

MEDICARE COMPLIANCE

Weekly News and Compliance Strategies on CMS/OIG Regulations, Enforcement Actions and Audits

Contents

- 2** Thinking Through Compliance Strategy
- 3** With MOON Deadline Around Corner, Consider Other Notices As Well
- 5** Payment Rules Are Exempt from One In, Two Out Exec Order, With Limits
- 6** CMS Transmittals
- 8** News Briefs

Former Tenet Executive Charged with Fraud; Compliance Attestations at Heart of Case

Prosecutors have drawn a line from promises that a hospital executive purportedly broke when he signed compliance attestations while allegedly arranging payments for referrals to an indictment for fraud.

John Holland, former senior vice president of operations for Tenet Healthcare Corp.'s southern states region and CEO of North Fulton Medical Center Inc. in Roswell, Ga., was charged with mail fraud, health fraud and major fraud in connection with the kickback scheme for maternity patients that led to Tenet's \$513 settlement and non-prosecution agreement in October 2016 (*RMC 10/17/16, p. 1*), the Department of Justice said Feb. 1. However, the indictment is short on specifics, attorneys say. "It looks like a difficult case for the government to prove," says former federal prosecutor Scott McBride, with Lowenstein Sandler in Roseland, N.J.

That impression is shared by former federal prosecutor Robert Trusiak. "This is a very broad set of allegations stated generally in a conclusory manner without detail," says Trusiak, with Health Care Compliance Support in Buffalo, N.Y. Presumably the details will spill out during discovery and other pretrial maneuvering. The criminal case

continued on p. 6

Compliance Is Often Stuck in Checkbox Mentality; 'Strategic Value' Has More Impact

When former compliance officer Steve Ortquist meets with senior executives and board members about their organization's compliance program, he's surprised to find they can't always put their finger on what it's all about. They may give a vague reason for the compliance program, like "to make sure we're in compliance," or a single-minded reason, like keeping people out of jail.

"Something is wrong," said Ortquist, managing director of the Aegis Compliance and Ethics Center in Phoenix. "I regularly don't see organizations rallying around a larger purpose. They are checking the box — doing something they think they have to do — without a larger understanding or vision for what they're doing." It could make an enormous difference for the compliance program and the organization as a whole if senior leaders and board members see its strategic value. "Maybe we as compliance people need to start having a conversation that forces people to start thinking about this," Ortquist said on a Feb. 6 webinar sponsored by the Health Care Compliance Association. "If you can get to that place where an organization's leadership and board see [compliance] processes as integral to the overall organizational strategy, it can really transform what happens in this arena." That will require being far more concrete — establishing goals, measuring progress and reporting results in dashboards.

continued



Managing Editor
Nina Youngstrom
Nina.Youngstrom@hcca-info.org

“The overarching premise is that what leaders really engage in actively is something that they see as a strategic benefit,” he noted. “The strategic value of the compliance program may be different and less in some ways than the strategic value of a merger or building a new revenue stream, but if they can see the compliance program as being strategic, not just something you have to do,” it will be more effective. When the compliance program takes a structured approach to evaluating risk and develops a work plan based on that instead of firing at every target, “and the leadership team can see this, I think they will be more likely to engage with it.”

In fact, compliance officers will be more effective in the context of strategic initiatives if they focus on three areas: Stark and the anti-kickback law; revenue cycle/coding and billing and privacy and security. “These are not the only areas. For example, in the hospital setting, you also think of the [Emergency Medical Treatment and Labor Act],” Ortquist said (*RMC 1/30/17, p. 1*). “But if you look at a mature program, it’s focused on these three bubbles.”

He suggested compliance officers get the compliance committee and board more involved in the process of developing the risk assessment and the work plan, and

provide them with dashboards that vividly show what the compliance program has accomplished. “If those two bodies are functioning the way they need to, they are really going to be instrumental in driving the compliance program strategically,” Ortquist said. But the executive compliance committee is more hands on than the board’s audit/compliance committee.

The compliance committee should be made up of top executives rather than midlevel managers “who aren’t at a level where they can drive the program forward in a more strategic way,” he said. The executive compliance committee “will be a group that has the reporting relationships and the chutzpah to drive things in the way they need to be driven,” Ortquist said. For example, the executives on the committee have the clout to get compensation tied to compliance outcomes “or, if you’re dealing with a problem that requires interaction with the medical staff, to get from where you are to where you need to be, that executive level committee will have the right relationships and positions to move them forward.” A subcommittee of midlevel managers will be useful to ensure compliance on a day-to-day basis, he noted.

There are different expectations of the board’s audit/compliance committee, a fact that’s been driven home

Thinking Through Compliance Strategy

This chart is designed to help the compliance officer, management, the board and the compliance committee have a conversation about who will be involved in the various tasks of compliance, said Steve Ortquist, managing director of Aegis Compliance & Ethics Center. “The compliance officer’s job is to manage and implement the compliance program, not to ensure the organization is in compliance,” he said. Contact him at sortquist@aegis-compliance.com.

	Compliance Officer	Executive Compliance Committee	Board of Directors	Management	Legal Counsel
Assuring Compliance					
Managing Compliance Program					
Implementing Compliance Program					
Setting Tone and Culture					
Setting Compliance Program Strategy					
Providing Oversight					
Providing Resources					
Conducting Investigations					
Corrective Action Implementation					

EDITORIAL ADVISORY BOARD: JULIE E. CHICOINE, JD, RN, CPC, General Counsel, Texas Hospital Association, JEFFREY FITZGERALD, Polsinelli PC, EDWARD GAINES, Esq., Zotec-MMP, DEBI HINSON, Chief Research and Privacy Compliance Officer, Columbus Regional Health, MARION KRUSE, FTI Healthcare, RICHARD KUSSEROW, President, Strategic Management Systems, MARK PASTIN, PhD, Council of Ethical Organizations, CHERYL RICE, Corporate Responsibility Officer, Catholic Health Partners, ANDREW RUSKIN, Esq., Morgan, Lewis & Bockius LLP, WENDY TROUT, CPA, Director, Corporate Compliance, WellSpan Health, LARRY VERNAGLIA, Foley & Lardner LLP, BOB WADE, Esq., Krieg DeVault

in recent corporate integrity agreements. In terms of the compliance attestations that board members and executives must sign in the CIAs, “at both levels they have to have a significant understanding of the risks and processes and that you are going after this risk or that, but there is more personal responsibility for the state of compliance at the management level than the board.” At the same time, compliance officers should hash out who will be responsible for various compliance tasks with the executive compliance committee, board members, managers and others (see box, p. 2).

Information sharing is also key to promoting compliance in a broader context. “How do you give the board and committee enough so they establish a strategy and have a good sense of what kinds of allegations are made to the hotline and what kind of performance the compliance program has?” The packet should be “meaty,” he said, but there is an argument to be made for not overwhelming the board. “I always tried to include some education piece about a compliance risk area in every quarterly board report.”

Leaders are also more invested when they see dashboards that show measurable results in core compliance-program operations. “The more you can measure what you are trying to achieve and demonstrate that to your board, the better off you are,” he said. Examples of metrics: the number of people who were assigned Stark training and completed it; the average number of days it takes to close an investigation; the percentage of inpatient admissions without signed orders before discharge; the number of physician contracts that were executed without legal review and the number of payments to physicians for certain arrangements (e.g., medical directorships, on-call services, leases) without the necessary approvals.

Contact Ortquist at sortquist@aegis-compliance.com. ♦

With MOON Deadline Around Corner, Consider Other Notices As Well

All eyes are on the Medicare Outpatient Observation Notice (MOON), which takes effect March 8, and compliance may be trickier than anticipated. Hospitals may find it useful to approach compliance with the MOON, which informs patients they are outpatients receiving observation services, not inpatients, in tandem with other patient notices, including the advance beneficiary notice (ABN) and Hospital-Issued Notice of Non-Coverage (HINN).

CMS posted the final MOON on its website on Dec. 8 (*RMC 12/12/16, p. 1*). It created the form in response

to the Notice of Observation Treatment and Implication for Care Eligibility (NOTICE) Act, which was signed by President Obama on Aug. 6, 2015. According to the NOTICE Act, hospitals are required to notify patients who receive 24 hours or more of observation services that they are not inpatients within 36 hours after physicians have written the observation order. The MOON tells patients that, “You’re a hospital outpatient receiving observation services. You are not an inpatient because:” followed by a blank space, where physicians or other hospital staff will have to explain why. In instructions posted with the MOON, CMS said, “Fill in the specific reason the patient is in an outpatient, rather than an inpatient stay.” On Jan. 20, CMS issued Medicare Transmittal 3695 to explain a bit more how to administer the MOON (*RMC 1/30/17, p. 8*).

MOON May Go Down Easy

It’s always possible the MOON will go down easy. “Lot of patients will just sign the MOON,” said Ronald Hirsch, M.D., vice president of R1 Physician Advisory Services, at a Feb. 2 webinar sponsored by RACMonitor.com. Even if they have questions, patients can sign the MOON, as long as they get answers within the 36-hour statutory deadline. “There’s no requirement to show all their questions have been answered when they sign the

Report on Medicare Compliance (ISSN: 1094-3307) is published 45 times a year by the Health Care Compliance Association, 6500 Barrie Road, Suite 250, Minneapolis, MN 55435. 888.580.8373, www.hcca-info.org.

Copyright © 2017 by the Health Care Compliance Association. All rights reserved. On an occasional basis, it is okay to copy, fax or email an article or two from *RMC*. But unless you have HCCA’s permission, it violates federal law to make copies of, fax or email an entire issue, share your subscriber password, or post newsletter content on any website or network. To obtain our quick permission to transmit or make a few copies, or post a few stories of *RMC* at no charge, please contact customer service at 888.580.8373 or service@hcca-info.org. Contact Justin Allbee at 888.580.8373 x 7938 or Justin.allbee@corporatecompliance.org if you’d like to review our very reasonable rates for bulk or site licenses that will permit weekly redistributions of entire issues.

Report on Medicare Compliance is published with the understanding that the publisher is not engaged in rendering legal, accounting or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.

Subscriptions to *RMC* include free electronic delivery in addition to the print copy, e-Alerts when timely news breaks, and extensive subscriber-only services at www.hcca-info.org that include a searchable database of *RMC* content and archives of past issues.

To order an annual subscription to **Report on Medicare Compliance** (\$764 bill me; \$664 prepaid), call 888.580.8373 (major credit cards accepted) or order online at www.hcca-info.org.

Subscribers to *RMC* can receive 12 Continuing Education Credits per year, toward certification by the Compliance Certification Board. Contact CCB at 888-580-8373.