Compliance Investigations
Beyond the Basics

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Objectives

- Preparation is the key.
- Provide insight on key aspects of finding the answers.
- The interview is more than just the questions.

Definition

Investigation.....careful inquiry or research...fact finding...information gathering.
Tools & Techniques

Preparation

Fail to prepare
Prepare to Fail

When Must You Investigate
Any time there is:
- A potential for harm to a patient
- An allegation of a violation of law
- A report of improper conduct
- A potential for a government overpayment
- A potential for an overpayment by any other third-party payer
- A potential for whistleblower activity
Tools & Techniques
Investigation Guide

Who?  
What?  
Where?  
When?  
Why?  
How?

Scenarios

1.) There is an allegation that the Director of Food Service is using a non-approved provider and the cost for product is significantly higher.

2.) There have been complaints against the Director of Security alleging falsification of safety inspection documentation.

3.) There is an allegation by a vendor that the organization is using another vendor because it is owned by a physician.

Tools & Techniques
Attorney Client Privilege

- When
  - Discuss with counsel?
  - Potential for publicity?
  - Prior to beginning investigation?
  - Severity of allegations?
  - When you realize it is big?
Tools & Techniques

Attorney Client Privilege
- For legal advise in anticipation of litigation
- How is it Obtained?
- Request from the attorney
- You can request it orally or in writing
- How to avoid waiving it once created
- Mark the top of your email “Attorney-Client Privilege”
- Do not copy/forward or otherwise disclose to unnecessary recipients
- Instruct recipients accordingly - shows intent that it be privileged
- Can copy all necessary parties within corporation and agents thereof who are assisting the attorney

The Investigation

How is the concern or complaint received?
- In person, telephone, letter, hotline call, from administration, email, colleague, exit interviews, audits
- Anonymity

The Investigation

Analyze complaint or concern:
- Is there an impact on patient safety, health or quality of care?
- Immediate notification(s) needed?
- What is really going on?
- Changing facts – fact finding
- Detailed description of issue
The Investigation

Analyze complaint or concern (cont.)
- Individuals involved—who knew, who should have known?
- Is there monetary impact?
- Based on information initially received, is there any activity/behavior that needs immediate intervention?
- Practice continues or has it stopped?

The Investigation

Decide what resources are required
- Subject matter experts
- Additional investigators
- Others based on complexity, sensitivity or nature of the issue

The Investigation

Other resources:
- Legal counsel
- Auditors
- Medical or clinical personnel
- Risk Management
- Revenue Cycle/PFS
- Security or Law enforcement
- HIPAA/Privacy/Security
- Human Resources
The Investigation

- Develop investigative plan and strategy
  - Who
  - What
  - When
  - Where
  - Why
  - How

Now is the time to determine what documentation you will need to review.

The Investigation

- Review of documents – may include:
  - Personnel records, Medical records
  - Billing records, Accounts Payable, Policies, Regulations
  - Contracts, Leases, Emails, Letters to file, Call schedules, Work schedules, IT usage/access logs

The Interview

Conduct Interviews:
- Select order of individuals to be interviewed - in most if not all cases, interview the complainant **first**.
- Possible witnesses
- Subject of investigation – in most cases interview the subject **last.**
The Interview

- Who
- Union
- How many
- Room set-up
- Location
- Equipment
- Notes

The Interview

- Set the tone
- Questions
  - Based on pre-interview preparation
  - Open ended
  - Develop additional questions based on answers
  - Ask to repeat

The Investigation

Maintaining Documentation Requirements:
- Report Details
  - Incident Database
  - Narrative Format
- Event
- Documents Gathered
- Interviews
- Findings (based on facts)
The Investigation

Prepare analysis and conclusions
- Analyze/review all notes and documents
- Are more interviews or re-interviews needed?
- Are conclusions substantiated?
- Prepare draft report.
- Provide to counsel.

The Investigation

Take appropriate action
- Ensure appropriate action is taken
- May include disciplinary action and/or corrective actions such as process change, policy change, refund, counseling, education, follow up auditing/monitoring

Common Problems

- Failure to understand the issue and its ramifications
- Not identifying who is going to be in charge of the investigation
- Not clarifying who will participate in the investigation and their roles
Common Problems

- Assigning the investigation to someone with an interest in the outcome
- Assigning the investigation to someone who may have been part of the problem
- Failing to keep senior management advised of the existence and nature of the investigation
- Losing the privilege

Common Problems

- Failure to create records which are important to the investigation
- Failure to preserve records which are important to the investigation
  - Interview notes
  - Interview summaries
  - Schedule of interviews
  - Information supporting conclusions
  - Circulated draft reports
  - Expert reviews
  - Reports to executive leadership

Summary

Preparation
Summary

- Identifying issues requiring investigation
  - Clarifying the underlying issues
- Planning the Investigation
  - May involve cooperation with other departments (compliance, legal, risk, etc.)
- The Investigation
  - Fact-finding
  - Preserving evidence, conducting interviews, maintaining documentation, making recommendations

Questions

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