Session P40: 
Compliance Program Operations vs. 
Conducting a Complex Investigation

Sunday April 7, 2019
Time 3:15 – 4:45

Presenters:
Laura Jarrett, Senior Director Compliance
Al Josephs, Program Director Corporate Compliance

2019 HCCA Compliance Institute
April 2019

Objectives

• Compliance Investigations
  – Work Flow
  – Intake/Assessment
  – Primary considerations
• Parsing Resources
• Conflicts with Compliance Program Operations
  – Routine
  – Work Plan
• Case Study
Initial Evaluation of a Compliance Issue

**General Guidelines**

**Internal Compliance Department Assessment**

**Routine**

Routine issues/concerns identified either internally by Compliance and/or submitted through established reporting processes, are triaged by the Compliance Team to determine next steps for addressing the issue/concern consistent with established Compliance Department Guidance.

**Non-Routine**

Non-routine issues/concerns are defined as follows:

- material substance
- potential financial loss
- reputational risk
- potential violation of law/regulations
- compliance regulatory implications
- external regulatory inquiry or investigation
Initial Evaluation of a Compliance Issue - Continued

General Guidelines
Internal Compliance Department Assessment

For an issue/concern meeting the criteria, as non-routine, the Chief Compliance Officer (CCO), in collaboration with Sr. Director or Program Director, will further triage the issue to determine next steps.

Should the issue been validated as non-routine the CCO will immediately inform the General Counsel. Collaboratively the COO and GC will determine:

- what, if any, additional information is needed
- best method for conducting further investigation
- application of Attorney Client Privilege
- utilization of external counsel or consultants
- quantify organizational risk, based on established risk levels

Investigation of Compliance Issue

General Guidelines
Internal Compliance Department Assessment and Response

Investigations
All investigations (Routine or Non-Routine) will be conducted in a manner consistent with Compliance Department guidance for conducting internal investigations. All investigations will be assigned a Lead Investigator (LI).

Prompt Resolution
All reasonable efforts will be made to complete any investigation expeditiously, yet thoroughly. Where possible the investigation should be completed and recommended mitigation made within 60 days of the identification of a non-routine issue/concern. In some instances, the 60-day timeframe is important should an investigation result in a self-disclosure and/or repayment to Federal/State programs, which require repayment within 60 days of identification of an overpayment. Exceptions to the 60-day resolution time must be discussed and approved by the CCO well in advance of initial 60-day due date.
Investigation of Compliance Issue

General Guidelines
Internal Compliance Department Assessment and Response

Cooperation

All employees are expected to cooperate during any investigation of issue/concerns and respond promptly to any request for information or data. The Compliance Department is authorized to independently investigate and act on matters related to compliance, including the flexibility to design and coordinate internal investigations (e.g., responding to reports of problems or suspected violations) and any resulting corrective action with all hospital departments, providers and subproviders, agents and, if appropriate, independent contractors. In addition, the Compliance Department has the authority to review all documents and other information that are relevant to compliance activities and or investigations, including, but not limited to, patient records, billing records, and records concerning the marketing efforts of the facility and the hospital’s arrangements with other parties, including employees, professionals on staff, independent contractors, suppliers, agents, and hospital-based physicians, etc.

Confidentiality

Individuals, who report in good faith, will be afforded confidentiality and/or anonymity to the extent possible under the law. Any individual made aware of the allegations shall also be asked to keep the investigation confidential as appropriate and not disclose the identity of the subject or the issues raised.

For investigations conducted under Attorney Client Privilege (ACP), as determine by the General Counsel (GC), individuals must adhere to the requirements for maintaining ACP, any exceptions must be approved, in advance, by GC.
Lead Investigator Goals

- Oversee investigation
- Develop Work Plan and define scope of work, adjust as may be required
- Initial Goal
  - Who, what, when, where, why, how
  - Valid concern or not
  - Components of non-compliance
    - Law
    - Regulations
    - Policy and Procedures
    - Standards of Care
    - Health and Safety

Note that the concern under review may include multiple issues requiring the assignment of a separate Lead Investigator. In most instances this will be identified during the Intake Process. If however other related concerns are identified during an investigation the Lead Investigator should work with the Compliance Department to determine next steps for handling the newly identified concern.

Investigation Management

- Maintain calendar of events
- Develop Work Plan and define scope of work
- Identify investigation team members
- Control and track documentation
- Ensure validity of data received
- Attorney Client Privilege
  - Maintain log of individuals with access
  - Define approval process
  - Control document distribution
  - Address potential breaches
  - Educate individuals
- Stay Nimble
  - Log issues identified that are outside of scope
  - Adjust work plan/scope for as related issues are identified
Potential Key Stakeholders

- Compliance
- Legal Department
- Leadership
- External Counsel
- Human Resources
- Clinical Operations
- Audit Services
- Revenue Cycle
  - Chargemaster
  - Claims
  - Registration
- Managed Care
- Coding
- Privacy and Information Security
- Communications
- Security

Investigation Protocols

- Ensure individual privacy rights
- If whistleblower(s) are involved, protect their anonymity
- Interviews
  - Interview preparation
  - Investigator competence
  - Remain objective
  - Maintain business like approach
  - Never acknowledge other individuals interviewed
  - Focus on gathering information, ask questions and wait for answer(s)
  - No group interviews
  - Do not discuss your opinions or observations
  - Conduct interview promptly
- Prevent retaliation
Potential Spinoff Issues and Actions

Indirect considerations:
• Physician involvement
• Contract concerns
• Cost Report implications
• Licensure
• Implementations of new services
• Whistleblower interference

Interim Actions:
• Claims Hold
• Placement of safeguards or controls
• Suspension of services
• Education
• Prompt repayment of amounts identified
• Addressing Human Resources issues
• Non-cooperation/resistance

Parsing Resources

External Resource Considerations:
• Available skill sets
• Necessity for independence/second opinion
• Negotiations with outside agencies
• Prophet from out of town
• Concurrent mitigation

Internal Resources:
• Time constraints
• Potential involvement with issue
• Internal resistance
• Potential whistleblower(s)
• Conflicting opinions
Conflicts with Compliance Program Operations

Depending on the number and size of investigation(s)

Work Plan Implications:
- Reset of priorities
- Postpone projects
- Expand/Replace Work Plan items based on investigation findings
- Board approval/notification

Operations:
- More frequent management reporting
- Limited Staff and skill sets
- Limited staff involvement
- Focus on program essential elements
- Increase in external investigations or reviews
- Staff turnover
- Critical due dates (60 day rule, routine compliance activities)

Case Study
Welcome to 2018!

What does your Compliance Program look like Current State?

• Year-end Closeout/Reporting
• First Audit/Compliance Committee meeting – early March
• Aggressive workplan
• New organizational goals approach: Shared Cross-Department Goal
• Leadership change; New Team Member
• Best employee opinion and compliance program feedback in previous year
• Increased audit inquiry/activities; Active regulatory environment

Questions
• How do you plan for your year ahead?
• What does your team include in their annual goal setting?
• Do you leave space in your workplan for new risks identified this year?
• How do you onboard new Board Chairs or orient new leaders to the program?

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Hotline Report
Caller just received their year-end review, and are calling to express the following concerns:
• Toxic culture in the specialty department
• Unfair work practices regarding PTO
• Concerns regarding coding errors, providing documentation, and coding/billing.
What do you do next?

Questions/Considerations:
- Is this routine or non-routine?
- When do you involve your General Counsel?
- When do you consider putting this review under ACP?
- Who is your lead investigator?
- Who are your other stakeholders?
- What protocols do you put in place?
- How do you scope the investigation?
- What are the issues and actions at play?

Entity Compliance Officer

CURRENT STATE UPDATE

Human Resources
Investigations currently underway in this department regarding hiring practices, employee morale, and at least one leader has a development plan.

Speciality Providers
Based on increased volume and scheduling needs in this clinic, you were informed that there are two contracted providers working in this clinic in addition to your employed physicians.

Documentation Review
You were able to use a subject matter expert on your team for the professional billing reviews, but his other routine auditing/monitoring items have been put on hold.

Workplan Items
Your COI survey for the year has been released, and you have started two auditing/monitoring reviews, and your annual Compliance training will be assigned at the end of Q1.

New Leader Update
Your new Board Chair would like to have bi-monthly meetings to vet the upcoming Board report and stay abreast of the current state of your Compliance Activity dashboard items.
What do you do next?

Questions/Considerations:
- What concerns would you prioritize?
- If the investigation isn’t under ACP, would that change based on what you know now?
- What updates would you provide the Board Chair?
- Who else is missing from your SME group for this investigation?
- How does this impact your team’s workload?

Entity Compliance Officer

Human Resources
Human resources does their review of the case, and says the claims cannot be substantiated. There are no concerns with their investigation, and no new reports have been received regarding the specialty clinic.

Speciality Providers
The contracted provider agreements do not reveal any compliance concerns, but you have decided to add physician arrangements to your workplan monitoring list for the next fiscal year.

Documentation Review
Your review identified a few opportunities for documentation improvement, and one major billing compliance finding regarding E&M levels that must be refunded.

Workplan Items
Your COI survey is complete, with minimal new risks identified, you are behind on one of your scheduled coding reviews, and you are in the last few weeks of your annual compliance training window.

New Leader Update
Your Board Chair meetings have been going well, and now you need to provide him with an update on your annual COI survey and two new pending conflict management plans.
What do you do next?

Questions/Considerations:
• What issues would you prioritize?
• What are the next steps of closing out your investigation?
• How do you use the information gained in this review to assess the Compliance program impact? (i.e., next year’s workplan)
• What type of corrective action plan do you put in place? And who is responsible?

Lessons Learned
• Planning, planning and more planning*
• Have established reporting and board dashboards*
• Thoughtfully incorporate special projects or significant workplan items into your compliance team members annual goals*
• Have some established service standards, and ensure that those basic items remain in effect when your staff is swamped*
• Have a process established to assess when an investigation needs to be placed under Attorney Client Privilege
• Relationships are important when investigating significant concerns (Ex. HR, legal, HIM, medical staff services, etc.)
• Know your limits — For example, based on your resources and your team’s skill sets how many charts could be reviewed in a day/week and what type of reviews could you not do

*Samples/Tools to be shared
Questions / Discussion?

Appendix

Sample Tools
### Findings and Risk Summary

<table>
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<tr>
<th>Task</th>
<th>Issue</th>
<th>Findings</th>
<th>Project Risk</th>
<th>Risk Mitigation (to Project Timeline)</th>
<th>Responsible Party</th>
<th>Project Resolution Date</th>
<th>Risk Acceptance Level</th>
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### Internal vs. External Project Tracking

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### Open Items Management

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### Project Issues Management

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SAMPLE TOOLS

Remediation
Project - Looking Forward

Task
Issue
Policies and Procedure (review/development)

Education and Training

HIM

Revenue Services

Compliance

Other

Other

SAMPLE TOOLS

Project Documents – Table of Contents

I. Project Overview
   a. Employee Concerns
      i. Interview
         1. Summary of Impressions from Discussion with Employee
         2. List of Staff Interviews
   a. Senior Leadership Status Updates
   a. Internal Memos

I. Remediation
   a. Recommendations

I. Appendix
   a. Emails
   b. Meetings
   c. Employee Follow-up
   d. Planning Tools
   e. Background
SAMPLE TOOLS

Project Communication and Meetings

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Meetings Calendar [Source: Download of Outlook Calendar]

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<th>Meeting Organizer</th>
<th>Required Attendees</th>
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Dallas, Texas

SAMPLE TOOLS

Compliance Team Goals

1. Billing Compliance Program
   a. Summary: Goal: Develop, distribute, and improve current data compliance communications and education modules to ensure an effective compliance program and a true culture of compliance.
   b. Demonstration components: Demonstration of the following tools/resources: Updated Compliance Website, Annual Training, New Employee Orientation, Communication, and Group Communications.

2. Compliance Communication & Education
   a. Demonstration components: Development, adoption, and implementation of the following tools/resources: Updated Compliance Website, Annual Training, New Employee Orientation, Communication, and Group Communications.
   b. Assessment Model: 7 out of 9 elements (Threshold), 8 out of 9 elements (Target), All elements (Maximum).

Dallas, Texas
SAMPLE Dashboard - Workplan

- Special items to note related to this measurement
- Special items to note related to this measurement

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3/13/2019

Dallas, Texas