

## Corporate Compliance Guidelines for Long Term Care Facilities Are Just Around the Corner

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Long term care facilities should be gearing up now for the release of model corporate compliance guidelines scheduled for June 1999. The Health Care Financing Administration's (HCFA) Office of Inspector General (OIG) has already published model compliance plans for clinical laboratories, hospitals, home health agencies and third party billing entities. Draft compliance guidelines for the durable medical equipment, prosthetics, orthotics and supply industry have recently been published. The OIG is currently working on guidelines for nursing homes, hospices and Medicare+Choice organizations. Although the guidelines are not mandatory, the risks of failing to develop a corporate compliance program can be substantial.

The term "corporate compliance program" comes from the Federal Sentencing Guidelines. Established in 1987 in an effort to achieve uniformity of sentencing in federal criminal cases, the guidelines initially applied only to individuals. In 1991, however, the Guidelines were expanded to include elaborate rules for sentencing organizations convicted of federal crimes. One of the ways in which an organization can qualify for more lenient sentencing under the Guidelines is to demonstrate that, at the time of the offense, it had implemented an "effective program to prevent and detect violations of law." Organizations that do not have an effective corporate compliance program face stiffer penalties for criminal violations, including violations of the anti-fraud provisions of the Health Insurance Portability and Accountability Act and the



Medicare/Medicaid Anti-Kickback Statute.

In addition to possible reductions in fines and penalties, an effective corporate compliance program reduces the likelihood that a violation will occur in the first place, and increases the probability of early detection of violations that do occur. Effective compliance programs can also help an organization run more efficiently, manage risks and ultimately improve patient care.

Corporate compliance programs are particularly important in the long term care industry. In fiscal 1998, roughly 6% of the total Medicare expenditure of \$217 billion went to providing skilled nursing care. Nursing facility care for Medicaid beneficiaries accounted for nearly 20% of the \$155 billion Medicaid spent in 1996. With so much government money being spent on long term care, the potential for fraud and abuse is enormous.

The OIG has long been aware of problems involving illegal kickbacks between long term care facilities and their vendors, and with physicians billing Medicare and Medicaid for "gang visits" at those facilities. The OIG has also used the False Claims Act to target facilities billing the government for inappropriate or substandard care. The OIG has recently expressed interest in referral arrangements between long term care and hospice facilities. Since a criminal conviction carries with it mandatory program exclusion, and even a non-criminal violation can result in exclusion from participation in Medicare and Medicaid reimbursement, failure to adopt an effective compliance program places the organization at risk of being put out of business.

The key to any compliance program is that it must be "effective." A compliance document that sits on a shelf in someone's office is not an effective compliance program, and may be worse than having no program at all. In order to be considered an "effective" compliance program, the

corporate compliance plan must include at least the following:

1. Compliance Standards and Procedures: The organization must have established compliance standards and procedures for its employees and agents that are reasonably capable of reducing the prospect of criminal conduct. Usually these consist of an overall code of conduct, corporate policies and specific procedures to implement those policies.

2. Oversight Responsibility: There must be specific high level personnel within an organization who have overall responsibility for the compliance plan. The designated compliance officer or committee should report directly to the organization's board of directors and have sufficient authority and staff to carry out their responsibilities.

3. Delegation of Authority: The organization must have been careful not to delegate substantial discretionary authority to individuals who the organization knew, or should have known, had a propensity to engage in criminal activity. Background checks for employees in sensitive positions are a must.

4. Employee Training: The importance of training all employees in

their compliance responsibilities cannot be overemphasized. The organization must have taken steps to communicate its standards and procedures to all employees through participation in regular training programs.

5. Monitoring and Auditing: There must be both ongoing monitoring and periodic review of the compliance program. The organization must also have in place a system whereby employees and agents can report suspected violations without fear of retribution.

6. Enforcement and Discipline: Compliance standards must be consistently enforced through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for failure to detect an offense.

7. Response and Prevention: Once an offense has been detected, the organization must respond appropriately, including, as appropriate, self-reporting of the violation. The organization must also take reasonable steps to prevent a similar violation from occurring in the future.

The development of an effective compliance program requires an in-depth examination of the organization, its policies and procedures and the

particular risks facing that organization. The final product must be tailored to the individual organization. Above all, an effective compliance program must have the support and commitment of top management for it to become an integral part of the organization.

Our advice to long term care facilities is do not wait for the model guidelines to be published before deciding to develop a compliance program. The model program is just that, a model, which must be adapted to the needs of your particular organization and effectively implemented. The sooner you begin to develop your own corporate compliance program, the better prepared you will be.

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