

The HIGH Cost of Non-Compliance: Where Else? In Healthcare

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Certified Intensive Course**

Presented by:

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Background

- Department of Defense contractor – first ethical standards
- Board President of Adult Care Facility
- Chief Compliance Officer (CCO) Skilled Nursing Facility
- CCS Managed Long Term Care & Certified Home Health Agency
- Peer Review Committee Health Ethics Trust [HET]
- Certified Compliance Executive (CCE)
- Fellow of HET



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Corporate Compliance Is

- Providing Healthcare services in a lawful and ethical manner of integrity and responsibility
- Patient-centered service of highest quality with all relevant federal and state laws consistent with policies and procedures
- Corporate wide program encouraging self-examination, **identifying risk areas** and continuous improvement.

When Government Makes Contact:

No such thing as informal call – all serious

- **Lots of rules, regulations, costs**
- Health Insurance Portability & Accountability [HIPPA] & Breaches
- Federal Office of Inspector General [OIG]
- Centers Medicare and Medicaid Services (CMS)
- Deficit Reduction Act (DRA)
- False Claims Act [FCA]
- Fraud, Waste & Abuse [FWA]
- State Office of Medicaid Inspector General (NYS OMIG)
- Yearly Certifications (\$5M DRA federal; States \$500k)

In Reply to Government: Effective Corporate Compliance Plan

- Promoting a Corporate Compliance **culture** for all employees and stakeholders
 - lead from the top: board and management
- **Risk Identification**
 - versus policies and procedures
- Costs of Reply: Time, learning, Documentation



Effective Corporate Compliance

Plans:

Preventive Cost Measures

- Compliance Elements for Plan
 - Federal & State elements
 - Use Guidelines for existing terminology
 - Write your own plan for your organization
- **Know & Identify Risk Areas:**
 - Compliance Committee
 - Risk Chart for Operational Areas | FWA

A Distinction to be Made

- **Fraud:** intentional deception or misrepresentation by person with knowledge that deception could result in some unauthorized benefit to self or other:
 - Submitting false records; upcoding; unnecessary services; duplicate billing; credit balances not refunded; falsifying medical necessity
- **Abuse:** practices that directly/indirectly result in unnecessary cost and not consistent with sound fiscal, business or medical practices:
 - Sloppy, incomplete financial or medical record keeping; untrained or minimally trained staff
 - Lack of communication; no tracking, follow-up
- **Waste:** inefficiencies; no evidence of better outcomes

Fraud, Waste and Abuse



- Today's Enforcement Environment
 - Agencies lack of communication with each other
 - Recovery of Overpayment
- OIG & State OMIG Work Plans
- Qui Tam (private citizen known as relator initiates action on behalf of government)
- Fines, Penalties, Public Trust, Reputation, Cost
- Referrals to government agencies on-line
- Verifying services by providers

Training, Education: Face to Face, On-line, Zoom/GoToMeetings

- Learning and Education of Compliance Plan
 - Employees, Board, Management, Department Leadership, Finance, Rehabilitation, Social Activities, Providers, Vendors
- Handbook, Orientation
- Training Schedule & Dates; Zoom; GoToMeetings
- Newsletters, Handouts, Website, Conferences
- Exit Interviews





What Did You Say?

- Are we communicating effectively in smart phone/devices/Zoom/GoToMeetings
- Less communication without F2F?

Is Old Way - a New Way?

- Hotline/Helpline
- Understand the message
- Words, Tone, Body Language, Posture
- Investigation interviews: collecting data

Social Media

- Employee permitted to comment on Facebook, Twitter, etc. or assigned company representative?
- Written policies on Social Media

One or the Other:



- **Compliance Program: Disciplinary:**
 - Encouragement, Enforcement, Improvement
 - Reporting violations
 - HIPAA & PHI
 - Actions/Penalties for failure to conform to Compliance Program - non-compliant behavior

Other Areas of Compliance Risk

- **All areas LOB – members, patients/clients**
 - Inadequate documentation; quality issues; unlicensed or unqualified providers; unnecessary services +
- **Sanctions:** List of Excluded Individuals/Entities (LEIE) www.oig.hhs.gov;
- List of Parties Excluded from federal procurement/non-procurement programs: www.epls.gov
- Your State OMIG office, + news, work plan, guidelines
- Billings, Payments, Overpayments
- Conflict of Interest: Board, Management, All Staff

Is There a Problem?



- **Prompt Investigations**
 - Demonstrate intent to uncover and resolve issues
 - Asking probing questions
 - Repeat questions with different wording
- **Encourage Calls to Compliance without any fear**
 - the more, the better = being effective
 - Increase in cases a good statistic = part of culture
 - Government wants to see activity; reporting

Real Cases



- **Worried about co-worker may be violating a law:**
Simple mistake? If not reported, impact on system.
Duty & Responsibility to report. If you do not report, then you can be part of problem.
- **Ethical Thin Ice: Under a Lot of Pressure, Stress**
Uneasy about what you are doing; keep rationalizing; “everyone does it.” Talk to Supervisor if you can or contact Compliance. Use of “Secure” in emails with PHI
- **Gifts:** not about promotional items
- **Phishing, Emails & More**

No Fear



Non-Retaliation and Non-Intimidation

- Confidentiality
- Safe and Secure
- Job Status OK if participating in good faith

Interviewing

- Represent Compliance - responding to issue
- **Fact-finding** investigation - determine if issues are correct
- **Not investigating a person**
- **See if problem exists that can be fixed.**
- Keep interview confidential
- No retaliation; do not talk about this interview with others but do advise supervisor interview occurred.

Extras

- Compliance messaging at meetings
 - Board, Management, Quality Improvement/Risk Management
 - Annual Audit Calendar; Metrics Chart
- Cases & Vendor PHIs
- Special Investigative Unit [SIU]
- Keep Good Records, Documentation, Memos, Logins
- Newsletters: Re-enforce/Re-assure to All Staff/Board
- Annual Self-Assessment
- Access to Company Information
- Compliance Associations/Organizations
- **Medical Records, use HIPAA form - answer all questions; correct line of business [LOB]**

A Few More Extras

- **HIPAA and Confidentiality: the difference**
 - **Privacy** personally identifiable health information and access to it
 - **Confidentiality** much broader and inclusive than HIPAA – not just clinical information but also its business information ranging from financial data, revenue figures, trade secrets, contract terms, lists of supplier/vendors, strategies, associate information+
- **Privacy Log Every Year**
- **Breach – 4 Step Risk Assessment for Low Probability**

**When All Said and Done:
It's About Risk & Doing Right**

**Is that All There Is?
Questions**

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