

**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**

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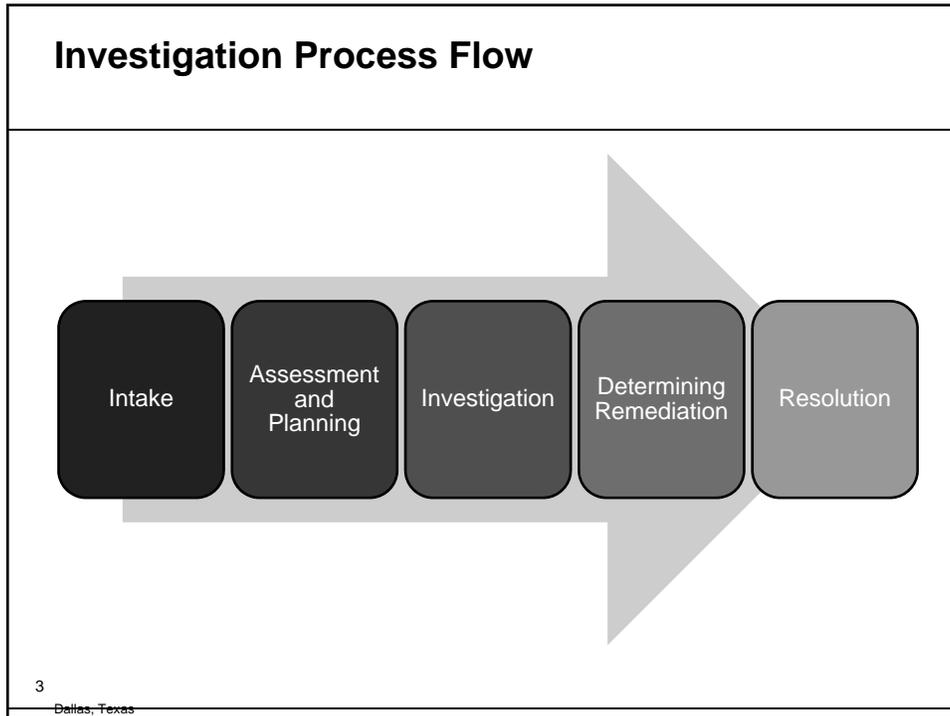
Objectives

- Compliance Investigations
 - Work Flow
 - Intake/Assessment
 - Primary considerations
- Parsing Resources
- Conflicts with Compliance Program Operations
 - Routine
 - Work Plan
- Case Study

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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

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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

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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.

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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.

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Investigation of Compliance Issue

General Guidelines

Internal Compliance Department Assessment and Response

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.

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Lead Investigator Goals

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.

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Investigation Management

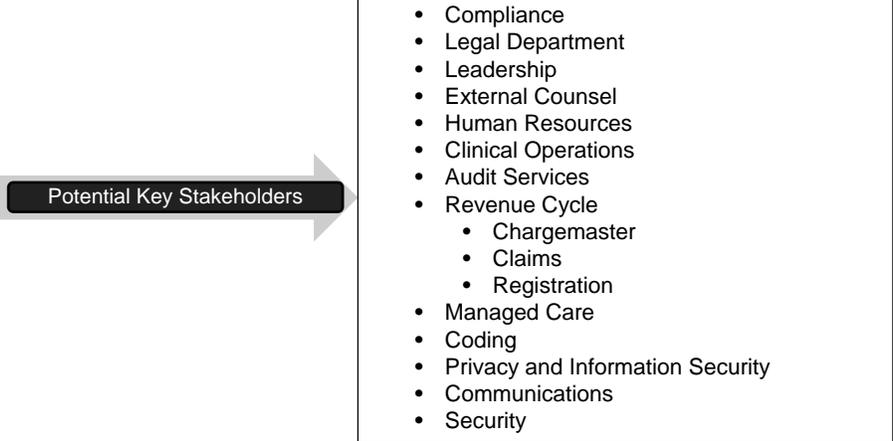
Investigation Management

- **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

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Potential Key Stakeholders

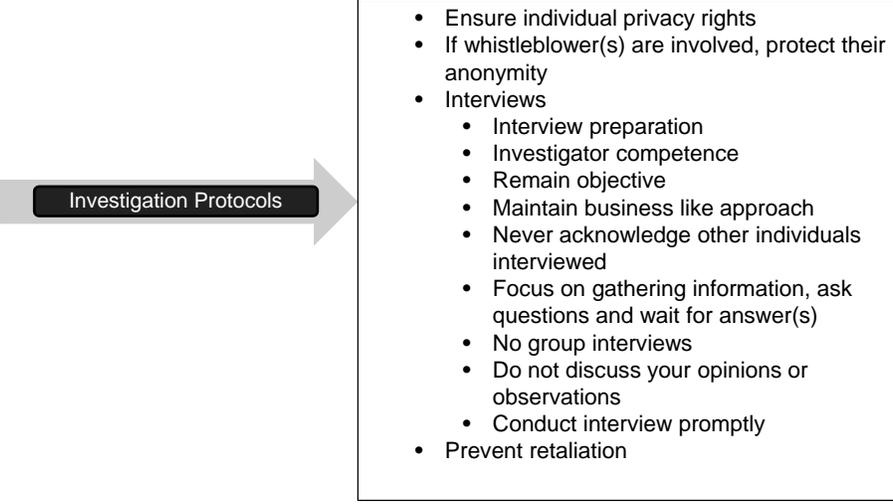


Potential Key Stakeholders

- 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

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Investigation Protocols



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

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Potential Spinoff Issues and Actions

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

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Parsing Resources

Resource Management

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

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Conflicts with Compliance Program Operations

Compliance Program Impact

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)

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Case Study

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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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January 22

● LIVE

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 WQs, providing documentation, and coding/billing.



BREAKING NEWS

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 into place?
- How do you scope the investigation?
- What are the issues and actions at play?

Entity Compliance Officer

CURRENT STATE UPDATE

NEWS *LIVE: March*

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.

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

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?



Entity Compliance Officer

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?

CURRENT STATE UPDATE

NEWS LIVE: May

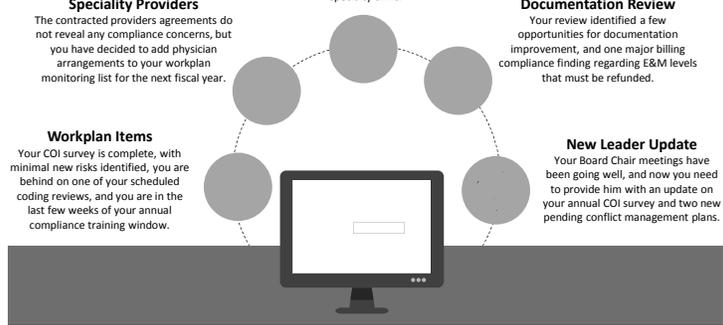
Specialty Providers
The contracted providers agreements do not reveal any compliance concerns, but you have decided to add physician arrangements to your workplan monitoring list for the next fiscal year.

Human Resources
Human resources closes 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.

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?



Entity Compliance Officer

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?



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Appendix

Sample Tools

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SAMPLE TOOLS	
<p>Remediation Project - Looking Forward</p> <p style="text-align: center;"><u>Task</u> <u>Issue</u></p> <p><i>Policies and Procedure (review/development)</i></p> <p><i>Education and Training</i></p> <p style="text-align: center;">HIM</p> <p style="text-align: center;"><u>Revenue Services</u></p> <p style="text-align: center;"><u>Compliance</u></p> <p style="text-align: center;"><u>Other</u></p> <p><u>Other</u></p>	<p style="text-align: center;"><u>Responsible Party</u></p>
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SAMPLE TOOLS	
<p><u>Project Documents – Table of Contents</u></p>	
<ul style="list-style-type: none"> I. Project Overview <ul style="list-style-type: none"> a. Employee Concerns <ul style="list-style-type: none"> i. Interview <ul style="list-style-type: none"> 1. Summary of Impressions from Discussion with Employee 2. List of Staff Interviews a. Senior Leadership Status Updates a. Internal Memos I. Remediation <ul style="list-style-type: none"> a. Recommendations I. Appendix <ul style="list-style-type: none"> a. Emails b. Meetings c. Employee Follow-up d. Planning Tools e. Background 	
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SAMPLE TOOLS							
<u>Project Communication and Meetings</u>							
Project Consults and Follow-up e-mails							
<u>Date</u>	<u>Topic</u>				<u>From</u>	<u>To</u>	
Meetings Calendar (Source: Download of Outlook Calendar)							
<u>Subject</u>	<u>Start Date</u>	<u>Start Time</u>	<u>End Date</u>	<u>End Time</u>	<u>Meeting Organizer</u>	<u>Required Attendees</u>	<u>Location</u>
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SAMPLE TOOLS
<u>Compliance Team Goals</u>
<ol style="list-style-type: none"> 1. Billing Compliance Program <ol style="list-style-type: none"> a. <i>Summary Goal:</i> Fully develop assessment methodology and risk mitigation planning for billing compliance risks for health system b. <i>Demonstration components:</i> Assessment of external tool to analyze charging patterns; Develop billing compliance guidelines and procedural documents; Dedicated education material for Annual training; Just in time education material to be developed in partnership with the departments as needed; Defined auditing and monitoring approach for next fiscal year; Documentation and coding assessment c. <i>Assessment Model:</i> Meets – 3 out of 6 elements achieved; Exceeds – 4 out of 6 elements achieved; Significantly Exceeds – All elements achieved 2. Compliance Communication & Education <ol style="list-style-type: none"> a. <i>Summary Goal:</i> Develop, distribute and improve current state compliance communications and education modules to ensure an effective compliance program and a true culture of compliance b. <i>Demonstration components:</i> Development, adoption and implementation of the following tools/resources - updated compliance webpage, annual training, new employee orientation deck, communication toolkit, new leader orientation and toolkit, monthly employee newsletter communications, leader compliance updates, schedule and a plan for compliance week activities/awareness. c. <i>Assessment Model:</i> 7 out of 9 elements (Threshold); 8 out of 9 elements (Target); All elements (Maximum)
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