ethics program that is effective in preventing and detecting criminal, civil, and administrative violations...and in promoting quality of care...*”**
 - **Codified as Medicare Conditions of Participation (42 CFR §483.85)**
- **Under the regulations, nursing facilities have until **November 28, 2019** to establish and implement the mandated compliance and ethics program.**
 - **As of that date, state survey agencies will begin assessing facility implementation of an effective compliance and ethics program.**



8 COMPLIANCE PROGRAM ELEMENTS

1. • Written compliance and ethics standards, policies, and procedures
2. • Assignment of oversight responsibilities to high-level individuals
3. • Sufficient resources and authority to designated individuals
4. • Due care not to delegate authority to individuals who have a propensity to engage in violations
5. • Effective communication of standards, policies and procedures to all staff, contractors, and volunteers
6. • Reasonable steps to achieve compliance with standards, policies, and procedures
7. • Consistent enforcement of standards, policies, and procedures through appropriate disciplinary mechanisms
8. • Prompt response to detected violations and taking steps to prevent further violations



COMPLIANCE PROGRAM OBJECTIVES

- **Compliance efforts are designed to establish a culture that promotes prevention, detection, and resolution of instances of conduct that do not conform to Federal and State law, and Federal health care program requirements, as well as the ethical and business policies.**
- **The Compliance Program should effectively articulate and demonstrate your commitment to ethical conduct. Benchmarks that demonstrate implementation and achievements are essential to any effective Compliance Program.**
- **The Compliance Program should become a routine part of your operations.**

Source: OIG Compliance Program Guidance Documents



COMPLIANCE PROGRAM BENEFITS

A well-designed Compliance Program can have many benefits, including:

- **Encouraging ethics and integrity;**
- **Identifying problems early so that they can be quickly fixed;**
- **Improving the quality of service;**
- **Minimizing billing mistakes and speeding up the proper payment of claims;**
- **Reducing the chance of a government audit; and**
- **Avoiding violations of law and decreasing penalties in the event of a violation.**



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**ROLE OF THE BOARD,
EXECUTIVE LEADERSHIP &
THE COMPLIANCE OFFICER**

OVERSIGHT VS. MANAGEMENT

The Board is responsible for:

- **Oversight**
- **Strategic Direction**

Executive Management is responsible for:

- **Day-to-day operations of the organization; and**
- **Appropriate reporting to the Board**

If a Board becomes too involved in the day-to-day operations of an organization, they risk elevating liability for potential errors from Management to the Board.



EMPHASIS ON BOARD INVOLVEMENT

Former HHS Inspector General Daniel Levinson:

- **Board involvement and commitment is critical to a successful Compliance Program – “Top Down Approach”**
- **The best Boards are those that are “active,” “questioning,” and “exercise constructive skepticism” in their oversight.**
- **A Board should receive regular reports and updates from the Compliance Officer.**
- **A Board should receive candid, timely, and comprehensive information on how the organization is doing.**
- **Compliance reports to a Board should be clearly understood, with comprehensive analysis of key risk areas and compliance issues.**



EFFECTIVE BOARD OVERSIGHT

“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, as well as the performance of those who develop and execute that program, and make compliance a responsibility for all levels of management.”

Practical Guidance for Health Care Governance Boards on Compliance Oversight



EXAMPLES OF BOARD RESPONSIBILITIES

- **Develops and maintains the mission of the organization.**
- **Provides leadership and strategy with a focus on the “big picture.”**
- **Establishes and supports a culture of compliance.**
- **Oversees management and the performance of the organization in conformity with applicable laws, regulations, policies, and strategies set by the Board.**
- **Receives and analyzes regular reports from executives and managers on operational and high risk issues.**



COMPLIANCE OFFICER RESPONSIBILITIES

- **Charged with operating/monitoring the Compliance Program:**
 - Develops metrics to measure execution of Compliance Program
 - Develops policies and procedures to promote compliance
 - Develops education and training programs that focus on compliance
 - Creates incentives to promote employee compliance
 - Assists in coordination of auditing and monitoring activities
 - Develops plans to improve or sustain compliance
 - Investigates potential compliance issues and develop corrective action
 - Develops reports and dashboards to help management and Board evaluate the effectiveness of the program



EXECUTIVE COMPLIANCE COMMITTEE RESPONSIBILITIES

- Composed of members of key functions within organization
- Assists in implementation of the Compliance Program
- Develops, reviews and implements policies and procedures
- Develops strategies for promoting and ensuring compliance throughout the organization, including the detection of potential violations
- Maintains and oversees a system for soliciting, evaluating and responding to complaints



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RECENT ENFORCEMENT ACTIONS

FIGHTING FRAUD AND ABUSE

- ◉ **The Federal government spends almost one trillion dollars a year on the Medicare and Medicaid programs**
- ◉ **The Federal government estimates that fraudulent billings for these programs are in the range of \$30 billion to \$100 billion each year**
- ◉ **As a result health care is both a highly-regulated, and closely scrutinized industry**
- ◉ **For FY 2018, HHS and DOJ estimated that for every \$1.00 invested in government investigations related to health care fraud in the past three years, \$4.00 was returned**



RECENT NURSING HOME ENFORCEMENT ACTIONS

- **Iowa Doctor Pleads Guilty to Making False Statements about Medicare Claims**
 - Upcoding; Falsely stating he spent more time with patients in nursing homes than he was actually spending with them
- **Chicago-Area Physical Therapy Center and 4 Nursing Facilities to Pay \$9.7 Million to Resolve False Claims Act Allegations**
 - The center worked with the nursing facilities to upcode their patients' "Resource Utilization Group" scores.
- **Vanguard Healthcare Agrees to Resolve Federal and State False Claims Act Liability**
 - For providing grossly substandard nursing home services



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D & I WORK PLAN FOR THE COMPLIANCE PROGRAM

PHASE II TIMELINE

Task	July			August				September				October				
	Week 3	Week 4	Week 5	Week 1	Week 2	Week 3	Week 4	Week 1	Week 2	Week 3	Week 4	Week 1	Week 2	Week 3	Week 4	Week 5
Oversight: Executive Compliance Committee	█	█	█	█												
Oversight: CO Designation and Announcement		█	█													
Guidance: CP Policies and Procedures		█	█	█	█	█	█	█	█							
Communication: Hotline Program				█	█	█	█									
Training: Compliance Program Annual Training Development								█	█	█	█					
Training: Compliance Program Training Roll Out												█	█	█	█	█
Enforcing Standards: Policy and Process Development								█	█	█	█	█	█			
Due care: Ineligible Persons Screening				█	█	█	█									
Response & Prevention: Policy and Process										█	█	█	█			
Monitoring & Auditing: Policy and Process Development												█	█	█	█	█



CONCLUSION

RESOURCES FOR COMPLIANCE PROGRAM GUIDANCE

- **Long Term Care Facility Conditions of Participation – Compliance and ethics program**
https://www.ecfr.gov/cgi-bin/text-idx?SID=71f0a665124b0ed4a6ece7e4d88264cf&mc=true&node=se42.5.483_185&rgn=div8
- **U.S. Sentencing Commission Guidelines**
<http://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2014/GLMFull.pdf>
- **OIG's Voluntary Compliance Guidance Documents**
<https://oig.hhs.gov/compliance/compliance-guidance/index.asp>
- **OIG Corporate Integrity Agreements**
<https://oig.hhs.gov/compliance/corporate-integrity-agreements/cia-documents.asp>
- **The Health Care Director's Compliance Duties: A Continued Focus of Attention and Enforcement**
https://oig.hhs.gov/compliance/compliance-guidance/docs/health_care_directors_compliance_duties.pdf
- **Practical Guidance for Health Care Governing Boards on Compliance Oversight**
<https://oig.hhs.gov/compliance/compliance-guidance/docs/Practical-Guidance-for-Health-Care-Boards-on-Compliance-Oversight.pdf>

