Effective Compliance Programs – How Does Your Program Measure Up?

Maryland Leading Age 2016
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Vice President of Compliance, Peace Church Compliance Program
What is the compliance environment

- Affordable Care Act – Compliance Programs become mandatory
  - ACA Sections 6102 and 6401 required compliance and ethics programs by 3/13/13.
  - CMS required to issue regulations
    - Proposed regulations issues July 16, 2015
    - Expected final Regulations September 2016
    - One year for implementation
CMS Proposed Regulations - Compliance

- CMs will use survey process to assess the effectiveness of compliance and ethics program
- Compliance program will be viewed by “others”
- Potential for deficiencies; Civil Money Penalties
- Increased expectations on “awareness of the program” by all
  - Education and Training
  - Accessibility
CMS Proposed Regulations

- Mandatory compliance training and orientation for all contractual staff and volunteers
- Annual reassessment of compliance program
- Periodic external audits specifically focus
  - Financial Records
  - Quality of Care Issues
Department of Justice

- Hires a new “Compliance Counsel” for Fraud Division
- Assistant Attorney General Caldwell outlines how criminal division compliance counsel will identify effective compliance programs
  - Includes Education and Training
  - Accessibility of policies by all
  - Evaluation the effectiveness of the program

consider including "ability to verbalize compliance program awareness"
Hallmarks Of An Effective Compliance Program – Hui Chen
DOJ Compliance Counsel

- Do Directors and seniors managers provide strong, explicit and visible support for its corporate compliance policies?
- Do the staff responsible for compliance have stature with the organization?
- Do Compliance staff get adequate funding and access to necessary resources?
- Are the compliance policies clear and in writing?
- Are the compliance policies easily understood by employees?
Hallmarks Of An Effective Compliance Program

- Are the compliance policies effectively communicated to all employees?
- Do employees have repeated training including directions regarding what to do or whom to consult when issues arise?
- Are policies updated with evolving risks and circumstances?
- Are there processes in place to enforce compliance policies?
- Are these processes implemented even handedly?
- Are third party vendors, agents or consultants sensitized to the organizations expectations regarding compliance?
DOJ Compliance Counsel View

- Thoughtful design of the compliance program
  - Does it address main causes of problems
  - Does organization leadership have ownership of their respective pieces?
  - Is there a healthy process for handling complaints; takes whistleblower complaints seriously
  - Is there a culture that facilitates an open door atmosphere and employees feel free to raise issues?
  - Is the program well resourced? Not just $$ but attention and commitment
Role of the Board

- Board must act in good faith in exercise of its oversight responsibility, including making inquiries to ensure:
  - A corporate information and reporting system exists and
  - The reporting system is adequate to assure the Board that appropriate information related to compliance with applicable laws will come to its attention timely and as a matter of course.
  - Regulatory awareness of State and Federal oversight for lines of business.
OIG Guidance to Health Care Boards on Compliance Oversight

- How is organization reviewing financial relationships with referral sources related to physician self-referral (Stark) and anti-kickback laws
- How is organization responding to 60 day repayment rule
- Does the organization have controls and processes in place to reduce the risk of and to identify misconduct or issues within the organization related to failures or problems that have been publicized
  - Rehab Care
  - Kindred
OIG Guidance to Health Care Boards on Compliance Oversight

- New areas of risk
  - Increased emphasis on quality
  - Industry consolidation
  - Changes in insurance coverage and reimbursement

I think this slide had too much, so I split it. Same comment about the title. If same source, should be consistent on both slides.
OIG Guidance to Boards

- Conduct regular executive sessions with compliance staff, quality staff etc. to encourage open communication
- Risk areas include billing problems
  - Upcoding
    - Submitting claims for services not rendered
    - Medically unnecessary services
- Privacy Breaches
- Quality Related Events

Consider re-phrasing. Plural? i.e. billing problems. May like inconsistencies, irregularities or inaccuracies.
OIG Guidance

- Plan to stay abreast of regulatory and operating environment
- Add to board or consult with experienced regulatory, compliance or legal professionals
- Receive compliance information in a format that is sufficient to satisfy the concerns or interests of the members and fit their capacity to review the information and understand it.
- Board may want management to create a formal education process that ensures Boards are periodically educated on organizations highest risks.
Errors are Human – Correction is a sign of success of the compliance program

Self disclosing is evidence of an effective program

Increased scrutiny of non-profits
  
  990 to be automated
  
  Compliance Officer/ Board to review
Assumptions - You Have A Compliance And Ethics Program

- Designated Compliance Officer
- Compliance Committee established and meeting
- Code of Conduct
- Compliance Policies and Procedures
- Hotline
The Program

- Program that is reasonably designed, implemented and enforced to be effective in preventing and detecting criminal, civil and administrative violations and in promoting quality of care. .... (proposed 483.85(a)(a) and 483.85(b))

- Organization would assign specific individuals within the high level personnel with the overall responsibility to oversee the program’s standards, policies and procedures, such as the CEO, members of the board of directors, directors of programs.

- Annual review of program
  - Keeping abreast of changes in regulations and law
  - Changes in risks
Role of the Compliance Officer

- Sufficient authority to carry out the role and responsibilities of the position
  - Develop, operate and monitor the Compliance Program
  - Investigate complaints and concerns regardless of stakeholders
- Report directly to the governing body or chief executive officer
- Ability to report to the board directly
- Not subordinate to general counsel, CFO or COO
Role of Compliance Committee

- Support to the Compliance Officer and the activities of the compliance program
- Topic experts
- Represent areas of high risk or lines of business
- Assist with Work Plan development and implementation
- Auditing, monitoring and reporting responsibilities for designated areas
Compliance Program Effectiveness

- OIG: an effective compliance program is one that identifies problems, reports them, corrects them and monitors so that they won’t happen again
Assessing Effectiveness – What We Need to Look At

- Education and Training
  - Performance Appraisals
- Detection; Remediation and Enforcement (Response and prevention of a pattern of issues)
- Auditing and Monitoring
  - Appropriate Corrective Action Plans (CAPs)
- Standards of Written Policy and Code of Conduct
Assessing Effectiveness – What We Need to Look At

- Risk Assessment and Annual Work Plan
- Evaluation of Compliance Effectiveness
  - Engagement of the BOD
  - Compliance Committee participation
  - Knowledge/Culture Through Entire Organization
  - Consistent Disciplinary Process
Assessing Effectiveness

- Sanction Screening Frequency
  - New Employees
  - Workforce
  - BOD
  - Vendors and Contractors
- HIPAA Breach Reporting
Assessing Effectiveness

- Repayments
  - Timely reporting; investigation and remediation
- Hotline Response
  - Within 30 days for initial report
  - Documentation and Logging
  - Categories of calls; frequency and substantiation
## Assessing Effectiveness – What It Might Look Like

<table>
<thead>
<tr>
<th></th>
<th>Education and Training</th>
<th>Data Compilation</th>
<th>Report to</th>
<th>Reporting Frequency</th>
<th>Tie to Strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Annual Compliance Training completed</td>
<td>Online training maintained in system</td>
<td>Compliance Committee / Managers</td>
<td>Monthly Department Managers</td>
<td>Invest in qualified workforce</td>
</tr>
<tr>
<td>B</td>
<td>New Hire Compliance Training</td>
<td>Live Training completed within 30 days of hire</td>
<td>CC/ Managers</td>
<td>Monthly reports to Managers</td>
<td></td>
</tr>
<tr>
<td>C</td>
<td>Target Education per annual work plan</td>
<td>Live maintained in system; Signature sheets completed</td>
<td>CC/ Managers</td>
<td>Monthly to VP’s and Directors</td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>Evaluation of Education/Training effectiveness</td>
<td>On line testing/Pass/Fail Staff interviews; Hotline Reporting</td>
<td>Staff Development/CC</td>
<td>Annual/Quarterly</td>
<td></td>
</tr>
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## Assessing Effectiveness

<table>
<thead>
<tr>
<th></th>
<th>Standards of Conduct/Policies</th>
<th>Data Compilation</th>
<th>Report to</th>
<th>Reporting Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Code of Conduct reviewed and updated annually</td>
<td>Review of Compliance Committee minutes for evidence of review/dated revision</td>
<td>Board Committee or Other</td>
<td>Annual</td>
</tr>
<tr>
<td>B</td>
<td>Code of Conduct Acknowledgement</td>
<td>Current Workforce: %Signed New Workforce: % Singed Board: % Signed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C</td>
<td>Compliance Policies and Procedure: Annual Review</td>
<td>Review by Compliance Committee: Revisions completed per required changes</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Assessing Effectiveness

<table>
<thead>
<tr>
<th>Risk Assessment/Work Plan</th>
<th>Data Compilation</th>
<th>Report to</th>
<th>Reporting Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Evaluate and assess compliance risk</td>
<td># of projects identified in work plan Resourced internally/externally</td>
<td>BOD or committee thereof; CEO</td>
<td>Quarterly and Annual</td>
</tr>
<tr>
<td>B. Define Annual work plan</td>
<td>Evaluate completion of projects and participation Revised as needed through out the year</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Questions