



## The OIG and Hospice Compliance Programs The Whys and The Whats

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## What You Will Learn

- The OIGs focus on recoupment
- The importance of having an effective compliance program
- Steps in building your compliance program
- Hospice risk areas
- The impact of culture

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## 2012-Record Breaking Year

- The Health Care Fraud and Abuse Control program, returned more than \$7 for every \$1 invested
- \$15.4 billion in estimated savings and expected recoveries of misspent funds in 2012
- Elimination of fraud, abuse and waste a top priority for Obama administration
- Using enhanced screenings and enrollment requirements, increased data sharing across government and expanded recovery efforts for overpayments

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## Mandatory compliance programs requirement is coming

- The Patient Protection and Affordable Care Act of 2010 mandated that a broad range of providers, suppliers, and physicians adopt a compliance and ethics program as a condition of enrollment
- The compliance program mandates are divided into two categories:
  - Nursing facilities (they're up first)
  - All other providers/suppliers
    - That's us!

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## Mandatory compliance programs requirement is coming

- Medicaid too!
  - States must require providers and suppliers under a state Medicaid plan to establish a compliance program that contains the core elements established by HHS and OIG
  - No timelines yet posted

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## Why Do We Care?

- The OIG is devoted to curtailing or eliminating fraud and abuse and they have expectations that providers will voluntarily participate in that goal
- For several years, have been paying particular attention to
  - Hospice care in the nursing home
  - Determination of eligibility
- Not moved by our angel status

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### Benefits of Compliance Program

- Helps ensure that business is conducted according to Federal, state and local laws and regulations and the highest professional standards
- Supports a culture of compliance that promotes the prevention, detection and resolution of conduct that does not conform
- Aids in ensuring the integrity of your hospice's mission is maintained by each person involved in the conduct of your hospice's business

### Benefits of Compliance Program

- Improves internal communication
- Improves quality, consistency and efficiency of patient care
- Reduces organizational risk
- Governmental investigators will want to review

It's about being proactive!

### OIG Compliance Plan Guidance

- In the 90s, OIG started strongly encouraging providers (all kinds) to voluntarily implement a comprehensive and effective compliance program
- To support this, issued guidance to specific provider groups
  - Framework the same across provider groups
  - Each group's guidance included specific risk areas
  - Hospice guidance issued October 1999

### Compliance Program

OIG Compliance Program, Guidance for Hospices (published 1999)

- Set forth the 7 fundamental elements of an effective compliance program
- Identified risk areas
- Provided suggestions on how a hospice can best establish internal controls and monitoring to correct and prevent fraudulent activities
- Encouraged hospices to develop and implement compliance elements that address its own particular risk areas

### The OIG Hospice Risk Areas

- Total of 28
- Additional emphasis on 5 areas
  - Eligibility requirements
  - Plan of care
  - Utilization of hospice services
  - Levels of hospice care
  - Services provided to hospice patients in NFs
- List still pretty much still on target even though it is 15 years old  
Published 1999

### 7 Elements of a Compliance Program

Elements provide

- Backbone of an effective compliance program
- Benchmark against which organizations evaluate their compliance programs

OIG recognizes diversity in industry but makes it clear “regardless of a hospice’s size and structure...every hospice can and should strive to accomplish the objectives and principles underlying all of the compliance policies and procedures recommended within this guidance”

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### The 7 Compliance Program Elements

1. Implementing written policies, procedures and standards of conduct  
*Think through how people should act and write it down*
2. Designating a compliance officer & compliance committee  
*Identify who will be responsible (and accountable) for your compliance efforts; pull together a group to assist*

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### The 7 Compliance Program Elements

3. Conducting effective training & education  
*Train people – and make certain that you do it effectively*
4. Developing effective lines of communication  
*Make sure you have a way for the important information to flow*

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### The 7 Compliance Program Elements

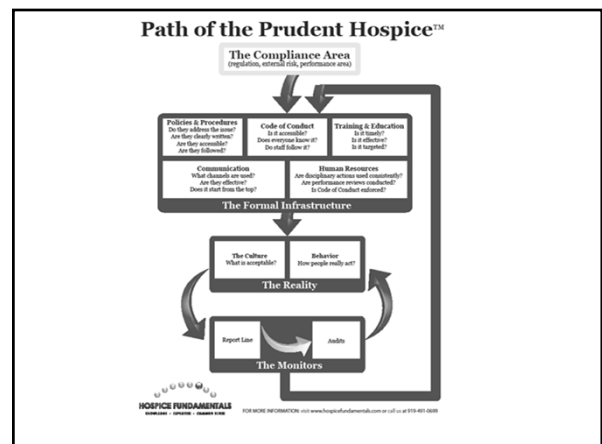
5. Enforcing standards through well-publicized disciplinary guidelines  
*Decide what will happen if someone breaks the rules, tell everyone and follow through*
6. Conducting internal monitoring and auditing  
*Consider risk areas, figure out how to monitor them, make a schedule and stick to it*

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### The 7 Compliance Program Elements

7. Responding promptly to detected offenses and developing corrective action  
*When you discover a problem, respond to it and figure out what to do to fix it*
8. (Bonus) Conducting on-going risk assessments  
*Review and update*


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**THE 7 ESSENTIAL ELEMENTS OF A COMPLIANCE PROGRAM**




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**#1 Implementing written policies, procedures and standards of conduct**

*Think through how people should act and write it down*

- Standards of Conduct
  - Foundation of your compliance program
  - Document that details the fundamental principles, values and framework for action within the hospice
  - Reflect vision, mission and values
  - Understandable
  - Focus on doing the right things well every day




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**#1 Implementing written policies, procedures and standards of conduct**

Standards of conduct

- Employees & Board are expected to comply with all Federal health care program requirements and with the Hospice's own policies and procedures
- Employees & Board are expected to report to the appropriate individuals any suspected violations of any Federal health care program requirements
- Hospice's commitment to non retaliation and to maintain confidentiality & anonymity with respect to disclosures




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**#1 Implementing written policies, procedures and standards of conduct**

Standards of conduct

- Implemented by written policies which convey your hospice's response to the day to day risks it confronts
- Performance in accordance with policies is foundational
- Failure to follow policy has serious negative affect on compliance




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**#1 Implementing written policies, procedures and standards of conduct**

Policies and procedures

- Subjects related to Standards of Conduct
- The OIG's Compliance Program Guidance for Hospice
- Federal health care program requirements relating
  - Coverage of hospice services & eligibility requirements for such coverage, including requirements relating to initial admission of patients, eligibility of continued stay patients & eligibility for the various levels of care
  - Documentation of eligibility for hospice services & the services provided, and relating to the preparation & submission of accurate claims for such services




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**#1 Implementing written policies, procedures and standards of conduct**

Policies and procedures

- Compliance program elements
  - Duties &responsibilities of Compliance Officer & Committee
  - Compliance as an element of performance evaluations
  - How and when employees will be trained
  - Internal assessments



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**#1 Implementing written policies, procedures and standards of conduct**

Policies and procedures

- Compliance program elements
  - Self disclosure
  - OIG sanction checks
  - Documentation requirements
  - Hotline operation
  - How a potential compliance violations is investigated and findings reported
  - Non retaliation

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**#1 Implementing written policies, procedures and standards of conduct**

Policies and procedures

- The OIG risk areas
  - Marketing
  - Billing
  - Eligibility requirements
  - Plan of care
  - Utilization of hospice services
  - Levels of hospice care
  - Services provided to hospice patients in NFs

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**#2 Designating a compliance officer & compliance committee**

*Identify who will be responsible (and accountable) for your compliance efforts; pull together a group to assist*

- Compliance Officer
  - Designation of a compliance professional to serve as the point person for compliance activities
  - Should have appropriate authority (member of senior leadership) via backing of the organization's board
  - Routine interaction with the Board

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**#2 Designating a compliance officer & compliance committee**

Compliance Officer

- Oversight and monitoring of implementation of compliance program
- Reporting regularly to governing body/ board and compliance committee
- Developing, coordinating, and participating in compliance education
- Assisting with internal compliance reviews and identification of existing and potential compliance risk areas
- Independently investigating and acting on matters related to compliance

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**#2 Designating a compliance officer & compliance committee**

Compliance Committee

- Analyzing legal and regulatory requirements and specific risk areas
- Regularly reviewing and accessing polices/ procedures
- Assisting with development of code of conduct and polices/ procedures
- Monitoring internal systems r/t standards, polices/ procedures
- Developing a system to evaluate and respond to complaints and problems

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**#3 Conducting effective training & education**

*Train people – and make certain that you do it effectively*

- Education and training are the first and possibly the most important line of defense for a compliance program
- Impossible to address all the situations that might occur

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### #3 Conducting effective training & education

- Basic training about standards of conduct and compliance program
  - On hire
  - Annually (minimally)
  - Testing
- Recordkeeping
- Specific targeted

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### #3 Conducting effective training & education

Your Compliance Program-everyone

- Leadership and Board support
- Compliance and ethics philosophy
- Standards of conduct
- Body of legal & regulatory knowledge guiding compliance activity
- Ongoing educational requirements
- Communication

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### #3 Conducting effective training & education

Your Compliance Program-everyone

- How compliance violations are defined
- Duty to report
- Patient confidentiality
- Non retaliation
- Consequences for employees involved with compliance violations

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### #3 Conducting effective training & education

Targeted

- Leadership
- Admissions staff
- Sales and marketing staff
- Billing staff
- IDG
- Others

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### #3 Conducting effective training & education

Targeted

- The hospice benefit, including eligibility, certification, and recertification
- Requirements applicable to documentation
- Personal obligation of each individual in claims submission process to ensure claims are accurate
- Applicable reimbursement statutes, regulations, program requirements & directives
- Examples of proper & improper claims submission practices

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### #3 Conducting effective training & education

- Regularly review and update
- Make completion of training a job requirement
- Maintain documentation to show who received what
- Board training

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#### #4 Developing effective lines of communication

*Make sure you have a way for the important information to flow*

- Open lines of communication-information exchange
  - Solicit feedback
- Employees know how and to whom to report any concerns
- Ability to seek guidance and report misconduct without fear of retaliation
- Well publicized anonymous “hotline”
- Confidentiality and non-retaliation policy

#### #4 Developing effective lines of communication

- Visibility and approachability of compliance officer and committee
- Visibility through newsletters, internal websites
- Compliance Officer meets with Board

#### #4 Developing effective lines of communication

- 44% of non-management employees do not report misconduct they observe
- Those who did not report failed to report
  - 57% feared of confidentiality would not be maintained
  - 41% feared retaliation from management
  - 30% feared co-workers would retaliate

Ad Hoc Advisory Group U.S. Sentencing Commission 2004

#### #5 Enforcing standards through well-publicized disciplinary guidelines

*Decide what will happen if someone breaks the rules, tell everyone and follow through*

- Enforcement of the standards of conduct must be
  - Fair
  - Consistent
  - Equitable

#### #5 Enforcing standards through well-publicized disciplinary guidelines

- Standards of conduct policy includes degrees of disciplinary actions that may be imposed
- Policy should include
  - Noncompliance will be punishable
  - Failure to report noncompliance will be punishable
  - An outline of disciplinary process
  - A list of parties responsible for appropriate action
  - A promise that discipline will be fair and consistent

#### #6 Conducting internal monitoring and auditing

*Consider risk areas, figure out how to monitor them, make a schedule and stick to it*

- Fundamental component of effective compliance program
- Proactive
- According to the OIG, extent and frequency of audits may vary depending on
  - Available resources,
  - Prior history of noncompliance, and
  - Risk factors particular to the hospice
- Goal-strive for and demonstrate a process for continually improving on compliance activities

## #6 Conducting internal monitoring and auditing

Auditing and monitoring techniques can include

- Reviews of documentation
- Reviews of claims
- On site visits
- Interviews with staff
- Questionnaires
- Trend analyses
- Inclusion of compliance related questions in exit interviews

## #6 Conducting internal monitoring and auditing

Audits-Need a Plan

- What will you audit
- Who does the audits
- How often
- How will you document results
- Report results
- What do you do with results
- How do you use results for improvement
- Re-evaluate plan regularly

## #7 Responding promptly to detected offenses and developing corrective action

*When you discover a problem, respond to it and figure out what to do to fix it*

- Compliance programs are intended to promote adherence to applicable laws and regulations but situations may still arise where conduct inconsistent with legal requirements is reported, suspected or even confirmed
- Need a process by which the organization can respond to actual or potential violations

## #7 Responding promptly to detected offenses and developing corrective action

Potential non-compliance is reported or suspected

- Act promptly when issues arise
- Consider whether need for involvement of health care attorney
- Fairly and expediently investigate to determine the existence, scope and seriousness and to identify the underlying conduct or cause
- Take and document corrective action
- Respond with appropriate corrective action to confirmed non-compliance
- Implement preventative measures to avoid similar instances in the future

And the Bonus Element- Conducting on-going risk assessments

*Review and update*

- Keep current
- Evaluate effectiveness-does it work?

**A FEW WORDS ABOUT SETTING THE TONE FOR A CULTURE OF COMPLIANCE...**



## Culture

“the set of shared attitudes, values, goals, and practices that characterizes an institution or organization”

Merriam Webster

## Culture - Corporate Responsibility

- Board member whether voluntary or compensated, is a critical component of any health care provider or system
- Oversight helps form the corporate vision and promote an environment of corporate responsibility that protects the mission of the agency, the patients and families it serves and the viability of the business

## Leadership Sets the Tone

- Reflects the desired culture
- Personally respects and demonstrates the tone in everyday communications and functionality
- Communicates to employees with specific message of ethics and integrity
- Drives tone down through all levels of the agency

## Foster a culture of compliance

- Support your compliance program with sufficient resources
- Regardless of monetary resources, support compliance with your attitude
- Work compliance topics into staff meetings, employee recognition, etc.

Leadership sets the tone

## Hospice Risk areas

## Pay Attention To These

1. Compliance Plan Guidance  
1999 Federal Register
2. OIG FY Work Plan  
Released annually in the fall
3. OIG Reports  
Released at completion of projects

### OIG's Compliance Program Guidance for Hospices (September 1999)

#### Areas identified

- Uninformed consent to elect the Medicare Hospice Benefit
- Admitting patients to hospice care who are not terminally ill
- Untimely and/or forged physician certifications on plans of care
- Insufficient oversight of patients, in particular, those patients receiving more than six consecutive months of hospice care

### OIG's Compliance Program Guidance for Hospices (September 1999)

#### Areas identified

- Arrangement with another health care provider who a hospice knows is submitting claims for services already covered by the Medicare Hospice Benefit
- Billing for a higher level of care than was necessary
- Failure to adhere to hospice licensing requirements and Medicare conditions of participation

### OIG's Compliance Program Guidance for Hospices (September 1999)

#### • Areas identified:

- Inadequate or incomplete services rendered by the Interdisciplinary Group
- Knowingly billing for inadequate or substandard care
- Pressure on a patient to revoke the Medicare Hospice Benefit when the patient is still eligible for and desires care, but the care has become too expensive for the hospice to deliver

### OIG's Compliance Program Guidance for Hospices (September 1999)

#### • Areas identified:

- Hospice incentives to actual or potential referral sources that may violate the Anti-kickback statute or other similar Federal or State statute or regulation including improper arrangements with nursing homes
- Overlap in the services that a nursing home provides, which results in insufficient care provided by a hospice to a nursing home resident
- Providing hospice services in a nursing home before a written agreement has been finalized, if required

### OIG Workplans

- Many consecutive years with focus on hospice care in the nursing home
- General Inpatient level of care (3 years running)
- Duplicate drug claims

### OIG Workplan 2014

#### General Inpatient

- Review use of hospice general inpatient care.
- Assess the appropriateness of hospices' general inpatient care claims and the content of election statements for hospice beneficiaries who receive GIP
- Review hospice medical records to address concerns that this level of hospice care is being misused

## OIG Workplan 2014

### Hospice in Assisted Living

- Determine the length of stay, levels of care received, and common terminal illnesses of beneficiaries who receive hospice care in ALFs

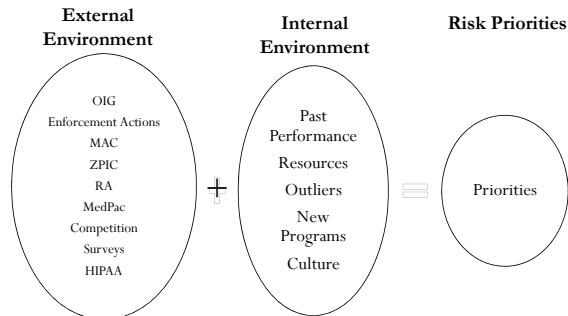
*How did ALF get on the radar screen?*

## Hospice in ALFs – 2012

Measure	Unskilled NF	Skilled NF	ALF	National
Beneficiaries Served	18%	9%	10%	100%
Utilization Days	19%	5%	17% KY=2%; AZ=33%	100%
Mean LOS	102 Days	55 Days	155 days	71 Days
Median LOS	35 Days	14 Days	73 days	25 Days
% Discharged Alive	18%	18%	25%	13%
% Days @ RHC	99.4%	97.2%	99.6%	97.5%

Medicare 2012 Claims Data  
Courtesy of Hospice Analytics, [www.hospiceanalytics.com](http://www.hospiceanalytics.com)

## Risk Assessment Prioritization



## Top Hospice Risk Areas

- Eligibility especially the long length of stay
- Certifications/recertifications (all the components)
- Hospice Care in the Nursing Facility
- Medicare Part D
- Plans of care
- General inpatient

## The Path

- Regulation, Performance and Risk
- Education
  - Targeted
  - Orientation
  - Ongoing
- Communication
- Policies and standard operating procedures
- Accountability
- Results of monitors and audits

## Getting Started (or reenergized)

1. Read the OIG Compliance Guidance
2. Educate the board and obtain their commitment
3. Designate compliance officer and establish compliance committee
4. Develop compliance plan and communicate
5. Develop useful policies
6. Educate staff
7. Identify risk areas, develop audit plan and conduct regular audits

## Compliance Program Resources for Hospices

Office of Inspector General [www.oig.hhs.gov](http://www.oig.hhs.gov)

- OIG Compliance Program, Guidance for Hospices
- OIG 2014 Workplan
- *CORPORATE RESPONSIBILITY AND CORPORATE COMPLIANCE: A Resource for Health Care Boards of Directors - A Toolkit for Health Care Boards*

Health Care Compliance Association

- [www.HCCA-info.org](http://www.HCCA-info.org)
- *Evaluating and Improving A Compliance Program*

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