

## HEALTH CARE COMPLIANCE

By Daniel J. Osborne, M.S.

In the late 1990's, the government, via well publicized news releases, requested that "ALL" health care providers implement health care compliance programs as a means to self-police themselves to ensure compliance with health care laws and rules, as well as to facilitate detection and correction of identified misconduct. This request was made in conjunction with the governments increased focus on combating health care fraud, that was greatly enhanced by the passage of the Health Insurance Portability & Accountability Act of 1996 (HIPAA).

Unfortunately, when most health care providers hear "HIPAA" they think of patient confidentiality and record security, but not the most significant aspect of this law - *the expanded ability of the federal government to combat health care fraud and abuse, including:*

- *Fraud & Abuse Control Program created to coordinate anti-fraud efforts at the federal, state and local levels.*
- *Sanctions available for unlawful conduct involving a Health Care Benefit Plan.*
- *Created new federal health care offenses that extend to nongovernmental programs.*
- *Added substantial funding for OIG, FBI and CMS.*
- *Makes incorrect coding a false claim, specifically identifying upcoding.*
- *Medicare/Medicaid exclusions apply to other federal programs.*
- *Organizational fines of \$10,000.00 per day for continuing investor relationship &/or employing person excluded from any federal health care program.*
- *Increases civil monetary penalties from \$2,000.00 to \$10,000.00 per infraction plus three times the amount of overpayment.*
- *Mandatory Medicare exclusion for 5 to 10 years for certain offenses.*
- *Penalties for inducing Medicare and Medicaid beneficiaries to receive care.*
- *Cash rewards of up to \$1,000.00 to encourage beneficiaries and others to report suspected Medicare fraud and abuse.*
- *Forfeiture/confiscation of assets acquired from fraud activity.*
- *Defines should know as a person acting in deliberate ignorance of the truth or falsity of the information, acts in reckless disregard of the truth or falsity of the information, no proof of specific intent to defraud required.*

In the years following the passage of HIPAA, providers have implemented compliance programs to meet HIPAA confidentiality and security requirements. But, what about the other laws and rules in place that govern health care – including the health care fraud and abuse provisions of HIPAA? To emphasize the importance of compliance program for all areas of your practice, one need look no further than the numerous compliance guidance documents promulgated by HHS OIG for health care providers and related entities.

### **COMPLIANCE Q&A:**

**What is compliance?** It is a process of conforming to official requirements.

**What is a compliance program?** It is a formal system to detect and correct violations and facilitate compliance with all relevant laws, rules and/or regulations.

**What is a compliance plan?** It is the written policies and procedures on compliance of the organization that are designed to identify legal and/or regulatory risks, correct practice problems and violations of law, and create a mechanism to prevent future problems.

**Are compliance programs only for health care providers?** No, many different professions employ compliance programs to assist their efforts in complying with their governing standards.

**Are there standards for compliance?** Yes, they are found in the Federal Sentencing Guidelines, created by the United States Sentencing Commission as part of the "Sentencing Reform Act of 1984" to provide uniformity and predictability in federal sentences by having the culpability for an offense be determined by the steps taken to prevent and detect criminal conduct.

**What are the standards?** The FSG identifies seven standards that must be met or exceeded for an "effective" compliance program, including: 1) Overall program oversight, 2) Written policies and procedures, 3) Education and training, 4) Due care in delegating authority, 5) Auditing, monitoring and reporting mechanisms, 6) Enforcing compliance standards, and 7) Response and corrective actions.

**Is an ineffective compliance program better than no compliance program at all?** NO! Because of the false sense of security a compliance program can instill, and ability of illegal conduct to continue, an ineffective compliance program can be worse than no program at all.

**Should I contact an attorney prior to starting a compliance program?** It is very important to seek the counsel of an experienced health care attorney before starting this process, so that the attorney can properly guide your efforts in doing the right thing – the right way!

**Is it appropriate to buy a pre-packaged compliance program for my practice?** Generally this would not be appropriate, as the compliance plan – your written policies and procedures, are, for the most part, practice specific and determined by the initial baseline audit of your practice. Further, a compliance program is not just having a manual on your shelf, but it is what you do to comply with your governing standards that determine if you actually have a compliance program.

**Who should conduct the audit of my practice?** It is highly recommended that you and your attorney retain an experienced practice auditor to perform the practice audit, who provides their findings in written form to your counsel for review and development of a corrective action plan.

**What is a corrective action plan?** It is your plan on the corrective action that you will take to correct the deficiencies identified in your audit and monitoring processes, and keep them from reoccurring

**Who should be my compliance officer?** The compliance officer should be someone who is honest and trustworthy, knowledgeable on the laws and rules, sophisticated on coding, experienced on investigative techniques and conducting investigations, as well as being able to complete complex tasks.

**How do I get started?** There are a number of logical steps in starting the compliance program process, starting with having all the laws, rules, regulations, and/or guidelines for which you must follow. Next, as discussed above, you should consult with an experienced health care attorney to assist you in evaluating your practice and developing your corrective action and compliance plan. And, then ensure that your compliance efforts are documented and that they meet or exceed the standards on effective compliance.

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