

Getting into Compliance with Compliance Program Requirements for SNFs and NFs

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Objectives

- Identify minimum requirements for SNF and NF compliance programs – including the 8 critical components set forth in the Affordable Care Act.
- Explain how to evaluate your compliance program.
- Describe how your facility can come into compliance.
- Identify what to expect from the state surveyor.
- Real world compliance examples



Agenda

- Background and Context
- Regulatory Guidance
- ODH Surveys and Compliance
- Compliance Program Elements
- Recent Settlements and Litigation involving Skilled Nursing Facilities



Background and Context

- Federal Sentencing Guidelines
- Health Care Organization Compliance Issues
 - Laboratory Unbundling investigation of hospitals (early 1990s)
 - Settlements (later known as “corporate integrity agreements”)
- False Claims Act
 - From defense contractors to health care providers
 - “Per claim” liability



Those Dreaded 3 Letters:

O – I – G

- HHS Office of Inspector General recommends voluntarily adopting compliance programs
- OIG issues first “model” compliance program (for hospitals) – 1998
- OIG has subsequently issued similar guidance for other types of health care providers:
 - Clinical laboratories
 - Home health agencies
 - DME
 - Ambulance companies
 - Physicians
 - **Nursing Facilities**
 - Hospice
 - 3rd party billing
 - Pharmaceutical Mfgs

But it was still voluntary in absence of a CIA



Current Era of Compliance

Why compliance is so important today:

- Highly regulated industry
- More theories of liability (e.g., *US ex rel Absher v. Momen Meadows Nursing Center* – 2014)
- Prevalence of whistleblowers
- Audit contractors (e.g., RACs)
- Government revenue generation
- Heavy cost of non-compliance
- Key = effective and efficient self-assessed compliance

COMPLIANCE



Why Does the Government Care About Compliance?

- Health care fraud and abuse recoveries totaled **\$3.3 billion** in FY 2014
- 867 criminal health care fraud/abuse actions in FY 2014
- 529 civil health care fraud/abuse actions in FY 2014.



Enter the Affordable Care Act

- The Affordable Care Act (ACA) changed compliance programs from voluntary to mandatory
- Section 6102 of the Affordable Care Act mandates that all SNFs adopt an effective compliance and ethics plan **by March 23, 2013**
- Increased enforcement activity: Section 6402(i) of ACA and Section 1303 of the Reconciliation Act provide an additional \$350 million for the Health Care Fraud and Abuse Control Fund to fight fraud, waste and abuse



Affordable Care Act (cont'd.)

- The ACA also added a mandatory duty to report overpayments within 60 days after the date on which the overpayment is identified
 - Sometimes referred to as “reverse false claims”
 - **Statutory** obligation, in effect as of March, 2010
 - Report and return “any funds that a person receives or retains ... to which the person, after applicable reconciliation, is not entitled.”
 - Proposed regulations (2012) – 10-year lookback period
 - Final regulations – delayed until 2016



Benefits of a Compliance Program

- According to the OIG, the benefits of a GOOD compliance program are:
 - Increase the potential of proper submission and payment of claims
 - Reduce billing mistakes
 - Improve the results of reviews (audits) of Medicare/Medicaid claims
 - Avoid the potential for fraud, waste and abuse
 - Promote patient safety and ensure delivery of high quality patient care



MANDATORY

Mandatory Compliance Programs

MANDATORY



ACA - Required Components of SNF Compliance Program

REQUIRED



ACA - Required Components of SNF Compliance Program

REQUIRED

1. Written policies and procedures and standards of conduct - Compliance standards that reduce the prospect of criminal, civil and administrative violations
2. Compliance program oversight - Assignment of high-level personnel within the organization with overall responsibility and sufficient resources to assure compliance
3. Training & Education/Opening the Lines of Communication - Effective communication of compliance standards to employees and agents through publications and training and mechanisms for reporting concerns
4. Auditing and Monitoring - Reasonable measures to achieve compliance, such as monitoring and auditing procedures to detect noncompliance



ACA - Required Components of SNF Compliance Program

REQUIRED

5. Consistent Discipline - Consistent enforcement of compliance standards, including effective disciplinary mechanisms in the event of noncompliance
6. Corrective Actions - Mechanisms that correct noncompliance and prevent recurrence of noncompliance
7. Periodic assessment of whether the compliance program should be modified based on changes within the organization
8. Avoiding the delegation of responsibility to individuals who have a propensity to commit criminal, civil or administrative violations



Enforcement of ACA Compliance Program Mandate

- CMS to review compliance programs
- Likely to be delegated to State survey agencies to review similar to other CMS-mandated requirements

MANDATORY COMPLIANCE



ODH Survey Process for Compliance Programs

- Condition of Participation for SNFs and NFs
 - Standard survey
 - Complaint investigation
- Cited deficiencies require Plan of Correction
- Subject to penalties for failure to correct deficiencies
- Include document review and interviews with Compliance Officer, members of Compliance Committee, training officer, report intake officer, staff, physicians, contractors



Survey Area: Compliance Standards to Reduce Risk of Fraud

- Quality of Care
 - Policies and procedures for staffing, resident care plan updates, medications
 - Staffing schedules, resident charts, interview
- Submission of accurate claims
 - Policies and procedures for reporting claims
 - Claims, interview
- Employee screening for excluded individuals
 - Policies and procedures for ensuring new and current employees are not excluded individuals
 - Personnel records, interview
- Contracts
- Policies for record retention and destruction
- Policies and procedures for HIPAA compliance



Survey Area: Compliance Officer Designation

- Job description
- Organizational chart
- Compliance committee membership, function and authority
 - Meeting schedule
 - Attendees
 - Meeting minutes
 - Follow-up of recommended action



Survey Area: Compliance Training and Education

- Policies for training employees
- Training schedule
- Content
 - Consistency in message
 - Educate and re-educate
 - Non-punitive environment
 - Identify reporting structure
- Attendees
 - Educate stakeholders and agents providing care in your facility



Survey Area: Communication of Potential Incidents

- Policies and procedures for accepting reports of potential incidents
- Policies on confidentiality and non-retaliation
- Interview employees
 - Do employees know it is their responsibility to report potential incidents
- Reported incidents



Survey Area: Disciplinary Action

- Policies and procedures for imposing disciplinary action on employee
- Document disciplinary action
- Interview
- Personnel records



Survey Area: Auditing and Monitoring

- Policies and procedures for compliance program implementation and reporting
- Documentation of efforts undertaken
 - Investigate patterns
 - Monitor claims submission/risk areas/PEPPER
 - Monitor 5 Star rating
 - Turnover in leadership roles
 - Complaints / surveys
 - Trends
 - Repeated incidents
 - Staff concerns
- Interview



Survey Area: Responding to Offenses and Developing POC

- Policies and procedures for response and investigation
- Policies for record retention of incidents
- Policies for reporting violations
- Records of identified violations
- Interview



SNF Compliance Programs

- Start with the elements listed above
- Use OIG Guidance to fill in/flesh out the requirements
 - Publication of the OIG Compliance Program Guidance for Nursing Facilities, 65 Fed. Reg. 14289 (Mar. 16, 2000)
 - OIG Supplemental Compliance Program Guidance for Nursing Facilities, 73 Fed. Reg. 56832 (Sep. 30, 2008)

Available at www.oig.hhs.gov



Compliance Standards

Standards of conduct for employees

Code of conduct

- Serves as the foundational document that details the fundamental principles, values and framework for action within the organization.
- Describes the facility's commitment to compliance, values and quality treatment of patients and employees, commitment to ethical behavior
- Describes the organization's vision and values
- Indicates that compliance is the responsibility of all employees
- Describes how to report incidents of non-compliant/unethical behavior



IG believes ALL nursing facilities should operate under a code of conduct.



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Compliance Standards (cont'd)

Policies & Procedures

- Clearly written and describe expectations
- Readily available to all employees (intranet?)
- Reviewed by employees within 90 days of hire and annually (part of orientation)
- Regularly reviewed and updated
- Policy for compliance staff roles and responsibilities
- Procedures show training plans and details of compliance program, including interactions with other departments
 - How and when employees will be trained
 - Compliance reporting structure
 - Training requirements
 - Reporting mechanisms (hotline?)
 - How investigations are conducted
 - How issues are resolved
 - Auditing and monitoring



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Compliance Standards (cont'd)

- ### Policies & Procedures addressing fraud risk areas:
- Quality of care (i.e., sufficient staffing, comprehensive resident care plans, resident safety)
 - Submission of accurate claims (i.e., proper reporting of resident case-mix, screening for excluded individuals and entities)
 - Resident's rights
 - Employee screening
 - Vendor relationships
 - Billing
 - Cost reporting



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Compliance Standards (cont'd)

- Policies & Procedures addressing fraud risk areas (cont'd.):
 - Record keeping and documentation
 - Free goods and services
 - Service contracts
 - Discounts (i.e., price reductions, swapping)
 - Relationships with hospices
 - Reserved bed payments
 - Anti-supplementation
 - Medicare Part D



Compliance Standards (cont'd)

- Policies regarding annual survey results
 - Analyze the results of annual surveys
 - Verify that the facility addresses deficiencies cited by the surveyors
- Policies regarding anti-kickback and Stark self-referral statutes and regulations
 - Specifically look at arrangements with hospitals, hospices, physicians and hospital staff
- Policies and procedures regarding HIPAA privacy and security
- Policies and procedures regarding the creation, distribution, retention, storage, retrieval and destruction of documents



Compliance Program Oversight

Reporting Chain



- Oversight includes:
- Approving standards of conduct
 - Understanding and administering the compliance program structure
 - Being informed on the outcomes of audits and monitoring
 - Reporting on compliance enforcement activity
 - Reviewing and performing effectiveness assessments of the compliance program



Compliance Program Oversight

- Designation of a compliance officer
 - Serves as the focal point for compliance activities
 - Nursing facility should have documents (policy, job description) outlining the compliance officer's duties and authority
 - Reports regularly to the nursing facility's governing board, CEO and compliance committee
 - Investigates and acts on matters related to compliance
 - Participates with nursing facility counsel in the appropriate reporting of self-discovered violations
 - Develop/review compliance policies and procedures
 - Attends operations staff meetings
 - Implement system for assessment of risk
 - Develop auditing work plan – review auditing & monitoring reports
 - Monitor effectiveness of corrective actions
 - Enforcing disciplinary standards, ensuring consistency

• Watch for conflicts
 • Ensure adequate time and resources are allocated



Assignment of High-Level Personnel to Assure Compliance (cont'd)

- Compliance Committee
 - Nursing facility policy should establish the compliance committee and outline its function and authority
 - Advises the compliance officer and assists in the implementation of the compliance program
 - Recommends and monitors the development of internal controls and systems to carry out the organization's policies
 - Develops a system to solicit, evaluate and respond to complaints and problems

• Select committee members who work in risk areas, have access to information that may reveal risk, broad range of departments
 • Education for committee members is essential



Effective Communication of Compliance Standards

Education & Training

- Nursing facilities must provide training and education to employees and contractors regarding the requirements of the compliance program
- Initial training for new employees should be at/near date of hire (orientation?)
- Annual refresher training
- Track attendance – make attendance a condition of employment

• Make training relevant & easy to understand for attendees
 • In addition to general compliance training, consider specific training for employees whose job responsibilities touch on high risk areas



Compliance Training and Education

(cont'd.)

- Training programs should cover:
 - The nursing facility's compliance program;
 - Fraud and abuse laws;
 - Medicare, Medicaid and private payor requirements;
 - Compliance with Medicare participation requirements;
 - Appropriate and sufficient documentation to support services billed;
 - Prohibitions on paying or receiving remuneration to induce referrals;
 - Proper documentation in clinical and financial records;
 - Resident's rights; and
 - Duty to report misconduct
- Try to use actual compliance scenarios/investigations as examples
 - Use interactive modules, incentives, games to motivate employees



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Open Lines of Communication

- Requirements for all employees to be proactive and report issues timely
- Policy/procedure outlining how employees can communicate with and report incidents of potential fraud to the compliance officer
 - Employees must be able to ask questions and report problems
- There should also be confidentiality and non-retaliation policies in place regarding communications with the compliance officer
- Track incoming communications
- Formal process for managers to communicate compliance issues and results to staff



- Hotline
- Open door
- Newsletters
- Bulletin Board
- Email box



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Open Lines of Communication

- Communicate WHAT?
 - Compliance issues or fraudulent and illegal behavior
- WHO should compliance issues be reported to?
 - Compliance Officer
 - Anonymously via email/hotline/comment box
- HOW can your staff report compliance issues?
 - In person
 - Electronically (email)
 - Anonymously (drop box, hotline without caller ID)
- When must compliance issues be reported?
 - Immediately (as soon as identified)



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Auditing and Monitoring

- Auditing and monitoring to:
 - Measure the effectiveness of the compliance program
 - Ensure compliance with CMS requirements
 - Identify compliance risks
- Monitoring
 - Regular reviews performed as part of normal operations to confirm ongoing compliance
- Auditing
 - Formal reviews of compliance with a particular set of standards as base measures



Auditing and Monitoring

- Monitoring
 - Occurs on a regular basis (daily, weekly monthly) during normal operations
 - Performed by staff
 - Follows up on recommendations and corrective action plans to be sure implemented
 - Work plan should indicate frequency of monitoring, person responsible, and issues of concern

What to Monitor? Some ideas:

- PEPPER Report
- Code of Conduct distribution
- Training attendance
- Compliance report log (logged? Follow-up? Timely resolution?)
- Exit interviews



Auditing and Monitoring (cont'd.)

- Auditing
 - Ensures compliance with various statutory and CMS requirements
 - Includes regular, periodic evaluations of the compliance program to assess effectiveness
 - Performed at least annually
 - Includes written reports containing findings, recommendations, proposed corrective actions
 - Based on risk assessment
 - Work plan should indicate audit schedule and methods to be used for audits

What to Audit? Some ideas:

- Claims – correct claim submission (coding)
- Compliance with Medicare requirements – required notices
- Compliance with Patient rights
- Documentation to support claims submission
- Legal review of contracts with vendors and referral sources

Self-audits are a good way to detect problems before they become serious.



“Okay, boss, I just audited myself, and I came out looking pretty darn good.”



Auditing and Monitoring (cont'd.)

- Auditing
 - Risk Assessment – formal baseline assessment of major compliance and fraud, waste and abuse areas to assess the facility's risk in each area
 - Include areas of concern identified by CMS, beneficiaries, providers, and managers/employees
 - Identify risk levels (high, medium, low) to help prioritize resources
 - High risk areas should be monitored regularly
 - Coding and billing
 - Exclusions



Responding to Detected Offenses

- Detected but uncorrected deficiencies can seriously damage the reputation and legal status of a nursing facility
- Written Policies/Procedures should address:
 - A plan for how internal investigations are conducted
 - Time limit for beginning (immediately upon notice) and closing an investigation
 - Options for corrective actions
 - When to have an investigation performed by an outside, independent contractor
 - How and when to involve outside counsel and when to refer a matter to CMS, OIG, other law enforcement authorities
- Intake Log – log all reports, no matter how big or small



Track all – investigation, follow-up, resolution



Developing Corrective Action Initiatives

- Examples of Corrective Actions:
 - Repayment of overpayment
 - Disciplinary action against responsible employees
- Overpayments must be reported and returned **no later than 60 days** after identifying the overpayment
 - Question: when is the overpayment "identified"?
- The nursing facility should have policies and procedures regarding:
 - The retention of investigation records
 - Self-reporting violations
 - Responding to investigations



Consistent Discipline

- Policies that set out the consequences of violating the nursing facility's standards of conduct, policies and procedures
 - Describe expectations as well as consequences for noncompliant, unethical, illegal behaviors
 - Who will be responsible for taking appropriate action?
 - Coordinate with HR
 - Procedures for handling disciplinary problems
 - Sanctions for:
 - Non-compliance
 - Failure to detect non-compliance when routine observation or due diligence should have provided adequate clues
 - Failure to report actual or suspected non-compliance
 - Sanctions range
 - verbal warnings → suspension → termination → financial penalties



Periodic Assessment of the Compliance Program

- The nursing facility should have a process in place (survey, outside review) to:
 - Periodically assess the effectiveness of the compliance program; and
 - Determine whether changes are needed based on changes within the organization such as:
 - New affiliations or related parties that bring new risks
 - New service lines
 - Growth of the organization

• *Compliance Program is not effective if it's getting dusty on the shelf*
 • *Living documents – make them useful and functional for your facility*



Dangers Lurking



- Extencicare case (October 2014)
- Foundation Health Services case (June 2014)
- Ralex Services case (August 2014)



EXTENDICARE The Extendicare Case

- Large multi-state chain of SNFs paid \$38 Million to resolve allegations that it billed Medicare for medically unnecessary rehab services and for materially substandard (“worthless”) nursing services *Whistleblowers get 15-25% of \$38 Million!*
 - Failed to have sufficient number of skilled nurses
 - Failed to provide adequate catheter care
 - Failed to follow appropriate protocols to prevent pressure ulcers and falls
 - Provided unnecessary therapy to patients especially during assessment reference periods in order to bill at the highest per diem possible
 - Lawsuit filed by former Director of Rehab (who reported the concerns and was retaliated against and fired) and a patient/his son

In addition to the \$38 Million penalty, all of Extendicare's owned/managed LTC facilities in the U.S. put under CIA with OIG's



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US ex rel Absher

- Multi-State chain of SNFs
- Paid \$750,000 to resolve allegations that they billed Medicare/Medicaid for materially substandard (“worthless”) SNF services
- Investigation began after a facility was evacuated in July 2010 due to broken a/c when temperatures were reaching 100 degrees
- Allegations were that Foundation failed to:
 - Follow appropriate fall protocols
 - Follow appropriate pressure ulcers and infection control protocols
 - Properly administer medications to avoid medication errors
 - Appropriately provide for activities of daily living (Bathing, monitoring, feeding, supervising)
 - Answer call lights promptly
 - Employ sufficient number and skill level of nursing staff



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Foundation Health Services

- Multi-State chain of SNFs
- Paid \$750,000 to resolve allegations that they billed Medicare/Medicaid for materially substandard (“worthless”) SNF services
- Investigation began after a facility was evacuated in July 2010 due to broken a/c when temperatures were reaching 100 degrees
- Allegations were that Foundation failed to:
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 - Follow appropriate pressure ulcers and infection control protocols
 - Properly administer medications to avoid medication errors
 - Appropriately provide for activities of daily living (Bathing, monitoring, feeding, supervising)
 - Answer call lights promptly
 - Employ sufficient number and skill level of nursing staff



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Ralex Services

- Ralex paid \$2.2 Million to resolve allegations that it billed New York Medicaid at artificially inflated rates by upcoding – falsely representing the amount of care patients needed
 - Exaggerated diagnoses, conditions, required treatments
- Falsified records at “tampering parties”
- 2 nurses who participated in the “tampering parties” were convicted
- An administrator pled guilty to felony grand larceny
- **Whistleblower: Former assistant director of nursing**



US ex rel Martin v. Life Care Centers of America

- Tennessee Federal Court whistleblower action
- Life Care Centers = 200-plus skilled nursing facilities
- Alleged nationwide scheme to provide medically unnecessary services
 - Maximizing “Ultra High” (720 minutes of therapy per week) levels of rehabilitation services regardless of patient conditions or diagnoses
 - Alleged corporate-wide strategy to encourage and maximize
- Sample of 400 claims extrapolated to universe of over 50,000 claims
- Court rejected summary judgment and is allowing jury to decide if extrapolation and sample are reliable



Compliance Program Practice Pointers

- Culture of Compliance
 - Appropriate authority and resources for Compliance Department
 - Encourage reporting of concerns
 - Take reported concerns seriously
 - Promptly refund overpayments
- Finalize and Distribute your policies/procedures/code of conduct – **AND FOLLOW THEM!**
- Educate staff on compliance program and applicable laws
- Educate staff on how to properly do their jobs
- Exercise caution when engaging auditors – try to engage them under attorney-client privilege through counsel
- Use the PEPPER Report, OIG Work Plan and other free resources to identify your risk areas and manage risks



Questions?

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Appendix

Q-tips



Q-tip #1

Focus on Effective Compliance Programs for NMI and NLC
Component H: Compliance Standards

The first required component for an effective Compliance Program is compliance standards, policies and procedures and a code of conduct that define the proper or correct, safe, and appropriate conduct.

Q-tip: An effective Compliance Program should establish compliance standards that address policies for Board and risk through written policies and procedures for the following areas:

- Standards of conduct for employees (a code of conduct)
 - Should serve as the foundational document that details the fundamental principles, values and tenets for the organization.
- Conflict of interest
- Antitrust/anti-trust
- Employee screening
- Insider trading
- Whistleblowers
- Hiring
- Code of ethics
- Record keeping and documentation
- Fair goods and services
- Donations
- Relationships with hospitals
- Board and risk programs
- Information protection
- Business plan IS
- Annual survey results
 - Should analyze the results of annual surveys and verify that the facility addresses deficiencies identified by the surveys.
- Anti-kickback and Stark self-referral statute and regulations
 - Including: look at arrangements with hospitals, physicians, and hospital staff
- HIPAA privacy and security
- Creation, distribution, revision, storage, retrieval, and destruction of documents
- Staffing performance
 - Should establish compliance in compliance policies and procedures
 - Policies should require compliance to
 - Discuss with employees the compliance policies and legal requirements applicable to their function
 - Assess if reported personnel that their compliance is a condition of employment and part of the annual evaluation process
 - Disclose to all reported personnel that the reporting facility will take disciplinary action up to and including termination for violation of the compliance program



Q-tip #2

Series on Effective Compliance Programs for SNFs and NFs Component 2: Assignment of High-Level Personnel to Assure Compliance

The second required component for an effective Compliance Program is **Assignment of High-Level Personnel to Assure Compliance**. This includes the designation of a compliance officer and establishment of a compliance committee, each with the independence and authority to effectively implement and carry out the Compliance Program's functions.

Q-tip: A designated compliance officer serves as the focal point for compliance activities. The nursing facility should document the compliance officer's duties and authority, which include the following:

- Report regularly to the nursing facility's governing board, CEO, and compliance committee
- Investigate and act on matters related to compliance
- Participate with nursing facility counsel in the appropriate reporting of self-disclosed violations

Where compliance is not the sole responsibility of the compliance officer:

- Watch for conflicts
- Ensure adequate time and resources are allocated

In addition, the nursing facility should establish a **compliance committee** and document its function and authority, which include the following:

- Advise the compliance officer and assist in the implementation of the compliance program
- Recommend and monitor the development of internal controls and systems to carry out the organization's policies
- Develop systems to solicit, evaluate, and respond to complaints and problems

Select committee members who work in risk areas and have access to information that may reveal risk.

- Members should be from a broad range of departments
- Education for committee members is essential



Q-tip #3

Series on Effective Compliance Programs for SNFs and NFs Component 3: Avoid the delegation of responsibility to individuals who have a propensity to commit violations

The third required component for an effective Compliance Program is to **avoid the delegation of responsibility to individuals who have a propensity to commit violations**. This appears to be intuitive on the surface but may be more challenging to carry out, particularly in a small facility. The compliance officer may need to rely on the expertise of several individuals within the facility in order to carry out all of his or her responsibilities (e.g., payment specialist to help with billing issues, director of nursing to address quality of care issues, etc.). At the same time, the compliance officer must retain the integrity and objectivity not to compromise the program.

Q-tip: Establish a system of checks and balances to more effectively achieve the goals of the compliance program. Select individuals with whom you have the utmost trust and confidence to carry out the compliance functions for your organization. An effective system that monitors activities and provides for open communication can help to identify individuals who may pose a concern.



Q-tip #4

Series on Effective Compliance Programs for SNFs and NFs Component 4: Effective Communication of Compliance Standards

The fourth required component for an effective Compliance Program is **Effective Communication of Compliance Standards**. This requires the nursing facility to establish a program to educate and train employees and contractors under the facility's Compliance Program's policies and procedures and develop effective lines of communication.

Q-tip:

Education and Training

- Track attendance and make attendance of education and training sessions a condition of employment
- Make training relevant and easy to understand for attendees
- In addition to general compliance training, consider more specific training for employees whose job responsibilities touch on high-risk areas
- Training program should cover:
 - The nursing facility's compliance program
 - Florida state laws
 - Medicare, Medicaid, and private payer requirements
 - Compliance with Medicaid participation requirements
 - Appropriate and sufficient documentation to support services billed
 - Procedures on how to reporting communication issues, including:
 - Proper documentation in clinical and financial records
 - Residents' rights
 - Duty to report immediate Non-emergency policy

Effective Lines of Communication

- Policies and procedures should outline how employees can communicate with and report incidents of non-compliance found in the compliance officer
- Employees must be able to file questions or report problems without fear of retaliation
- There should be confidentiality and non-retaliation policies in place regarding communications with the compliance officer
- All incoming communication must be tracked
 - Hotline
 - Open-door
 - Newletters
 - Bulletin board
 - Email box



Q-tip #5

Series on Effective Compliance Programs for SNFs and NFs Component #5: Auditing and Monitoring

The fifth required component for an effective Compliance Program is **Auditing and Monitoring for Adherence to Compliance Standards**. This requires the nursing facility to incorporate through monitoring and on-going evaluation of the Compliance Program. The compliance officer should document on-going monitoring and share these assessments with the nursing facility's senior management and compliance committee.

Q-tip: What should you monitor? Here are some ideas:

- PEPPER Report
- Code of Conduct distribution
- Training attendance
- Compliance report log – include follow-up and timely resolution
- Exit interviews

What should you Audit? Here are some examples:

- Claims – correct claim submission (coding)
- Compliance with Medicare requirements – Are required notices being provided?
- Compliance with residents' rights
- Documentation to support claims submission
- Legal review of contracts with vendors and referral sources

A mock survey can be an effective aid in monitoring and evaluating your Compliance Program.



Q-tip #6

Series on Effective Compliance Programs for SNFs and NFs Component #6: Consistent Enforcement of Compliance Standards

The sixth required component for an effective Compliance Program is **Consistent Enforcement of Compliance Standards**. This requires the nursing facility to develop disciplinary policies that set out the consequences of violating the nursing facility's standards of conduct, policies, and procedures and to apply those consequences in a consistent manner.

Q-tip:

- Include procedures for imposing disciplinary action in your facility's Compliance Program's policies and procedures.
- Communicate disciplinary policies and procedures to staff.
- Identify potential sanctions for disciplinary action, which can include verbal warning, suspension, termination, and financial penalties.
- Identify positions responsible for taking appropriate disciplinary action.
- Track disciplinary actions taken for violating the facility's Compliance Program policies or procedures and ensure that like infractions are treated consistently.



Q-tip #7

Series on Effective Compliance Programs for SNFs and NFs Component #7: Mechanisms that correct noncompliance and prevent recurrence of noncompliance

The seventh required component for an effective Compliance Program is **mechanisms that correct noncompliance and prevent recurrence of noncompliance**. Detected but uncorrected deficiencies can have financial implications and seriously damage the reputation and legal status of a nursing facility, including its ability to participate in the Medicare and Medicaid programs. It is important that the compliance officer immediately investigate all allegations of noncompliance to determine whether a violation has occurred. The nursing facility should have written procedures outlining how reports of violations will be responded to and investigated.

Q-tip: Maintain an intake log for all reports (verbal or written) of possible violations. Track all reports by identifying the following:

- Date of report
- Date(s) of investigation
- Document investigatory action
- Finding
- Follow-up - include any disciplinary action
- Resolution – including any establishment of new policies and procedures to prevent recurrence of the noncompliance and any disciplinary actions taken.

If there is a finding of misconduct, report the violation to the appropriate authorities no later than 60 days after determining that there is credible evidence of a violation.

- Involve legal counsel and prompt the investigation under attorney-client privilege.
- Obtain legal advice, guidance, and analysis.

Your Compliance Program should include policies and procedures for retention of all records relating to the investigation of, reporting, and response to violations.



Q-tip #8

Series on Effective Compliance Programs for SNFs and NFs Component #8: Periodic Assessment of Compliance Program

The eighth required component for an effective Compliance Program is the **periodic assessment of your Compliance Program**. The nursing facility should have a process in place to periodically assess the effectiveness of the compliance program to determine whether changes are needed.

Q-tip: Consider periodically conducting a mock survey or have an outside review of your Compliance Program. Changes within your facility or organization, such as new affiliations, new service lines, or growth, should also trigger a review of your Compliance Program for necessary modifications to accommodate the changes.



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