

HCCA San Juan Regional

Auditing, Monitoring and Investigations

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Scenario

US Central Health System 55 hospital System

You receive a hotline call from Sally Jones who is the administrative assistant for the system CEO. Sally indicates that she believes we are paying multiple physicians for Medical Directorships without an agreement. She further indicates that we also have physicians with call coverage agreements where we are paying well above FMV. She apparently has information that the CEO has agreed to do this because the physicians have agreed to refer their patients to US rather than to St. Elsewhere in competing markets because of the higher than FMV payments.

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What do you do?

- Audit
- Monitor
- Investigate



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Counsel

- Discuss known facts and allegations
- Discuss next steps
- Audit, Monitor or Investigate
- Attorney client privilege



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Definition



Auditing:

- Formalized approach, independent, and objective
- Audits are performed by someone who has no vested interest in the outcomes or business area being reviewed.
- Audits have established approach and methodology for sampling.

Adapted from Institute of Internal Auditors (IIA) definitions

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Definition



Monitoring:

- Day to day reviews
- Not necessarily independent of business unit, ie: self reviews, peer reviews, etc.
- Part of doing business and approach may be informal.

Adapted from Institute of Internal Auditors (IIA) definitions

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When to “audit”?

Audit when objective results needed and integrity is critical

- For cause reviews
- Not-for-cause reviews to assess risk
- Effectiveness of corrective actions
- Note: The more independent an audit, the more integrity the audit will have

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When to “monitor”?

Monitor when watching compliance becomes part of daily operations

- Implementing new rules
- Implementing corrective actions
- High risk areas in between audits

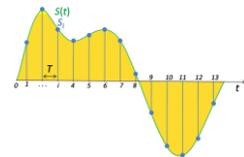
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Essentials For Your Auditing and Monitoring

- Understanding of current and applicable business risks and strategies
- Appropriate, credible resources at your disposal
- Management ownership and accountability is present in the culture to address findings
- Understanding that there will always be follow up to any audit activity, ie: audit corrective actions, audit finding areas to see if still problems, validating management put action in place, etc.

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Sampling Methodology



Non-statistical:

- According to the statisticians, the sample size of 30 gives the **lowest level** of statistical **significance** in a sample.
 - Sampling sizes less than 30 are limited, ie: focus, probes, reviews, etc.
- In any sample that is not statistically valid:
 - **Can't assure Equal positive probability** of every member of the population being selected
 - Sample **CANNOT be extrapolated** to make assumptions about the population universe

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Sampling Methodology



Statistical:

- Statistical sampling of claims involves randomly selecting claims in a sample where every member of the population has an **equal positive probability** of being selected to represent the population universe
- To be statistically valid, the sample must be **selected at random** with no bias or other distortions that could make it non-representative
- The results of a statistical **sample can be extrapolated** to make assumptions about the population universe
- Precision and confidence indicates an **acceptable level of sampling error**
 - May choose to stratify the sample to improve sample efficiency (i.e., to hit targeted precision and confidence levels)
 - Stratification commonly based on sample item value (e.g., lower vs. higher payment amount)

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Basics of Sampling-example of agency focused approach



- Outside agency may want a certain approach that you would consider for your sampling.
- For example: OIG Probe Audit Approach:
 - Sample of 20-40 units that is not statistically significant
 - For errors greater than 5%, then conduct a statistically significant sample
 - OIG provides RAT-STATS software on its website for random sampling and sample sizing
 - <http://oig.hhs.gov/compliance/rat-stats/index.asp>
- Think through error rate – the denominator may be more refined than simply the number units audited

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Samples

Discovery samples (usually 50 claims)

- If a Full Sample is needed, the Discovery Sample would be used to determine the size of the Full Sample in order to meet the required precision and confidence levels.
- Full Sample must estimate overpayment in the population with a 90% confidence level and a maximum relative precision of 25% of the point estimate

OIG website: <http://oig.hhs.gov/fraud/cia/faq.asp>

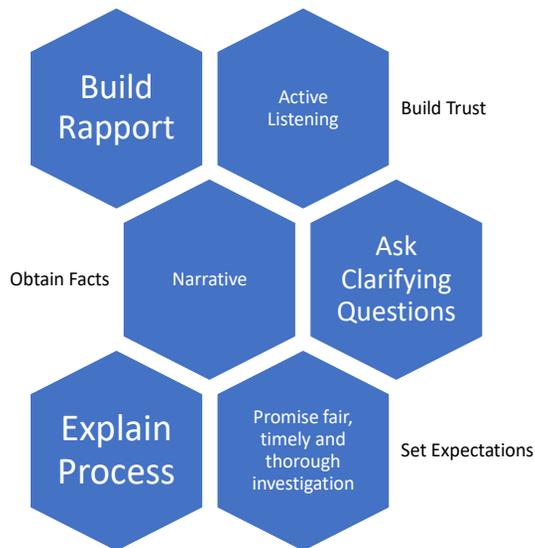
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What to do with the results?

- We will need to decide when and where we want this slide. Do we discuss the various options of Disclosure or Not to Disclose?

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INTAKE TIPS

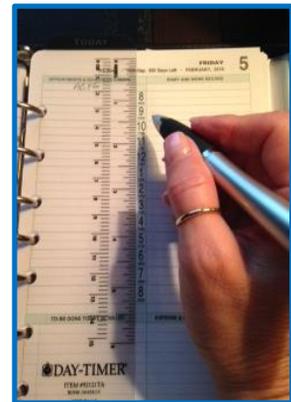


INTAKE IS
CRITICAL

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Investigative Plan

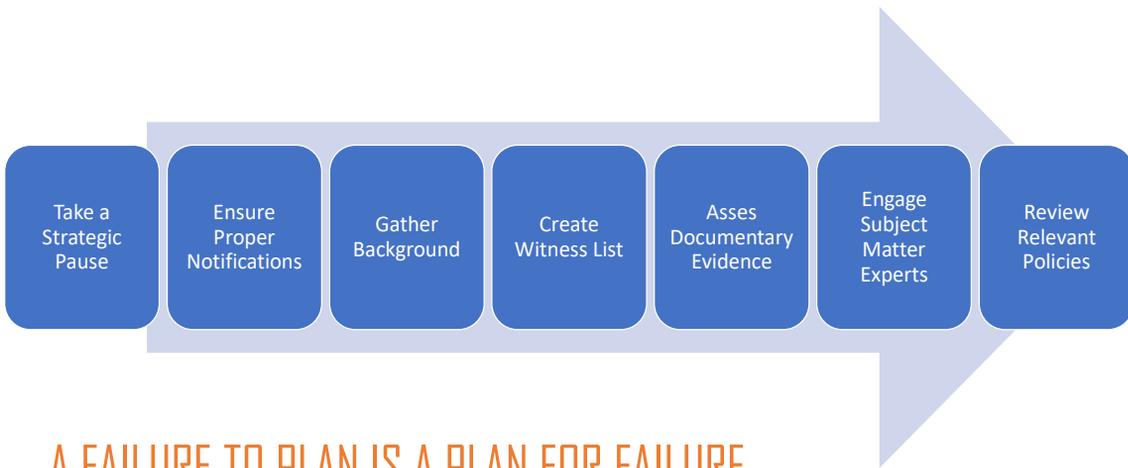
- Roadmap
- What are allegations?
- Who is the Subject of the report?
- What witnesses did Jeff name?
- What Functional Support will you need?
- What notifications need to be made?
- What policy is impacted?



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INVESTIGATIVE PLAN



A FAILURE TO PLAN IS A PLAN FOR FAILURE

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Legal Considerations

- Confidentiality - Banner Health Decision (NLRB)*
 - Represented Parties
 - Non-Represented Parties
 - Leaders versus non-leaders
 - Exceptions
- Other Legal Considerations:
 - CBA-represented Parties – Weingarten Rights
 - Parties who say they have a lawyer
 - Parties who ask for complete confidentiality
 - Parties who ask to record the interview



**Banner Health Systems, 362 NLRB No. 137 (June 26, 2015)*

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International Considerations

- Privacy Laws
 - GDPR (EU General Data Protection Regulation)
 - What could it mean to you?
- What if?
 - What if the Subject (Becca) lives in the UK?
 - What would you do differently in the investigation?
 - What special legal considerations are there?



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Evidence

- Documentary (consider chain of custody)
 - Email
 - Instant Message
 - Facility Access Records
 - Conflict of Interest Declarations
 - Public Record Searches
- Physical Evidence (chain of custody/storage considerations)
 - Hard copy notes, letters, documents
 - Thumb drives (engage your computer experts, as needed)
- Testimonial (memorialize notes soon as possible)
 - Manager Discussion
 - Human Resources
 - Witness Interviews
 - Reporting Party and Subject Interviews



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Witness Interviews

- Do your homework
- Keep it Collegial
- BOVINE Approach:
 - **B**uild Rapport
 - **O**pen-ended questions
 - **V**isualize their story
 - **I**ntroduce clarifying questions
 - **N**otice the Gaps
 - **E**nd with Closed Questions
- Challenges
 - Uncooperative/hostile
 - Reluctant/Nervous



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Reaching your Investigative Conclusion

- Review Allegations
 - How did your investigation evolve?
 - What does evidence suggest?
- Standard of "proof"
 - More Likely than Not
 - Good faith investigation
- Courage of your Convictions
 - Confer with Subject Matter Experts
 - Don't fear the gray areas or elephants in the room
 - You are the policy expert
 - Document the conclusion

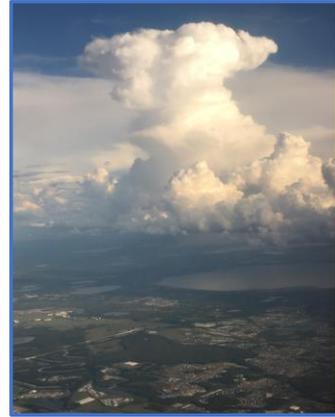


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Bringing it in for a landing – Investigative Report

- Format
- Consider Outline to prepare for ROI
- Avoid legal conclusions and legalese
- Third Person; Active Voice
- Keep it concise
- Peer review



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Feedback, Presentation, Follow-Up

- Feedback
 - Reporting Party
 - Subject
- Presentation
 - Be present
 - Be prepared
 - Be polite
 - Be professional
- Follow-Up
 - Legal/Regulatory Issue?
 - Security Issue?
 - Surveys of Reporting Party? Subject?



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