Speakers

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HEALTH CARE COMPLIANCE; LONG TERM CARE ADMINISTRATION AND OPERATIONS; HUMAN RESOURCES

- Licensed nursing home administrator
- Certifications: CHC, SPHR, SHRM-SCP
- More than 20 years of experience in long-term care operations, administration, and human resources.
- Particular expertise assisting organizations with developing and implementing compliance programs and labor/employment compliance.

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- Focuses on regulatory and compliance issues affecting all health care providers with an emphasis on long-term care, home health and hospice providers.
- His practice is concentrated in the areas of licensure, certification, compliance and reimbursement at the local, state and federal levels.
Presentation Overview

1. Benefits of a long-term care compliance program

2. Building a compliance program on the long-term care Requirements of Participation compliance responsibilities

3. Steps to ensure ongoing compliance program effectiveness

Benefits of a long-term care compliance program
Recent Long-Term Care Enforcement Penalties

- Medically unnecessary therapy - up to $50 million
- Grossly substandard or worthless care - up to $1.25 million and a CIA
- Controlled substance records and requirements - $2 million
- Medically unnecessary Hospice services - up to $8.8 million
- Hiring excluded individuals - $142,000
- Billing for individual therapy when group therapy was provided - 12 months in prison
- Discrimination in accepting patients - $5,000
- Kickbacks
  - To physicians for Hospice referrals - $2.4 million
  - To hospital discharge planners for SNF referrals - $6.9 million

Benefits of a Voluntary Long-Term Care Compliance Program

- Protects patients and promotes quality care
- Can decrease risk of enforcement and penalties by self-identifying issues and correcting them
- Protects the organization’s image and reputation
- Protects reimbursement
- Increases staff awareness and understanding of compliance requirements and appropriate behaviors
- May decrease culpability in case of a violation and enforcement action
- May help to avoid imposition of a mandated compliance program via a Corporate Integrity Agreement
Building a compliance program on the long-term care Requirements of Participation compliance responsibilities

Long-Term Care Compliance History

**Recommended Compliance Program:**
In the past, compliance programs were recommended in guidance documents.
- Federal Sentencing Guidelines
- OIG SNF Guidance 2000
- OIG SNF Guidance 2008

https://oig.hhs.gov/compliance/compliance-guidance/index.asp

**Mandatory Compliance Program:**
Now, the Affordable Care Act and Long-Term Care Requirements of Participation require SNF-operating organizations to have a compliance program
Reform of Requirements for Long-Term Care Facilities

- Published October 4, 2016 in Federal Register Vol. 81, No. 192 (81 Fed Reg 68688)

- The first requirements for participation for LTC facilities were published in 1989, and were last comprehensively reviewed and updated in 1991. There have been substantial changes in service delivery in this setting, including innovations in resident care and quality assessment practices, and increasing diversity and clinical complexity of the LTC population.

- The Final Rule addresses multiple aspects of LTC. Some sections are updated from the previous version, while other sections are completely new.


Section 483.85 - Compliance Requirements

- Requires the SNF operating organization to have a compliance and ethics program effective in preventing and detecting criminal, civil, and administrative violations, and promoting quality of care consistent with the regulations.

- Compliance Program Implementation date - Phase 3 of implementation - November 28, 2019

- The Final Rule requires that the Compliance Program be “reasonably designed, implemented, and enforced so that it is effective in preventing and detecting criminal, civil, and administrative violations under the Act, and in promoting quality of care; and includes, at a minimum, the required components...”
Specific Compliance Program Requirements

- Written compliance and quality of care policies and procedures
- High-level program oversight
- Sufficient resources and authority to ensure compliance
- A screening process for positions with discretionary authority
- Effective communication of compliance standards to staff, contractors, and volunteers
- Procedures to promote compliance, such as auditing, monitoring, and an anonymous reporting system
- Consistently enforced disciplinary actions
- Appropriate response to violations, and prevention of similar future violations
- An annual review and update of the compliance and ethics program
- In addition, organizations with five or more facilities must also provide annual mandatory compliance training, appoint a compliance officer, and designate a compliance liaison at each facility

Risk Assessment:
The Foundation of Compliance Program Development

An effective compliance program must be based on an accurate risk profile

- What are the common industry risks (external) and the risks specific to your entity (internal)?

Risk Assessment guides application of the Compliance Elements

- What policies do you need? Where should you audit? What content should be in your education?

External risks: OIG Compliance Program Guidance for LTC, CMS Requirements of Participation, OIG Work Plan, industry and regulatory changes, pertinent enforcement actions, etc.

Internal risks: Staff interviews, collaboration with business leadership, current and past survey results, compliance auditing and monitoring results, etc.
Written Compliance and Quality of Care **Policies and Procedures**

- Code of Conduct
- Long-Term Care Compliance and Quality of Care
- General Healthcare Compliance
- The Final Rule indicates the entity should have policies including (but not limited to)
  - Program contact for reporting, and an alternate anonymous reporting method without fear of retribution
  - Disciplinary standards with consequences for violations
  - Contracted individuals
  - Volunteer expectations/roles

2nd Element: High-Level Program **Oversight - §483.85(c)(2)**

- Not a “managing employee.”
- High-level personnel means individual(s) who have substantial control over the operating organization or who have a substantial role in the making of policy within the operating organization.
- Examples include a member of the Board of Directors, an executive officer/CEO, an individual in charge of a major business or functional unit, or an individual with substantial ownership interest in the operating organization.
Who should be a Compliance Officer? Choose carefully.

- Demonstrates leadership.
- Reputation for honesty and integrity.
- Experience in long term care.
- Familiarity with regulations and operations.
- Experience with project management/strong organizational skills.
- Can maintain confidences and secrets.
- Can communicate well.

Compliance Officer Reports to Board:

- Not just when there is a complaint or issue.
- Routine reports.
- Create “dashboards” that show current status and compare with previous reports.
- Show trends – number of complaints, number of investigations, results, paybacks, etc.
- Budget: show board how resources are used and where resources are lacking.
3rd Element: Sufficient Resources and Authority to Ensure Compliance - §483.85(c)(3)

- Sufficient resources and authority to the specific individuals to reasonably assure compliance with such standards, policies, and procedures.
  - **Resources**
    - Sufficient budget and staffing to carry out the Compliance Program.
  - **Authority**
    - Appropriate authority so that the program has power to enforce standards and Compliance Program requirements.

4th Element: Screening Process for Positions with Discretionary Authority - §483.85(c)(4)

- The Final Rule discusses due diligence to ensure that individuals with a propensity to wrongdoing are not put in positions of power, authority, policy-making.
- Also, ensure screening for exclusion from federal healthcare programs.
- The OIG guidance documents also discuss background check, resident safety, licensure and certification, exclusion, and signed certification that not convicted of an offense precluding work in a skilled nursing facility.
5th Element - Effective **Communication** of Compliance Standards - §483.85(c)(5)

- Audience: Staff, Contractors, and Volunteers
- Final Rule discusses mandatory participation in training or orientation programs, or disseminating information in a practical manner explaining what is required by the Compliance Program.
- Develop compliance orientation and training materials that explain what the Compliance Program requires, and require participation.
- Develop a plan for ongoing communication to get the compliance message to the entity.
  - What is the content of the message?
  - Who needs to hear the message and where are these individuals located?
  - How can the message be communicated? How often?
  - Is there a marketing department to help develop communication materials?

6th Element: Procedures to Promote Compliance – May Include **Monitoring and Auditing Systems** - §483.85(c)(6)

- Develop a monitoring and auditing plan based on external and internal risk.
- Difference in monitoring (real-time) and auditing (after the fact).
- Auditing staff, contractors, and volunteers.
- Start simple and add more complexity over time and as the Compliance Program develops.
- Determine who will audit, how audits will be conducted, a consistent format for each audit report, and to whom audit results will be reported.
- OIG considers an ongoing evaluation process to be a “critical to a successful compliance program.”
6th Element Continued: Procedures to Promote Compliance – Including an **Anonymous Reporting System** - §483.85(c)(2)

- The Final Rule calls for system where individuals can report without fear of retribution and a process for ensuring the integrity of any reported data.
- Consider contracting with a third-party Hotline vendor.
- Develop reporting mechanisms in addition to the Hotline.
  - An online anonymous reporting tool.
  - Publicize how to report, the Hotline number, the names, phone numbers, and email addresses of Compliance Program contacts.

7th Element - Consistently Enforced **Disciplinary Actions** - §483.85(c)(7)

- The Final Rule discusses inclusion of disciplinary action for failure to detect or report violations.
- The Final Rule requires a policy addressing disciplinary standards including consequences for violations.
- Ensure compliance and behavior expectations are clear.
- Collaboration with Human Resources.
8th Element: Appropriate **Response** to Violations and Prevention of Similar Future Violations - §483.85(c)(8)

- The Final Rule discusses making necessary modifications to the Compliance Program in response to violations.
- Consistent process for responding to violations and poor audit results
- Incorporate Root Cause Analysis into process.
- Document actions taken in response to violations, and actions taken to prevent future similar violations.

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Annual **Review and Update** of the Compliance Program - §483.85(e)

- The Final Rule indicates the Program should be annually reviewed relative to changes in both the regulations and in the operating organization and facilities.
- The Final Rule indicates the Program should be updated to improve its performance in deterring, reducing, and detecting violations, and promoting quality of care.
- If applicable, the annual review can be performed with collaboration with the compliance staff, compliance committee, and senior leadership to review the year’s compliance successes and opportunities for improvement.
- Document performance of the review, and any changes or updates made to the program in response to the review.
1) Provide annual mandatory Compliance Program training.
   • Update the general annual training each year, as needed.
   • Consider what high-risk positions would benefit from additional, more specialized compliance training.

2) Appoint a Compliance Officer.
   • Reports directly to the Governing Body.
   • Is not subordinate to the Chief Financial Officer, Chief Operating Officer, or General Counsel.

3) Designate a compliance liaison at each facility.
   • Tasked with the day-to-day operationalization of the Compliance Program at the facility.
   • Ensure appropriate education and ongoing communication with the Compliance Officer, so that liaison understands expectations, has buy in, and is accountable for compliance responsibilities.
Steps to ensuring ongoing Compliance Program effectiveness

Compliance Program Effectiveness

- 52 pages of suggestions.
- Some used frequently, some not at all.
- Frequency and use will be based on size and risk areas.
- Not intended to be a check list or to do all.
- If you do none—obviously not enough.

Interactions with QAPI and Facility Assessment

- CMS: Facilities should be integrating the information and data they collect or that arises out of their compliance and ethics programs into their Quality Assurance and Performance Improvement ("QAPI") program.
- CMS: All operating organizations should use the facility assessment they developed in developing and maintaining their compliance and ethics programs.
  - Use the facility assessment to determine the resources they need.

Annual Risk Assessment, Program Review and Work Plan Development

- Collaborate with compliance committee and compliance staff, if applicable, and senior leadership to assess risk, program successes, and areas for opportunity.
- Rank risks to help determine priorities for the upcoming year.
- Develop a 12-month work plan based on risk assessment and program review to guide compliance program activity.
Engagement with Leadership and Staff

- Board of Directors
- CEO
- Senior Leaders
- Facility Administration
- Frontline Staff

Ongoing Investment in Compliance Program

- Review of budget and staffing, and comparison with benchmarks.
- Promote open communication between Compliance Officer and the Board of Directors and CEO regarding Program successes, opportunities for growth, and needs of the Program.
- Encourage compliance staff to get regular compliance continuing education, be involved in professional organizations, obtain professional certifications, etc.
Resources

OIG Work Plan

OIG Criminal and Civil Enforcement Actions
https://oig.hhs.gov/fraud/enforcement/criminal/index.asp

OIG Skilled Nursing Facility Compliance Guidance
https://oig.hhs.gov/compliance/compliance-guidance/index.asp

Heath Care Compliance Association (HCCA)
https://www.hcca-info.org/

American Health Care Association (AHCA)
https://www.ahcancal.org/facility_operations/integrity/Pages/Compliance-Programs.aspx

Questions?

Thank You!