COMPLIANCE TODAY

IS YOUR PROGRAM EFFECTIVE?
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TOPICS

• History of compliance
• Federal Sentencing Guidelines and changes over time
• Today’s compliance expectations
  – Accountability
  – Mature compliance programs
• Why the wheels come off
• Best practices
PPACA

- Compliance programs are required
  - Ups the ante for failing to have effective compliance
  - Makes “knew or should have known” a given
HISTORY OF THE SENTENCING GUIDELINES

- 1984 Congress passed Sentencing Reform Act
- Purpose to establish Federal sentencing policies and standards
- “Mandatory” although called guidelines
- Goal to enlist organizations in fraud/false claim prevention
HOW DO THEY AFFECT ME AND WHY DO I CARE?

• 1991
  – How the government responds to misconduct
  – Link penalties to effective compliance program efforts
  – 1:1 correlation with 7 elements of effective compliance programs
ASSESSMENT OF FUNDAMENTAL ELEMENTS OF EFFECTIVE PROGRAMS

• 7 basic elements of effective compliance programs:
  – Implementation of written P&P and standards of conduct
  – Designation of compliance officer and committee
  – Effective training and education
  – Effective communication
  – Enforcement/discipline
  – Internal auditing and monitoring
  – Response to detected errors
  – Accountability for high level employees
HOW ITWORKS

• How bad is a function of:
  – Mathematical formula to calculate fines, penalties and prison sentences
  – You start with a base score (it’s never 0)
  – What’s good may be used to subtract points
  – What’s bad will add points

• The changes in 2003 added big teeth in the Culpability score
  – Size of organization
  – Definition of “effective”
  – Management involvement or knowledge
  – Program requirements and expectations
WHAT ARE YOUR RISK AREAS?

• There are some common problems but your risks are unique to your organization

• Your compliance program must be unique and customized for your organization

• If you’ve seen one rural health clinic, you’ve seen one rural health clinic
WHAT ARE SOME OF THE WELL KNOWN RISKS?

- Credit balances
- System integrity
- Coding
- Provider numbers
- Place of service
- Billing
- Modifiers
- Joint ventures

- Discounts
  - Professional courtesy
- Kickbacks
- Not medically necessary
- Software that results in improper billing

EHR
OIG PROVIDES THE GUIDANCE

- 1998 Hospitals
  - Revised 2005. Update includes excellent guidance that can be used by all providers
- 1998 Third Party Billing guidance
- 2000 Physician and small group practices
- Other specialties
- All have same basic requirements
- All have things you can use in your program (the best information is in the footnotes)
WHAT ARE THE EXPECTATIONS?

• Prevention, prevention, prevention
• Rapid identification of problems
• Rapid correction of problems
  – What steps should be given due care?
• Compliance with ALL rules, laws, regulations and statutes
• Compliance imbedded at every level in every job
• Management (including executives) actively involved and knowledgeable
EXPECTATIONS, cont.

- Education at every level in the organization
- Implementation of industry “best practices”
  - How do you keep up?
  - How do you measure yourself against best practices?
- Discipline and enforcement
- Ongoing risk assessments
- What you “knew or should have known”
- Understanding of “false claim”
  - It should be renamed “false anything”
EXPECTATIONS, cont.

• You do not get bonus points for a compliance plan. We are in a mature environment and a mature plan is the standard. “This is 2012, not 1996.”
  – It’s not a book
  – It’s not a check-off list
  – Compliance plan ≠ effective compliance

• If it’s in your walls, you’d better address it!!!!!
  – “Pattern and practice determine intent.”
DO I WORK FOR YOU?

- Long term employee
- > 40 years old
- Recognized as a leader, known for performance excellence and other awards
- Reliable, trustworthy, your right arm
THE WORLD WE LIVE IN

• FY 2011
  – $3 Billion in False Claim Act recoveries
  • $2.8 billion from Qui Tam cases
THINGS TO PONDER

• Why have virtually 0 entities sentenced under the federal sentencing guidelines received credit for an “effective” compliance program?

• Prosecutors acknowledge in the “vast majority” of successful prosecutions the organizations and entities had a compliance program, so what was wrong with it?

• Prosecutors, defense attorneys and experts in myriad cases all came up with the same list of problems demonstrating non-effective programs.

• LET’S LEARN FROM THAT!!!!!
COMPLACENCY

• We have a plan and we think it’s working
  – Yes, but on paper, not living and breathing
  – Stated vs. Execution

• Rely upon what was established to function as intended
  – What about the changes since then
    • People
    • Regulations
    • Procedures
    • Providers
    • Services
    • Systems
    • Payors
      – Policies
CULTURE OVERRIDES INTENT

- Does your culture *welcome and encourage* reporting of issues vs. “Require”.
- What do employees really know and understand?
- How do they really think, act and feel?
- What are the ongoing, meaningful compliance educational efforts?
- Do all employees jointly and individually understand their role in contributing to your compliance efforts and processes?
EMPLOYEE VS. MANAGEMENT

- Perception is typically a continental divide
  - I’ve never had compliance training
  - I think I had some training when I was hired
  - We have to go once a year
  - “My manager is the LAST person I would tell about a problem. I need other options.”
EMPLOYEE VS. MANAGEMENT, CONT.

- Employees do not feel their concerns matter or are taken seriously
  - We are treated like children
  - We are treated like we are stupid
  - The owner/supervisor/manager has no idea (or does not care) what’s going on
- Employees perceive retaliation
  - He complained and then he didn’t get a raise
  - I heard the managers laughing about me
  - My manager/supervisor gets mad when I complain
  - You can tell who the managers don’t like
BREEDING A QUI TAM

- Discounting employees who complain
  - It went into a black hole
  - Not enough reporting options
- Failure to inform employees what happened with their concern
  - Why they were wrong
  - Why they were right
  - Do they see any changes?
  - Did you take advantage of a training opportunity?
  - My supervisor/manager never knows the answer
MIDDLE MANAGEMENT

- Middle managers “in particular”:
  - Fail to recognize compliance problems
  - Fail to take appropriate actions
  - Fail to report concerns
  - Tend to treat serious compliance problems as HR issues
  - Address the messenger, not the message
  - Embarrass employees
  - Show favoritism
  - Are not trained to fulfill the critical role they play in the organization
  - Do not have access to necessary industry information
  - Make detrimental compliance decisions to make their (and their employees’) lives easier
  - Treat departments like silos
• Compliance is not a business priority
• Symbols of priority
  – Money spent
  – Resources available to all
  – Continual measurements of performance
  – Widely disseminated, imbedded in every job
  – A real part of job descriptions and performance evaluations for everyone, including owner, BOD, etc.
SUPERMAN AND WOMAN

• Too many hats syndrome
  – Reliance on “off the shelf” helps vs. developing and customizing the real thing
  – Not enough time
  – No ongoing meaningful evaluation and revisions
  – Compliance becomes the onerous duty you have to go visit once in a while
  – Tendency to think you are done
  – Delegation to people not qualified to perform duties
    • No training or monitoring
POOR PLAN CONSTRUCTION

• Is compliance a company blueprint or a game plan?
  – Unrealistic in ability to follow through, adhere to the plan and deploy resources
  – Will you do everything you said you would?
  – Can you do everything you said you would?
  – Are you doing every single thing your plan says you are?
    • How do you know and can your prove it?
  – Do you allow things to fall through the cracks when other priorities arise
FAILURE TO PREVENT VIOLATIONS

- Duration of problem
- Why not found?
- No planned methodology to research updates
  - I heard it through the grapevine
  - If it’s not on the list serve, it’s not important
- True risk areas not identified
  - You can’t manage what you don’t know about
- Policies and procedures not carried out
- Monitoring for compliance with policies and procedures not effective
INEFFECTIVE EDUCATION

- Boring
- Repetitive
- Limited
- Not tailored
- No face-to-face
- No validation of comprehension
- Questionable sources
- Occasional vs. every day
- Make the operations to compliance connection
NO BEST PRACTICES

• Guidance and enforcement not considered best practices
  – Other entity woes not reviewed for relevance to your company
    • What can we learn from Pfizer?
    • What can we learn from the hospital guidance?
    • How many integrity agreements have you reviewed?
    • How many settlements have you read?
    • What reports from OIG, CMS, etc?
    • What targets have been identified?
    • What does the false claims act state?
    • What do the federal sentencing guidelines state?
RIGOR MORTIS

- Timeliness and appropriateness of responses
  - Not prepared to investigate
  - Failure to investigate
  - Improper investigation
  - Failure to seek competent advice
  - Failure to act swiftly to correct problem
  - Failure to look at the bigger picture in response to a problem
HOLLY’S LAW

• If you have the wrong people in charge of compliance, you will fail

• I’d like to kick the project off by assigning blame for its eventual failure.

  – Dilbert
THE RIGHT PERSON

- Pays attention all the time
- Can they draw a line in the sand and hold it?
- Inclusive vs. exclusive
- Approach should be ethics based, not just rules and regulations
- Are they trying to find people screwing up or help them succeed?
- A leader and a team player
- Right is more important than liked
- Integrity and trusted
- Loves and understands research, rules, people
- Highest level in organization
- Independent
ENVIRONMENTAL SCAN

• In today’s environment, it’s a matter of when, not if, the false claims act will affect you
• Use preventive medicine and you can be protected
BEST PRACTICES

• What your attorney may use as a defense strategy is NOT how you should operate your compliance program.
BEST PRACTICES, CONT.

• OIG has a wealth of tools, resources and educational materials and those resources are expanding regularly
  – oig.hhs.gov/

• CMS has a “certification” for Part A and Part B free on line
  – cms.hhs.gov/ Web based training courses by MLN

• Research payor websites - not just your jurisdiction

• Take advantage of outreach and open door programs
SET A CLOCK

• We’ve all learned to change batteries in our fire alarms and smoke detectors with the daylight savings time changes. We should refresh our compliance program on a set, predictable and recurring schedule.
FOCUS ON THE WEAK SPOTS

• The focus should be on management and required knowledge, leadership and participation
  – Clear investments: time, money, duty of care
MORE BEST PRACTICES

• Rely on prevention, not reaction
  – Assess your history for clues to your program operations
• Compliance is dynamic. If it is not changing and adapting all the time, it is not working
• Don’t assume what you wrote and/or intended is working
• Do assume some people did not “get it”  
  – Find out who and help them
• Compliance is at the operational level
  – Knowledge is your best friend
YOUR TURN

• QUESTIONS
• IDEAS
• SUGGESTIONS
• BEST PRACTICES SHARED