Corporate Compliance Programs: Identifying Risks to Best Practices

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Introduction

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Outline

- Components of An Effective Corporate Compliance Plan
- OMIG Identified Best Practices and Deficiency Areas
- Questions
Corporate Compliance 101
History of Corporate Compliance

- 1997: Clinical laboratories have model compliance plans in place
- 1998: Hospitals, Home Health Agencies, Third Party Billers follow suit
- 1999: Durable Medical Equipment, Hospice, and Skilled Nursing Facilities get on board
- 1996: HIPAA
- 2005-06: Deficit Reduction Act
- 2013: Affordable Care Act – Nursing Homes
Benefits of a Compliance Plan

- You find your ‘weaknesses’ before Medicaid or other government entity does (early detection)
- Promotes ethical conduct and regulatory compliance
- Communicates agency’s commitment to regulatory compliance
- Educated staff (Whistleblower lawsuit protection)
- Drives more efficient and effective operations
- Improves financial health of agency
- Defends the organization; may mitigate paybacks/fines
Corporate Compliance Plans

Definition:

…is a set of formal organizational systems intended to prevent, detect, and respond to misconduct committed by employees and other agents.
Compliance

On an organizational level:

- Long term commitment to conduct business in ways that promote doing the right things
- Continually monitoring that the right things are being done
- Responding to changes and problems that are identified along the way
Corporate Compliance
Your Role....

An effective Corporate Compliance Plan requires the understanding, leadership, and commitment of senior management and the governing body.

The government clearly looks to this group for the development and implementation of an effective Corporate Compliance Plan.
NY Social Service Law 363-d

- Created as part of Chapter 442 (OMIG legislation)
- Requires that Medicaid providers develop and implement compliance programs aimed at detecting fraud, waste, and abuse in the Medicaid program
- Providers receiving or claiming in excess of $500,000 over 12 months, plus Article 16, 28, 31 Clinics, must have a Compliance Program (includes billing companies)
- Must certify annually to OMIG that requirements are met
- Authorizes OMIG to audit Provider Compliance Programs
- Providers can be excluded from Medicaid participation for non-compliance
Role of Administration and Governing Body

“Every required provider shall adopt and implement an effective compliance program...Required providers’ compliance programs shall be applicable to:

- Billings
- Payments
- Medical necessity and quality of care
- Governance
- Mandatory reporting
- Credentialing
- Other risk areas that are or should with due diligence be identified by the provider”
Eight Elements of a Compliance Program

- Written Policies and Procedures / Code of Conduct
- Compliance Program Oversight
- Training and Education
- Effective, Confidential Communications
- Enforcement of Compliance Standards
- Auditing and Monitoring
- Responding to Offenses and Developing a Corrective Action Plan
- Policy of Non-retaliation and Non-intimidation
OMIG Compliance Program Guidance

- Issued October 2016; available on OMIG website: www.omig.ny.gov
- Provides detailed guidance in each of eight required elements
1. Written Policies and Procedures

- Based on laws, regulations, and practices
- Written policies and procedures that support the operation of their compliance program
- Code of Conduct
- Provides direction and guidance to staff
- Must adhere to them
- Need to be updated as laws and regulations change
- Revise as necessary based results of internal or external reviews
Code of Conduct

- Written code – applies to all employees, independent contractors, and governing body
- Clearly expresses commitment to compliance by governing body, management, and all employees
- Communicates commitment to comply with all federal and state laws, standards, and regulations and the prevention of fraud and abuse
- Clear expectations for governing body, management, employees, contractors, and agents
Risks

- No Compliance Plan, code of conduct, policies, or procedures on compliance exist.
- No policy and/or procedure describing how potential compliance issues are investigated and resolved exists.
- The Compliance Program has not been implemented or is not operational.
Best Practices

- Publication of code of conduct and/or Compliance Plan document on the agency’s intranet and/or web site.
- Compliance Plan document outlines the benefits of a Corporate Compliance Program as a way to obtain buy-in.
- Code of conduct is reviewed annually with employees, contractors and governing body as part of ongoing compliance education.
2. Compliance Program Oversight

- Corporate Compliance Officer
- Corporate Compliance Committee
- Governing body involvement
  - Subcommittee of governing body
  - Representation on Corporate Compliance Committee
  - Regular communication/interaction with Corporate Compliance Officer
Corporate Compliance Officer

- Senior level position; reports to Executive Director with indirect reporting responsibility to governing body
- Interaction with governing body
- Has authority to carry out responsibilities
- Has sufficient resources (time, staff, funding) to carry out responsibilities
Risks

- Organizational chart shows a reporting structure to the CEO, but the actual reporting is different.
- Compliance Officer does not periodically report directly to the governing board.
- Compliance Officer’s job description does not describe any compliance-related duties or functions.
- The Compliance Plan requires a Compliance Committee, but none exists or meetings have ceased.
- The compliance duties are combined with other duties and the compliance responsibilities are not satisfactorily carried out.
- An employee has not been assigned compliance program oversight.
- Employees do not know who Compliance Officer is.
Best Practices

- The Compliance Officer reports directly to the governing board, with dotted line responsibility to a member of senior management.
- The CEO receives regular reports from the Compliance Officer if the Compliance Officer does not report directly to the CEO.
- Compliance Committee membership includes governing body.
- Compliance Committee meets monthly, bi-monthly.
3. Training and Education

- Is mandatory and regular
- Includes
  - Content of Compliance Plan, Code of Conduct
  - Overview and importance of compliance
  - Department specific risk areas
  - Summary of fraud and abuse laws
  - How to report non-compliance
  - Confidentiality and non-retaliation for reporting
Training and Education

- Important part of new hire orientation
- Provided by Compliance Officer or consistent trainers; Compliance Officer monitors
- Signed acknowledgement of training
- Annual refresher for all staff
- Compliance with training is measurement of performance evaluation
- Specific training to risk areas (Medicaid programs, billing personnel, etc.)
- Status reports to Compliance Committee and governing body
Risks

- Compliance training does not include the governing board, senior management, staff, or other essential parties.
- There is no compliance-related training performed.
- Compliance training is not part of orientation for governing body members, executives, appointees, associates, or new employees.
- The compliance training does not occur periodically.
Best Practices

- Use of an electronic training and education system that tracks mandatory compliance education of employees; notifies of due dates.
- The compliance training materials are tailored to the needs of all levels and the educational backgrounds of all employees.
- The compliance manual/code of conduct is distributed upon hire and annually.
- Regular compliance-related information/education – newsletters; e-blasts, Compliance & Ethics week.
4. Effective, Confidential Communications

- “Open Door” Policy to raise issues with Management
- Methods to report actual or suspected non-compliance confidentially or anonymously
- Hotline or other means for confidential or anonymous reporting
- Non-retaliation and non-intimidation for reporting actual or suspected non-compliance
Risks

- No anonymous method of communication to the Compliance Officer exists.
- Little or no meaningful communication between the Compliance Officer and the governing board and/or senior management exists on compliance-related issues.
- There is no clear direction that confidential disclosures to the Compliance Officer can occur.
- There are no confidential lines of communication available.
- The Compliance Plan and the applicable policies and procedures do not identify accessible lines of communication for members of the governing body to report compliance issues.
Best Practices

- The compliance program operates in an environment of transparency throughout all levels of the organization.
- Clients/service recipients receive information on how to identify Medicaid fraud and how any concerns can be reported to management.
- Provider uses posters/flyers about the Compliance Program and the hotline that uses pictures as well as text to communicate the expectation that if you see or hear anything, you should report it.
5. Enforcement of Compliance Standards

- Clear guidance for staff, contractors
- Supervision and monitoring
- Disciplinary action for non-compliance with laws, regulations, policies, procedures, and practices
- Disciplinary action for failing to report actual or suspected non-compliance
- Must follow it, apply uniformly, and maintain written documentation
Risks

- Disciplinary policies are not applied equally.
- Disciplinary policies do not encourage good faith participation in the Compliance Program. Disciplinary policies address employees, but do not address all others covered by the Compliance Program, including the governing body.
- Disciplinary policies do not address sanctions for failing to report suspected problems; participating in non-compliant behavior; or encouraging, directing, facilitation or permitted non-compliant behavior.
Best Practices

- Employee performance evaluations incorporate compliance as one indicator of performance, as well as an employee’s adherence to applicable laws, regulations, and policies.
- Discipline policies, employee handbook references Compliance Program.
6. Identification of Compliance Risk Areas

- Compliance Officer and Committee oversee this area
- Assess risk areas – start with billing and documentation audits, progress to other areas of compliance with laws and regulations (not addressed by QA activities)
- Include any external audits for risks
- Require corrective action plans to address findings
- Systemic corrective actions
- Follow-up to determine effectiveness of corrective action
- Results of audits and monitoring activities to Compliance Committee and governing body
Risks

- No system in place to routinely identify compliance risk areas specific to the provider’s service type (risk assessment).
- No system is in place to conduct self-evaluations and audits.
- No system for evaluation of potential or actual non-compliance as a result of self-evaluations and identified by external or internal audits.
- No evidence of a connection between the Compliance Officer and the results of external audits.
Best Practices

- Use of a comprehensive self-assessment tool to plan and develop an annual Compliance Work Plan.
- Internal monitoring and auditing systems are used throughout the organization.
- A pre-claim review process is used prior to submission of claims.
- A Compliance Program assessment is undertaken prior to the December certification period to identify potential Compliance Program gaps. Results are shared with governing body.
7. Response, Resolution, and Follow-up

- Investigate reports of actual or suspected non-compliance
- Report findings
- Find root cause, systemic issues
- Develop and implement corrective action plans (Educate, Policy and Procedure changes, discipline, monitoring practices)
- Review for effectiveness
- May involve repayment or self-disclosure
Risks

- Failure to respond to matters identified to the provider by OMIG or other NYS or federal regulatory bodies as program deficiencies and/or weaknesses.
- Failure to have an operating system that addresses compliance issues promptly and thoroughly and reduces the potential for recurrence of the issue.
- Failure to have a system for investigating potential compliance issues.
- No system in place for implementing procedures, policies, and systems as necessary to reduce the potential for recurrence.
- No policy and procedures to address the return of overpayments.
Best Practices

- Review OMIG’s, OIG’s, and CMS’s web sites for regulatory work plans and alerts associated with specific areas of focus; assess organizational risk in those areas; and develop appropriate action plans to address the risk or weakness.
- Establish work plans with target dates for action and assignment of staff responsibility to address compliance related issues and Compliance Program gap analysis.

- Zero tolerance for intimidation or retaliation for “good faith” reporting of actual or suspected non-compliance
- Communicated to all employees
- Policy and Procedure to address non-retaliation and non-intimidation
Risks

- There is no policy addressing non-retaliation and non-intimidation for good faith participation in the compliance program; the policy does not address reporting potential issues, investigating issues, self-evaluations, audits and remedial actions, and reporting to appropriate officials (as provided in Sections 740 and 741 of the New York State Labor Law).
Best Practices

- Exit interviews with employees include an interview with the Compliance Officer.

- Compliance Officer reaches out to former employees 30 days after former employee’s separation date to inquire of any possible compliance matters observed during employment.
Corporate Compliance

Do It Right......
Right From The Start!
Thank you for your participation!