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## **Building an Effective Compliance Program**

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## Purpose of the Program

- To identify common roadblocks to an effective compliance program
- To learn how to test the effectiveness of a program
- To identify ways to strengthen and encourage staff participation in the program.



# Healthcare Industry Environment

- Public expectations
- Regulatory aggressiveness
- Whistleblowers
- Federal Sentencing Guidelines
- Criminal and Civil penalties
- Director's liability
- Corporate death sentences



# What is Fraud?

- “Fraud” is the intentional deception or misrepresentation that an individual makes and knows or believes is false and untrue, knowing the deception could result in unauthorized benefits to himself or others.
- In nursing facilities, fraud can be clarified as:
  - A series of unintended oversights that produce a routine pattern of undeserved benefits and ultimately result in a clear benefit to a person or persons of an organization.

## Federal Investigation of Health Care Fraud

- In 2005, the federal government won or negotiated \$1.47 billion in judgments or settlements in health care fraud cases.
- In 2005, the U.S. Attorney's Office also opened 935 new criminal health care fraud investigations with 1, 597 potential defendants.
- A total of 523 defendants were convicted for health care fraud related crimes in 2005.

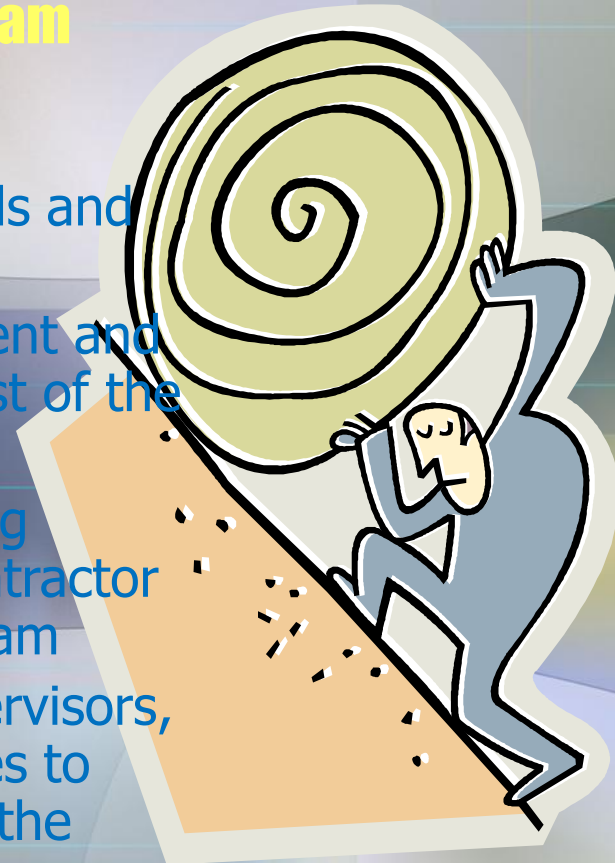


## What is a Compliance Program?

A compliance program is a management system for preventing inappropriate conduct within an organization. It provides guidance and support across the organization for employees to make appropriate decisions regarding both clinical and business practices, decisions and behaviors

## Challenges to Building an Effective Compliance Program

- Management Challenges
  - Obtaining support and encouragement of boards and management
  - Encouraging commitment and cooperation from the rest of the organization
  - Gaining and maintaining clinician and outside contractor acceptance of the program
  - Making it easy for supervisors, managers and employees to understand their role in the compliance program



# Challenges to Building an Effective Compliance Program

## Administrative Challenges

- Finding the time and money to keep the program working effectively
- Not having the capability to receive anonymous reporting of noncompliance
- Reinforcing the main options staff have for relaying concerns
- Maintaining consistency in monitoring, evaluation and discipline
- Completing investigations and follow-up with persons involved, management and senior officers
- Providing new employees with thorough compliance training
- Keeping abreast of new rules and regulations for third party reimbursement



## Specific Areas of Concern in Nursing Facilities

- **Quality of Care**
  - Provide the highest standard of mental, physical and psychosocial well-being to all residents
- **Residents' Rights**
  - Ensure residents maintain freedom of choice, self-determination and reasonable accommodation of individual needs
  - The Budget Reconciliation Act of 1987 provides some requirements to protect the rights of residents and many States of specific lists of residents' rights
- **Billing and Cost Reporting**
  - Fraudulent and abusive billing practices can result in criminal, civil and administrative enforcement actions
  - Billing practices and procedures must ensure that all billing practices are continually reviewed for potential compliance issues

## Specific Areas of Concern in Nursing Facilities

- **Employee Screening**
  - Must ensure that all potential staff members are carefully scrutinized through background and reference checks
- **Kickbacks, Inducements and Self-Referrals**
  - Must specify actions which could be considered a violation of anti-kickback statutes, Stark laws and any other relevant law
  - Arrangements with hospitals, physicians, hospices and vendors should be particularly scrutinized
- **Creation and Retention of Records**
  - Must ensure that appropriate and sufficient policies and procedures are in place for the creation, maintenance and retention of patient files
  - Resident privacy, timely documentation, and regulatory requirements are concerns

## The Seven Recommended Elements for an Effective Compliance Program

1. Implementing Written Policies, Procedures and Standards of Conduct
2. Designating a Compliance Officer and Compliance Committee
3. Conducting Effective Training and Education
4. Developing Effective Lines of Communication
5. Conducting Internal Monitoring and Auditing
6. Enforcing Standards Through Well-Publicized Disciplinary Guidelines
7. Responding Promptly to Detected Offenses and Developing Corrective Action



## Implementing Written Policies, Procedures and Standards of Conduct

- Clearly document and communicate all standards and procedures, including risks specific to your organization.
- Make the policies and procedures easily accessible by printing them in the employee handbooks.
- If your organization has a website, you can also post your policies and procedures online



## Implementing Written Policies, Procedures and Standards of Conduct

- Codes of Conduct
  - An organization's constitution
  - Should outline general and fundamental principles of the organization
- Employee Handbooks
  - If standards of conduct are printing in the Employee Handbook, it must be regularly updated
  - Anyone affected should sign a form indicating they have read the updated handbook



# Designating a Compliance Officer and Compliance Committee

- The organization must determine what responsibilities a Compliance Officer will have.
- Sample position requirements can be found at [www.hcca-info.org](http://www.hcca-info.org).

Sample Job Description  
Corporate Compliance Officer

Job Title: Compliance Officer	Grade/FLSA:	Dept/Business Unit:	Job Code:
Reports To (Supervisor's Title): VP of <u>XXXXXXXXXXXX</u>	Human Resource Approval:	Date:	

**Purpose of Job:** (Briefly state the primary purpose of the job in terms of how it contributes to the department objectives):  
The compliance officer serves as the focal point for all compliance activities. The compliance officer coordinates and communicates all compliance activities and programs, as well as plans, implements, and monitors the compliance program.

**Job Components:** (List the major job responsibilities and accountabilities in order of priority, include approximate percentage of time spent on each component):

- Overseeing and monitoring the implementation of the compliance program;
- Reporting on a regular basis to XXXXXX and XXXXXX governing body, CEO and compliance committee on the progress of implementation;
- Periodically revising the program in light of changes in the organization's needs and in the law and policies and procedures of Government and private payor health plans;
- Ensure employees have received, read and understood the standards of conduct;
- Developing, coordinating, and participating in a multifaceted educational and training program that focuses on the elements of the compliance program and seeks to ensure that all appropriate employees and management are knowledgeable of, comply with, pertinent Federal and State standards;
- Coordinating personnel issues with the human resources/personnel office to ensure that employees do not appear in the List of Excluded Individuals/Entities and the General Services Administration (GSA) list of debarred contractors;
- Assisting management in coordinating internal compliance review and monitoring activities, including annual or periodic reviews of departments;
- Independently investigating and acting on matters related to compliance, including the feasibility to design and coordinate internal investigations and any resulting corrective action with all departments, contracted vendors, and if appropriate, independent contractors;
- Developing policies and programs that encourage managers and employees to report suspected fraud and other irregularities without fear of retaliation;
- Coordinating the reinvigoration of the compliance program and the accomplishment of its objectives long after the initial years of implementation; and
- Participate on XXXXXX Compliance Committee.

**Interactions with Others:**  
Regular interaction with all departments, management, employees in various departments, health plans, and vendors.

**Job Scope:**

- Generally single site, single business unit.
- Manages compliance staff.

Sample Job Description Corp Comp Off  
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## Designating a Compliance Officer and Compliance Committee

- A Compliance Officer's main responsibilities should include:
  - Coordinating personnel issues with the HR department
  - Assisting the organization's financial management with internal compliance review and monitoring activities
  - Independently investigating compliance matters
  - Assisting the organization's counsel in self-reporting noncompliance
  - Continuing to maintain an active compliance program past the initial years of development and implementation.
- Overseeing and monitoring the compliance program
- Reporting on a regular basis to senior officers, Board and compliance committee
- Updating the compliance program
- Developing educational programs
- Assisting independent auditors in becoming familiar with the organization's compliance requirements

## Designating a Compliance Officer and Compliance Committee

- Reporting Structure
  - A compliance officer should be given authority to report to senior level officers and the organization's Board of Trustees or Directors
- Compliance Committee
  - Acts like a Board of Directors and should have a formal charter outlining the committee's roles and responsibilities
  - Lends support to Compliance Officer by communicating new policies and identifying potential problems



## Conducting Effective Training and Education

- One training program is not enough
  - Staff training must be ongoing
  - Compliance Officer should implement refresher courses and educational programs when there has been an change in the organization's policies and procedures
  - All training programs should be documented
- Training should target three groups
  - Employees
  - New hires
  - Agents and contractors

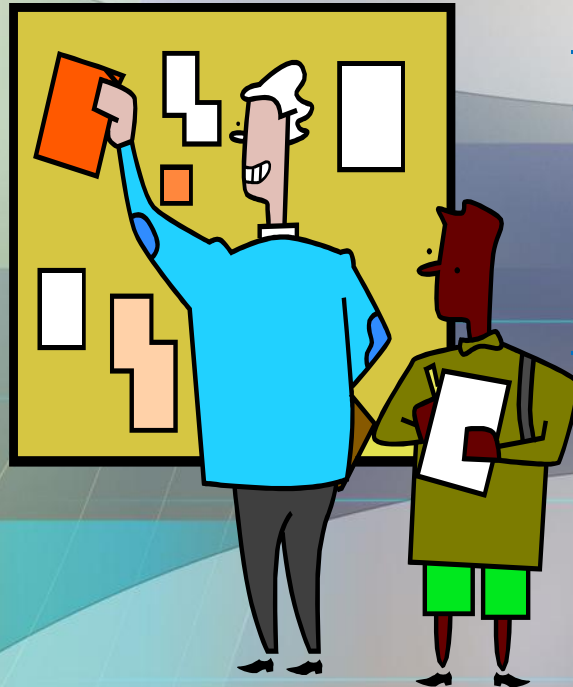


## Developing Effective Lines of Communication

- Openness
  - Compliance officer should be seen as “go to” person for compliance issues
- Anonymous Information
  - Organization should have mechanism in place to receive anonymous information, such as a hotline
  - Policies should protect whistleblowers
  - Consequences for managers and supervisors who do not report noncompliant behavior



## Developing Effective Lines of Communication



- New or changed policies
  - An organization should ensure that there are various methods for notifying staff of new or changed policies and procedures.
  - Examples include:
    - Posting in employee common area
    - Information on website
    - Employee handbook
    - Discussion in training sessions

## Conducting Internal Monitoring and Auditing

### •Self-Monitoring

- Supervisors in each department are in the best position to monitor employee compliance with Medicare and Medicaid billing
- Hospital contract managers can check contracts with physicians to ensure that they do not violate Anti-Kickback statutes

### •Independent Audits

- The Office of Inspector General also encourages organizations to have an independent audit
- Under the Single Audit Act of 1984, any institution that receives more than \$500,000 in Federal assistance must have one independent audit performed.



## Enforcing Standards Through Well-Publicized Disciplinary Guidelines

- **Potential Consequences**
  - Potential consequences of noncompliant behavior should be clearly identified
  - Consequences can include a warning, suspension or termination
- **Approval of Consequences**
  - Consequences should be approved by senior management before being implemented
- **Consistency**
  - “Consistency is key”
  - Discipline of noncompliant behavior should be consistent

## Responding Promptly to Detected Offenses and Developing Corrective Action

- How to handle a potential problem:
  - Develop protocol for investigating reports of noncompliance or other compliance issues
  - Conduct thorough inquiries that respect the reputation of those being investigated
  - Handle a problem promptly and consistently with corrective action
  - Report some situations (such as Medicare and Medicaid overpayment) directly to the federal government.



## Defining Roles and Responsibility and Assigning Oversight Responsibility

- An organization must do more than just define what is required, it must designate who is required to perform the action.
- All roles and responsibilities should be clearly designated
- Those with oversight responsibility must also be clearly identified.



## Maintaining Vitality and Effectiveness of Your Compliance Program

### Cutting down on whistleblower incentives

- *Qui tam* reporters are often disgruntled employees who felt their concerns were being ignored
- Four key steps:
  - *Education*
  - *Employee Feedback*
  - *Exit Interview*
  - *Follow-up Reports*



## Maintaining Vitality and Effectiveness of Your Compliance Program

- Provide recognition for employees and supervisors who make significant contributions to the program
- Offer incentives for employees who are enthusiastic about compliance
- Update policies and procedures to re-energize the program
- Remind everyone why compliance is important and the consequences of noncompliant behavior
- Energize the program through public relations and ethics components



