The Fifth Element of an Effective Compliance Program: Monitoring, Auditing and Internal Reporting Systems

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Objectives

› Share strategies and ideas on how to ensure auditing and monitoring are fully integrated into your Compliance Program.

› Provide guidance and strategies on how to tailor the 5th Element of auditing and monitoring to your specific organization.

› Discuss how and when to move from the 5th Element (Auditing & Monitoring) to the 7th Element of Investigations and Remedial Measures when significant measures are identified.
### Comparison of DOJ & OIG Guidances

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### Internal Reporting System

- **Accessibility of Reporting System**
  - 24 hours/day, 7 days/week, 365 days/year
  - Available in most spoken languages in organization.
  - Allows anonymous reporting and ability for reporter to follow-up, check on status.

- **Internal and Hotline Reporting**
  - Hotline
  - Compliance Officer
Fifth Element: Internal Reporting System

- Response to Reporters
  - Reporting System must be responsive to reporters
  - Policy & procedure on reporting suspected non-compliance

- Trust of system –
  - Are calls / reports increasing or decreasing
  - Consider Survey Money for users

Fifth Element: Internal Reporting System

- Track Reports and Responses Process
  - # of call (going up or down)
  - How submitted (on-line, through hotline or in person, etc.)
  - Time to respond to reporters
  - Time to close
Fifth Element: Internal Reporting System

- Promote Reporting to Hotline
  - Education & Training
    - How to report
    - Online Reporting vs. Hotline Reporting vs. Internal Reporting
  - Reporting Cards

- Hotline – Test Calls
  - Timeliness to report
  - Timeliness of reports to Compliance

The Fifth Element: Risk Assessment

- Identify the organizational areas of “Risk”
  - OIG Compliance Guidances (Hospital, Physician, Lab, etc.)
  - 2018 Fraud Settlements – Themes
    - Hospital & Physician Practices
    - Fair Market Value (FMV) paid to Physicians
    - Inpatient vs Outpatient Status
The Fifth Element: Risk Assessment

- Identify the organizational areas of “Risk”
  - Office Leases to Physicians
    - shared waiting rooms and other public areas
    - Fair Market Value and Commercial Reasonableness
  - OIG Workplan
    - Opioids
    - Part B Payments for Podiatry and Ancillary Services
    - NIH’s implementation of Financial Conflict of Interest Regulations
    - Assessing Inpatient Hospital Billing for Medicare Beneficiaries
    - Physician Billing for Critical Care E&M Services

- Denials
  - Not Medically Necessary
- Place of Service
  - POS 11 vs. 19 or 22
- Incident To
  - Non-Physician Providers Billing und Physician NPI
- Locum Tenens
  - Used for Supplemental Staffing vs. Short Term Replacement
The Fifth Element: Risk Assessment

- DOJ Focus Areas
  - Billing/up coding
  - Waived co-pays
  - Medical Necessity
  - Medicare Advantage / risks adjustment coding
  - Joint Ventures with Physician Practices
  - Healthcare Fraud cases against individuals and physicians.
  - Anti–Kickback Statute Violations
- HIPAA
  - Identification of patient's "opting out of the facility directory.
  - Documentation destruction processes
The Fifth Element: Risk Assessment

- HIPAA
  - BAAs – current OCR audit protocol addressed?
  - Identification & destruction of records and documents.
  - Access to Medical Records
- Patient Rights
  - Section 1557
  - Grievance / Complaint Process
- Medicare as Secondary Payer (MSP)
- Process for obtaining ABNs

The Fifth Element: Risk Assessment

- Physician Payment Reconciliation
  - Tracking non–monetary compensation
  - Fair market value and commercial reasonableness analysis part of contract file?
  - Medical Directorships
  - Reimbursable expenditures (employed Physicians)
  - Contract amendments
The Fifth Element: Risk Assessment

- Calculated Priority – Risk Assessment Spreadsheet
  - Potential Risk Area
    - Physician Compensation
    - Phishing
    - Waiver of Co-pays & Deductibles
    - Medical Necessity
    - Evaluation and Management Selection, etc.

The Fifth Element: Risk Assessment

- Calculated Priority – Risk Assessment Spreadsheet
  - Area of Scrutiny
    - AKS
    - Stark
    - FCA
    - Patient Inducement
    - HIPAA Privacy & Security
    - Medical Necessity, etc.
The Fifth Element: Risk Assessment

- Calculated Priority – Risk Assessment Spreadsheet
  - Risk to the Organization
    - High
    - Medium – High
    - Medium
    - Medium-Low
    - Minimal

- Likelihood of it happening
  - Highly Probably
  - Probable
  - Likely
  - Possible
  - Unlikely
  - Rare
The Fifth Element: Risk Assessment

- Calculated Priority – Risk Assessment Spreadsheet
  - Priority
    - High
    - Medium
    - Low
    - Minimal

Fifth Element: Auditors

- **Internal Auditors**
  - Coding, Documentation, Billing Background
  - Skill Sets
  - Areas of Expertise
  - Inter-Rater Reliability Testing

- **External Auditors**
  - Scope is bigger than organization can handle internally
  - Scope is out of internal auditor’s education, training, background
  - Reliability of External Auditor
Fifth Element: Auditing

- Audit Survey’s to Consider
  - Culture of Compliance
  - Compliance Policies
    - Gifts
    - Reporting Compliance Concerns
    - Emailing / Faxing PHI
  - Reporting Compliance Issues
  - Medicare Fraud & Abuse Laws

- Develop an Audit Plan
  - Audit areas with highest risk
    - Issue
    - Scope
    - Objectives
    - Resources
  - Universe
    - Number of claims within the designated period.
Fifth Element: Auditing

- Statistical Significance

- Sample Selection
  - Random
  - Targeted

- Sample Size & Timeframe
  - Past year, 6 months, 3 months, month

Fifth Element: Auditing

- The Audit Report
  - Purpose
  - Scope
  - Sample selections
  - Findings
  - Conclusions
  - Recommendations
Fifth Element: Auditing

- Analysis of Findings
  - Root Cause Analysis
  - Isolated or Systemic Problem
  - Education & Training

- Identification of Refunds
  - Making the Refund
  - Disclosure Letter to Accompany Refund

- Validation of Corrective Actions
Fifth Element: Auditing

› Follow-Up Communications
  ◦ Legal Counsel
  ◦ Board
  ◦ Executive Team
  ◦ Physicians
  ◦ Directors
  ◦ Staff
  ◦ Reporter

› Analysis of Findings
  ◦ Root Cause Analysis
  ◦ Isolated or Systemic Problem
  ◦ Education & Training

› Identification of Refunds
  ◦ Making the Refund
  ◦ Disclosure Letter to Accompany Refund
Fifth Element: Auditing

› Identification of Refunds
  ◦ Making the Refund
  ◦ Disclosure Letter to Accompany Refund

› Validation of Corrective Actions

Fifth Element: Auditing

› Follow-up with Periodic Monitoring
  ◦ Did the Corrective Action Work
  ◦ Is it Still Working
  ◦ Are there any other areas that may have the same risk?
Fifth Element: Monitoring

- Monitoring
  - Current Processes
    - Advanced Beneficiary Notices
    - Medicare as Secondary Payor
    - Validation of Primary and Secondary Insurances
    - Department of the Hospital
      - Communication with Patients
    - Potential Patient Inducements
      - Hotel Stays
      - Taxi’s, Transportation
      - Charity Policy

- Monitoring – Additional Spot Checks
  - New Procedures, Physicians, Practitioners
    - Surgical Procedures
    - Pacemaker clinics
    - INR Clinic
    - 99211 billing
  - New Processes
    - Coding & Billing for New Services
      - Infusion Therapy
      - Radiology
      - Labs
Fifth Element: Monitoring

- Monitoring
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Key References

- "Evaluation of Corporate Compliance Programs", U.S. Department of Justice; Criminal Division, Fraud Section, February 2017.
Questions?

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Fell Free to Contact Us!

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