

Compliance Plan: Plan To Respond To Investigations

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The purpose of a Response Plan is to organize and facilitate cooperation with any governmental or regulatory agency in the event of execution of a search warrant, service of a subpoena, unannounced inspections or surveys, audits, surveys and inspections, and to protect the provider's legal rights.

A provider will maintain at all times a response team directed by the Administrator and the Compliance Officer, who will have the responsibility for selecting its membership and supervising the team members in their responsibilities. The response team lead by the Compliance Officer will develop a written response plan which will be approved by the Compliance Oversight Committee.

The Compliance Officer will, in consultation with counsel, prepare and distribute written guidelines for employees regarding their rights and obligations in the event of investigative or regulatory activities initiated at the provider. Employees will be furnished with a written summary of the response plan and a summary of their rights and obligations when approached by an investigator. These guidelines will be one subject of employee training conducted by the Compliance Officer.

The written guidelines and employee training will focus on the following:

1. Employees should be reminded that while the provider is committed to its Standards of Conduct, employees also have certain obligations beyond those spelled out in the Code. For example, the provider's documents are not to be taken home, except for field charts and only pursuant to the provider's policy and procedure, and employees have no right to give the provider's documents or records to any third parties without advance express authority from the Compliance Officer.
2. Employees should be informed that government representatives, as a routine matter, may attempt to interview them on the provider's premises during the course of an audit, survey, the service of a subpoena, or the execution of a search warrant, or at home in the evening. Employees should be advised that while the provider will likely wish to cooperate in the investigation, it would like to do so in concert with the employee; the employee is not obligated to be interviewed without a representative of the provider being present; and such cooperation can be facilitated if the employee refers any such request from an investigator to the Compliance Officer.
3. Provider documents and records will be organized and maintained on the basis of a functional design. Under this design format, attorney client privileged documents should be maintained in a separate location where they are clearly labeled.
4. The Compliance Officer should be identified to all employees and his or her responsibilities explained.

In the event of unscheduled calls or visits by investigators, the Compliance Officer (or his or her designee), in consultation with counsel, will be the sole point of contact and communication. The



Compliance Officer will:

1. Verify the identity(ies) of investigators.
2. Request inspection of any warrant, or other authority for investigators being present, to ensure that the investigators have proper authorization, and retain the original or a copy of each such document.
3. Request permission to photocopy the credentials of all investigators and other personnel; secure telephone numbers for each investigator or obtain a business card; ascertain if the investigators are in contact with any attorneys at the United States Attorney's Office or the Criminal and/or Civil Divisions of the Department of Justice in Washington.
4. Attempt to ascertain from the investigators the nature of inquiry and the alleged violations or statutes that are the basis for the investigation.
5. Ensure that the provider's records are never voluntarily produced, only under compulsion of subpoena or search warrant, except when required to produce records during a certification or validation survey performed under the terms of 42 C.F.R. Part 488 and by federal surveyors or state surveyors pursuant to an 1864 agreement (42 U.S.C. § 1395aa), or as indicated by 42 C.F.R. 489.53a(4-8).
6. Confirm that employees do not volunteer information or otherwise engage in conversations with investigators.
7. Render courteous cooperation with the investigators, escort agents at all times while on the premises, and act as the sole representative handling oral communications with the investigators.
8. Be responsible for alerting counsel and coordinating implementation of the response plan, as well as insuring that all investigative activities are within the confines of the investigator's apparent authority.

If a search warrant is executed, it will be the responsibility of the Compliance Officer and the response team to monitor actions of the search team, making notes of areas searched and preparing a general description of items seized. At the conclusion of any investigative visit, audit or inspection the Compliance Officer will request an exit conference in order to learn additional details of the investigation, if any violations have been discovered during inspections, and if the provider will be involved in any further investigative activity. The Compliance Officer will ensure that once the search warrant has been executed, the agents as required by law, have left behind an inventory listing items seized. The Compliance Officer will undertake his or her own internal investigation.