




COMPLIANCE TODAY

IS YOUR PROGRAM EFFECTIVE?

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TOPICS

- **History of compliance**
- **Federal Sentencing Guidelines and changes over time**
- **Today's compliance expectations**
 - **Accountability**
 - **Mature compliance programs**
- **Why the wheels come off**
- **Best practices**

PPACA

- **Compliance programs are required**
 - Ups the ante for failing to have effective compliance
 - Makes “knew or should have known” a given





HISTORY OF THE SENTENCING GUIDELINES

- 1984 Congress passed Sentencing Reform Act
- Purpose to establish Federal sentencing policies and standards
- “Mandatory” although called guidelines
- Goal to enlist organizations in fraud/false claim prevention
- <http://www.ussc.gov/>

HOW DO THEY AFFECT ME AND WHY DO I CARE?

- 1991
 - How the government responds to misconduct
 - Link penalties to effective compliance program efforts
 - 1:1 correlation with 7 elements of effective compliance programs



ASSESSMENT OF FUNDAMENTAL ELEMENTS OF EFFECTIVE PROGRAMS

- **7 basic elements of effective compliance programs:**
 - **Implementation of written P&P and standards of conduct**
 - **Designation of compliance officer and committee**
 - **Effective training and education**
 - **Effective communication**
 - **Enforcement/discipline**
 - **Internal auditing and monitoring**
 - **Response to detected errors**
 - **Plus: Culture of compliance, ethical behavior (2003)**
 - **Accountability for high level employees**

HOW IT WORKS

- **How bad is a function of:**
 - **Mathematical formula to calculate fines, penalties and prison sentences**
 - **You start with a base score (it's never 0)**
 - **What's good *may* be used to subtract points**
 - **What's bad *will* add points**
- **The changes in 2003 added big teeth in the Culpability score**
 - **Size of organization**
 - **Definition of “effective”**
 - **Management involvement or knowledge**
 - **Program requirements and expectations**

WHAT ARE YOUR RISK AREAS?

- **There are some common problems but your risks are unique to your organization**
- **Your compliance program must be unique and customized for your organization**
- **If you've seen one rural health clinic, you've seen one rural health clinic**

WHAT ARE SOME OF THE WELL KNOWN RISKS?

- Credit balances
- System integrity
- Coding
- Provider numbers
- Place of service
- Billing
- Modifiers
- Joint ventures
- Discounts
 - Professional courtesy
- Kickbacks
- Not medically necessary
- Software that results in improper billing



OIG PROVIDES THE GUIDANCE

- **1998 Hospitals**
 - **Revised 2005. Update includes excellent guidance that can be used by all providers**
- **1998 Third Party Billing guidance**
- **2000 Physician and small group practices**
- **Other specialties**
- **All have same basic requirements**
- **All have things you can use in your program (the best information is in the footnotes)**

WHAT ARE THE EXPECTATIONS?

- **Prevention, prevention, prevention**
- **Rapid identification of problems**
- **Rapid correction of problems**
 - **What steps should be given due care?**
- **Compliance with ALL rules, laws, regulations and statutes**
- **Compliance imbedded at every level in every job**
- **Management (including executives) actively involved and knowledgeable**

EXPECTATIONS, cont.

- Education at every level in the organization
- Implementation of industry “best practices”
 - How do you keep up?
 - How do you measure yourself against best practices?
- Discipline and enforcement
- Ongoing risk assessments
- What you “knew or should have known”
- Understanding of “false claim”
 - It should be renamed “false anything”

EXPECTATIONS, cont.

- You do not get bonus points for a compliance plan. We are in a mature environment and a mature plan is the standard. **“This is 2012, not 1996.”**
 - It’s not a book
 - It’s not a check-off list
 - Compliance plan ≠ effective compliance
- If it’s in your walls, you’d better address it!!!!
 - **“Pattern and practice determine intent.”**

DO I WORK FOR YOU?

- Long term employee
- > 40 years old
- Recognized as a leader, known for performance excellence and other awards
- Reliable, trustworthy, your right arm



THE WORLD WE LIVE IN

- **FY 2011**
 - **\$3 Billion in False Claim Act recoveries**
 - **\$2.8 billion from Qui Tam cases**





THINGS TO PONDER

- Why have virtually 0 entities sentenced under the federal sentencing guidelines received credit for an "effective" compliance program?
- Prosecutors acknowledge in the "vast majority" of successful prosecutions the organizations and entities had a compliance program, so what was wrong with it?
- Prosecutors, defense attorneys and experts in myriad cases all came up with the same list of problems demonstrating non-effective programs.
- **LET'S LEARN FROM THAT!!!!**

COMPLACENCY

- **We have a plan and we think it's working**
 - **Yes, but on paper, not living and breathing**
 - **Stated vs. Execution**
- **Rely upon what was established to function as intended**
 - **What about the changes since then**
 - **People**
 - **Regulations**
 - **Procedures**
 - **Providers**
 - **Services**
 - **Systems**
 - **Payors**
 - **Policies**

CULTURE OVERRIDES INTENT

- Does your culture welcome and encourage reporting of issues vs. "Require".
- What do employees really know and understand?
- How do they really think, act and feel?
- What are the ongoing, meaningful compliance educational efforts?
- Do all employees jointly and individually understand their role in contributing to your compliance efforts and processes?

EMPLOYEE VS. MANAGEMENT



- Perception is typically a continental divide
 - I've never had compliance training
 - I think I had some training when I was hired
 - We have to go once a year
 - “My manager is the **LAST** person I would tell about a problem. I need other options.”

EMPLOYEE VS. MANAGEMENT, CONT.

- **Employees do not feel their concerns matter or are taken seriously**
 - **We are treated like children**
 - **We are treated like we are stupid**
 - **The owner/supervisor/manager has no idea (or does not care) what's going on**
- **Employees perceive retaliation**
 - **He complained and then he didn't get a raise**
 - **I heard the managers laughing about me**
 - **My manager/supervisor gets mad when I complain**
 - **You can tell who the managers don't like**

BREEDING A QUI TAM

- **Discounting employees who complain**
 - It went into a black hole
 - Not enough reporting options
- **Failure to inform employees what happened with their concern**
 - Why they were wrong
 - Why they were right
 - Do they see any changes?
 - Did you take advantage of a training opportunity?
 - My supervisor/manager never knows the answer

MIDDLE MANAGEMENT

- Middle managers “in particular”:
 - Fail to recognize compliance problems
 - Fail to take appropriate actions
 - Fail to report concerns
 - Tend to treat serious compliance problems as HR issues
 - Address the messenger, not the message
 - Embarrass employees
 - Show favoritism
 - Are not trained to fulfill the critical role they play in the organization
 - Do not have access to necessary industry information
 - Make detrimental compliance decisions to make their (and their employees’) lives easier
 - Treat departments like silos

BUSINESS PRIORITIES



- **Compliance is not a business priority**
- **Symbols of priority**
 - **Money spent**
 - **Resources available to all**
 - **Continual measurements of performance**
 - **Widely disseminated, imbedded in every job**
 - **A real part of job descriptions and performance evaluations for everyone, including owner, BOD, etc.**

SUPERMAN AND WOMAN

- **Too many hats syndrome**
 - **Reliance on “off the shelf” helps vs. developing and customizing the real thing**
 - **Not enough time**
 - **No ongoing meaningful evaluation and revisions**
 - **Compliance becomes the onerous duty you have to go visit once in a while**
 - **Tendency to think you are done**
 - **Delegation to people not qualified to perform duties**
 - **No training or monitoring**

POOR PLAN CONSTRUCTION

- **Is compliance a company blueprint or a game plan?**
 - **Unrealistic in ability to follow through, adhere to the plan and deploy resources**
 - **Will you do everything you said you would?**
 - **Can you do everything you said you would?**
 - **Are you doing every single thing your plan says you are?**
 - **How do you know and can you prove it?**
 - **Do you allow things to fall through the cracks when other priorities arise**

FAILURE TO PREVENT VIOLATIONS

- **Duration of problem**
- **Why not found?**
- **No planned methodology to research updates**
 - **I heard it through the grapevine**
 - **If it's not on the list serve, it's not important**
- **True risk areas not identified**
 - **You can't manage what you don't know about**
- **Policies and procedures not carried out**
- **Monitoring for compliance with policies and procedures not effective**

INEFFECTIVE EDUCATION



- Boring
- Repetitive
- Limited
- Not tailored
- No face-to-face
- No validation of comprehension
- Questionable sources
- Occasional vs. every day
- Make the operations to compliance connection

NO BEST PRACTICES

- **Guidance and enforcement not considered best practices**
 - **Other entity woes not reviewed for relevance to your company**
 - What can we learn from Pfizer?
 - What can we learn from the hospital guidance?
 - How many integrity agreements have you reviewed?
 - How many settlements have you read?
 - What reports from OIG, CMS, etc?
 - What targets have been identified?
 - What does the false claims act state?
 - What do the federal sentencing guidelines state?

RIGOR MORTIS

- **Timeliness and appropriateness of responses**
 - **Not prepared to investigate**
 - **Failure to investigate**
 - **Improper investigation**
 - **Failure to seek competent advice**
 - **Failure to act swiftly to correct problem**
 - **Failure to look at the bigger picture in response to a problem**



HOLLY'S LAW

- **If you have the wrong people in charge of compliance, you will fail**
 - **I'd like to kick the project off by assigning blame for its eventual failure.**
- Dilbert**

THE RIGHT PERSON

- Pays attention all the time
- Can they draw a line in the sand and hold it?
- Inclusive vs. exclusive
- Approach should be ethics based, not just rules and regulations
- Are they trying to find people screwing up or help them succeed?
- A leader and a team player
- Right is more important than liked
- Integrity and trusted
- Loves and understands research, rules, people
- Highest level in organization
- Independent

ENVIRONMENTAL SCAN

- **In today's environment, it's a matter of when, not if, the false claims act will affect you**
- **Use preventive medicine and you can be protected**



BEST PRACTICES

- What your attorney may use as a defense strategy is **NOT** how you should operate your compliance program



BEST PRACTICES, CONT.

- **OIG has a wealth of tools, resources and educational materials and those resources are expanding regularly**
 - oig.hhs.gov/
- **CMS has a “certification” for Part A and Part B free on line**
 - cms.hhs.gov/ Web based training courses by MLN
- **Research payor websites – not just your jurisdiction**
- **Take advantage of outreach and open door programs**

SET A CLOCK

- **We've all learned to change batteries in our fire alarms and smoke detectors with the daylight savings time changes. We should refresh our compliance program on a set, predictable and recurring schedule.**



FOCUS ON THE WEAK SPOTS

- The focus should be on management and required knowledge, leadership and participation
 - Clear investments: time, money, duty of care





MORE BEST PRACTICES

- **Rely on prevention, not reaction**
 - **Assess your history for clues to your program operations**
- **Compliance is dynamic. If it is not changing and adapting all the time, it is not working**
- **Don't assume what you wrote and/or intended is working**
- **Do assume some people did not "get it"**
 - **Find out who and help them**
- **Compliance is at the operational level**
 - **Knowledge is your best friend**

YOUR TURN

- **QUESTIONS**
- **IDEAS**
- **SUGGESTIONS**
- **BEST PRACTICES SHARED**

