

Communicating Health Care Reform Issues

Jenny O'Brien, JD, CHC
VP Medicare Compliance Officer UnitedHealth Group/PSMG
Minneapolis, MN

Shawn DeGroot, CHC-F, CCEP, CHRC
VP Corporate Responsibility Regional Health
Rapid City, SD

Key Discussion Areas

- Why should leadership care?
 - Understanding the fiduciary role
- What information should be communicated?
 - Communication strategies
- How do we demonstrate compliance?
 - Providing Effective Outcome Measures

Key Discussion Topic #1:

Why Should Leadership Care?

- Role of Leadership
- Fiduciary Duty
- Federal Sentencing Guidelines
- Government Expectations of Board Engagement

Congressional Findings:

- National health spending:
 - \$2,500,000,000,000 or 17.6% of economy in 2009
 - \$4,700,000,000 in 2019
- Private healthcare spending:
 - \$854,000,000,000 in 2009



Financial Pressure

- Sicker insured patients with same reimbursement
- Economic pressure can lead to bad choices
- Attacks on non-profit status
- New incentives, new disincentives



Medicaid

- Medicaid compliance
- Over 17 million new Medicaid recipients
- 58 Medicaid State Plans
 - Watch for amendments
- Medicaid OIG, MFCU, AG, etc.
- New or expanded service lines

Role of Leadership

Leaders are responsible for conduct and management of a company and its affairs:

- Act in best interests of company and in good faith at all times
- Disclose conflicts of interest
- Be engaged and aware

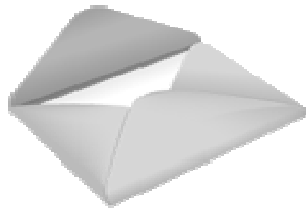
Culture

- Pressure for more “hands-on” with compliance oversight
- More will be demanded from the compliance officer



Culture

- Expectations and tensions will rise
- Sea change of rising expectations
- Atmosphere...



Results

“Compliance officers will have to produce data showing they reduced the risks of fraud, waste and abuse, and not just present the number of hotline calls and employees screened for Medicare sanctions.”

*Former HHS Inspector General Richard Kusserow
President of Strategic Management in Alexandria, VA
Report on Medicare Compliance, August 16, 2010*

Paper vs. Reality

“OIG has found in its reviews that senior management is less supportive of compliance programs than it should be.”

*Former HHS Inspector General Richard Kusserow
President of Strategic Management in Alexandria, VA
Report on Medicare Compliance, August 16, 2010*

Fiduciary Duty

Caremark Decision impacted fiduciary duties for all organizations (Not-for-Profit and For-Profit)

- Duty of compliance oversight enters the Boardroom – fiduciary obligation of individual Board members
- Oversight and responsibility of the Board of Directors and high level personnel of the organization
- Board knowledge about the content and operation of the organization’s compliance program to prevent and detect violations of the law
- Board exercises reasonable oversight with respect to implementation and effectiveness of the compliance program.

Fiduciary Duty (cont'd)

- Duty of Care – take adequate steps to inform themselves in making decisions and act as an ordinary prudent person would act in the same or similar circumstances
- Duty of Loyalty – place interest of corporation above own and act in what reasonably believe is the best interest of the organization
- Duty of Obedience - obey and be faithful to the organization's mission

A compliance program designed to assure compliance with applicable legal requirements helps meet these duties.

Fiduciary Duty (cont'd)

- Interaction between compliance and quality
- New compliance policies
- Changes in data systems
- Data accuracy
- Quality drives reimbursement



**Federal Sentencing Guideline
Amendments**

- Establishment of compliance standards and procedures and creation of code of conduct reasonably capable of reducing misconduct and promoting ethical behavior
 - Focus on areas of high risk and adopt procedures to reduce non-compliant activity

**Federal Sentencing Guideline
Amendments**

- Amendments expect more than creation of compliance program – compliance program must actually be effective in detecting and preventing misconduct
 - Offense by high level personnel creates rebuttable presumption of ineffectiveness

Sentencing Guidelines Amendments (cont'd)

- Assigning oversight and responsibility to high level personnel and governing authority for organizational compliance program
 - Knowledgeable about content and operation of compliance program
 - Ensure implementation and effectiveness of program
 - Compliance professionals provided with adequate resources and authority and reporting responsibility to governing authority.

Sentencing Guidelines Amendments (cont'd)



- US Sentencing Guidelines amended
 - Guidelines amended with respect to individuals convicted of healthcare fraud offenses related to any federal healthcare program
 - Offense level increased anywhere from 20% to 50% where the loss involves more than \$1 million

Government Expectations of Board Engagement

- Understand the content and operation of the compliance and ethics program
- Exercise reasonable oversight with respect to the program's implementation and effectiveness



Government Expectations of Board Engagement

- Organizations which fail to ferret out wrongful conduct and non-compliant activity will likely suffer the consequences of not doing so
- Increased focus on quality and patient safety
 - Emerging as enforcement priority for regulators
 - Increases expectation regarding oversight of corporate affairs

Government Expectations of Board Engagement

Daniel Levinson, Inspector General reminds boards that quality of care is a compliance concern and there is a material linkage between Medicare/Medicaid billing to the quality of patient care.

*Trustee Engagement and Hospital Success
July /August 2010*

Government Expectations of Board Engagement

Daniel Levinson, Inspector General describes the “best boards” as those that are active, questioning and exercise (constructive) skepticism in their oversight.

*Trustee Engagement and Hospital Success
July /August 2010*

Key Discussion Topic #2:

What information should be communicated?

- Strategies for communicating to the Board
- Template presentation
- Board Role in Compliance

Community & Transparency

Publication of Standard Hospital Charges

- Annually make public a list of the hospital's standard charges for items and services
- Accuracy?
- Anti-trust concerns?



Demonstration Programs

- Wellness programs
- Integrated care around a hospitalization
- Medicaid global payments
- Pediatric accountable care organizations
- Medicaid emergency psychiatric
- Maternal, infant, early childhood home visits



Demonstration Programs

- Postpartum depression
- Personal responsibility education
- Value based hospital purchasing tied to quality
- Encouraging development of new patient care models
 - “Center for Medicare and Medicaid Innovation”
- Hospital readmissions reduction program

Strategies for Board Communication

- In-person Training
 - Orientation and Annually
- On-going Education
 - Prepared Board so can ask key questions
 - Educate on Key Responses
- Provide Effective Tools
 - Scorecard
 - Updates on Enforcement Trends
- Participation in System-Wide Initiatives
 - Development of Mission, Vision, and Values
 - Visibility and Interaction with Employees



Presentation for Board of Directors

Health Care Reform

Compliance Issues and Board Oversight

Your name

Framework

The Board's understanding of...

- Structure –the scope of the compliance program
- Operations of compliance program
- Education – the new and existing risks (e.g. *health care reform and impact on organization*)

Framework

- What's on the Government's Mind?
 - Enforcement Activities
 - Regulatory Issues
 - Oversight Obligations by the Board
- What are the Hot Topics in Compliance
 - Demonstrating Compliance Effectiveness
 - Health Care Reform Readiness
 - Other Topics

Framework

- What's Happening at Organization
 - 2010 Accomplishments
 - 2011 Priorities (Readiness)
- What's the Board's Role in Compliance
 - Questions the board should be ask
 - Substantive discussion

What's on the Government's Mind?

- Expansion of Administrative Penalties
 - Authorizes suspension of Medicare and Medicaid payments “pending an investigation of a credible allegation of fraud”
 - Authorizes exclusion to any entity that knowingly makes or causes to be made a false statement or omission in an application, agreement, bid or contract to participate as a provider under a federal health care program

Future

- Year 2012:
 - Allow providers organized as accountable care organizations (ACOs) that voluntarily meet quality thresholds to share in the cost savings they achieve for the Medicare program
- Year 2013
 - Transparency reporting begins
 - Increased tax on investment income for high-income taxpayers begins

Board's Role

- Ensure that the organization's governing authority is knowledgeable about the content and operation of the ethics and compliance program

AND

- Exercise reasonable oversight with respect to the program's effectiveness

Board's Role

- Focus on quality of care as a compliance concern
- Reports from the CO to the Board are to be unfiltered
- Assertive oversight
 - Relationship of quality to compliance
 - CO as an ombudsman
 - Separation of legal and compliance

Board's Role

“Best Boards” are those that are active, questioning and exercise (constructive) skepticism in their oversight.

*Daniel Levinson, Inspector General
Trustee Engagement and Hospital Success
Trustee Magazine, July/August 2010*

Key Discussion Topic #3:

How do we demonstrate compliance?

- Purpose of a Compliance Program
- Providing Effective Outcome Measures



Purpose of a Compliance Program

- Creating a culture that promotes ethical behavior
- Ensuring that the organization meets its regulatory obligations



Fulfilling the Commitment

- Employee responsibility and accountability
- Policy development
- Code of Conduct
- Education, training, and communication
- Reporting
- Integrity Line
- Monitoring
- Auditing
- Ongoing evaluation and reporting



Fulfilling the Commitment

- Overpayments and FCA liability
 - Identified overpayments must be reported and repaid within 60 days
 - Retention of overpayments after 60 days constitutes an “obligation” under the FCA
- Providers must assess their disclosure efforts in context with new overpayment provision

Fulfilling the Commitment

- Expanded RAC Activities
 - RAC audits of providers will increase and expand to Medicare Part D and Medicare Advantage programs



Providing Effective Outcome Measures

Program Evaluation
(Compliance Scorecard)

Structure x Process x Outcome =
Effectiveness

Measurement Framework

- Structure measures refer to the *capacity* of a health care organization to ensure compliance.
- Process measures refer to the *manner* in which an organization actually provides compliance coverage.
- Outcome measures refer to *observable, measurable* compliance outcomes.

Compliance Scorecard Template

Compliance Scorecard

Date:	Hospitals			
Compliance Structure: (25 pts.)				
Program Oversight				
Standards and Policy Review/Update				
Reporting Mechanism				
Education and Training				
Communication & Awareness				
Compliance Process: (25 pts.)				
Risk Assessment				
Regulatory Implementation				
Response & Prevention				
▪ Corrective Action Plans				
▪ Ongoing Monitoring Effectiveness				
▪ Auditing and Monitoring				
Compliance Investigations				
▪ Process for Intake				
▪ Timely Response and Resolution				
Enforcement and Discipline				
Compliance Outcome: (50 pts.)				
Compliance Audit Error Rate				
Total:				
Rating				

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Jenny O'Brien
Jennifer.obrien@uhc.com

Shawn DeGroot
sdegroot1@regionalhealth.com