Objectives

1. Understand the key components of Phase 3 Compliance and Ethics Programs and actions to achieve the requirements.
2. Gain knowledge in the assessment of compliance vulnerabilities for the post-acute provider setting.
3. Identify practical operational and compliance program activities to promote ethical and compliance practice and respond to potential violations.
Housekeeping Announcements

- Handouts are posted on the toolbar at the right of your screen.
- All phone lines are muted
- All questions will be held until the end of the session
  - If you have a question/comment type your question into the Go-To webinar toolbar
- Contact the association through which you registered for any questions regarding continuing education credits & certificates.

SNF COMPLIANCE & ETHICS PROGRAM FUNDAMENTALS
What is a compliance program

*A written and operational program specifying an organization’s policies, procedures and actions to help prevent and detect violations of federal and state laws and regulations including detecting and preventing any allegations of fraud and abuse... and to promote quality of care*

Let us not become weary in doing good, for at the proper time we will reap a harvest if we do not give up. Galatians 6:9

Voluntary Compliance Benefits

- Demonstrate commitment to honest & responsible corporate conduct
- Increase likelihood of preventing unlawful & unethical conduct or correcting such behavior at an early stage
- Encourage employee reporting of problems to reduce risk of FCA lawsuits, administrative sanctions, & state actions
- Minimizing financial risk to the government & nursing facility
- Enhancing resident satisfaction & safety
- Improving reputation for integrity & quality
- Mitigating Factoring in Culpability Scoring for Sentencing

56834 Federal Register/Vol. 73, No. 190 9/30/08
OIG Supplemental Compliance Program Guidance for Nursing Facilities
Compliance & Ethics Programs

Elements:

1. Written compliance and ethics standards, policies, and procedures
2. Designated Compliance Officer & Committee
3. Training
4. Method of reporting violations
5. Auditing & Monitoring
6. Violation response plan & investigations
7. Disciplinary standard enforcement
8. Annual Review
Compliance & Ethics Program

§ 483.85 Compliance and ethics program.

§ 483.85(a) Definitions.

For purposes of this section, the following definitions apply:

Compliance and ethics program means, with respect to a facility, a program of the operating organization that—

§ 483.85(1) Has been reasonably designed, implemented, and enforced so that it is likely to be effective in preventing and detecting criminal, civil, and administrative violations under the Act and in promoting quality of care; and

§ 483.85(2) Includes, at a minimum, the required components specified in paragraph (c) of this section.

High-level personnel means individual(s) who have substantial control over the operating organization or who have a substantial role in the making of policy within the operating organization.

Operating organization means the individual(s) or entity that operates a facility.

§ 483.85(b) General rule.

Beginning on November 28, 2019, the operating organization for each facility must have in operation a compliance and ethics program (as defined in paragraph (a) of this section) that meets the requirements of this section.
483.85(c) Required components for all facilities. The operating organization for each facility must develop, implement, and maintain an effective compliance and ethics program that contains, at a minimum, the following components:

- § 483.85(c)(1) Established written compliance and ethics standards, policies, and procedures to follow that are reasonably capable of reducing the prospect of criminal, civil, and administrative violations under the Act and promote quality of care, which include, but are not limited to, the designation of an appropriate compliance and ethics program contact to which individuals may report suspected violations, as well as an alternate method of reporting suspected violations anonymously without fear of retribution; and disciplinary standards that set out the consequences for committing violations for the operating organization’s entire staff; individuals providing services under a contractual arrangement; and volunteers, consistent with the volunteers’ expected roles.

Standards & Procedures

- Mission, Vision, Core Values, Code of Conduct
- Designation of contact to which individuals may report suspected violations
- Method for reporting suspected violations anonymously without fear of retribution
- Disciplinary standards
Code of Conduct Tips

Make it relevant with a sample of general expectations and specific conduct examples:

- I think I saw someone accept a gift card from a vendor. Who should I contact?
- Should I report a possible problem even if I’m not sure? Will I get in trouble?
- What if my supervisor asks me to do something I think is wrong?
- How can I be sure my report will be kept confidential?
- If a physician asks me to code something I know is wrong should I just do it?

Tips Source:
http://complianceandethics.org/develop-code-conduct/

Code of Conduct Examples:
https://i-sight.com/resources/18-of-the-best-code-of-conduct-examples/

Written Policies & Procedures
Medicare Policies & Procedures

- Medicare documentation standards
- SNF level of care requirements
- Meeting procedures including responsibilities & meeting content
- Claims submission (review False Claims Act)
- Medicare RUG placement
- Case Management of Rehab Time
- IDT communication process including Physician services
- Signatures/E-Signature
- Contract therapy oversight
- Coding & billing accuracy (triple check)
- Correction of medical records
- Beneficiary notices
- Certification/Recertifications
- PDPM transition

- Care planning
- Medical record filing & retention
- QA plan, auditing, monitoring
- Medical Review Response (ADR/appeals)
- Procedures for government agency investigation/interviews, subpoena
- Stop destruction order
- Internal communication/email retention
- HIPAA (safeguards, breach reporting, BAA, hi-tech)
- Overpayment response/self reporting

Role of the Compliance Liaison, Champion or

COMPLIANCE OFFICER
F895
Compliance & Ethics Program

• **Required components:**
  • § 483.85(c)(2) Assignment of specific individuals within the *high-level personnel* of the operating organization with the overall responsibility to oversee compliance with the operating organization’s compliance and ethics program’s standards, policies, and procedures, such as, but not limited to, the chief executive officer (CEO), members of the board of directors, or directors of major divisions in the operating organization.
  • § 483.85(c)(3) **Sufficient resources and authority** to the specific individuals designated in paragraph (c)(2) of this section to reasonably assure compliance with such standards, policies, and procedures.
  • § 483.85(c)(4) **Due care** not to delegate substantial discretionary authority to individuals who the operating organization knew, or should have known through the exercise of due diligence, had a propensity to engage in criminal, civil, and administrative violations under the Social Security Act.

Compliance Officer Ideal Traits

• Integrity
• Courage
• Strong analytical ability and understanding of laws and regulations
• Attention to detail and a global vision
• Leadership
• Business acumen
• Teamwork
• Proactivity
• Reactivity

• Conflict management
• Communication skills
• Problem solving
CO Functions in Program Operations

- Enforce Standards
- Issue Tracking & Corrective Actions
- Auditing/ Monitoring
- Hotline/ Reporting
- Investigations
- Risk Assessment
- Work Plan & Program Updates
- Committee
- Compliance Training & Communication
- Periodic Board Reporting & Annual Report
- Code of Conduct/P&P
- Organizational Structure

Board Reporting & Oversight

- CO autonomy & direct board/CEO access
- Sufficient funding/budget
- Periodic updates
  - Audits, work plan
  - Violation reporting trends and resolution
  - Training
- Oversight of contracts
- Risks

“Clearly, the organization may be at risk & directors, under extreme circumstances, also may be at risk if they fail to reasonably oversee the organization’s compliance program or act as mere passive recipients of information.” — OIG, HHS, AHLA Corporate Responsibility & Corporate Compliance Resource for Health Care Boards of Directors
Oversight & Accountability

• Governing Body (Board)
  • Knowledgeable about program
  • Reasonable oversight

Duty of Inquiry
Duty of Care
Duty of Loyalty
Duty of Oversight

CMS Compliance Oversight Group “Lessons”

Where have providers gone wrong?

• CO lacks authority to effectively do the job and/or lacks credibility
• CO does not inform CEO or board of problems
  • Medicare compliance is an agenda item for governing body only twice a year despite major ongoing compliance issues
  • No in-person contact between CO and governing body
  • CO reports lack sufficient detail
  • Governing body not informed of audit results or compliance trends
• Compliance Committee
  • Scheduled meetings are not consistently held and absenteeism is overlooked
  • Inconsistency with committee meeting minutes being taken
  • There is little to no follow up on whether corrective actions are effective against identified compliance issues
Board Member Suggested Questions

• How is the Compliance Program structured & who are key employees responsible for implementation & operation?
• How does the reporting system work & how often does the board receive reports about compliance issues?
• What are the program goals? Limitations? How does the organization address limitations?
• Does the program address our significant risks? How were risks determined and how are new risks incorporated?
• What resources are needed to implement & sustain the program? How did management arrive at the resource needs?

(Cont.) Board Member Questions

• How has the Code of Conduct been incorporated into corporate policies, been publicized, and how well is it understood and accepted across the organization?
• Have Policies/Procedures been implemented to address risks?
• Does CO have sufficient authority & resources to run the program and respond to misconduct?
• Have compliance related responsibilities been assigned & how are staff held accountable?
• What is the scope & effectiveness of compliance training?
• How is the board kept apprised of new risks? What are the guidelines for reporting violations to the Board?
• How is the program periodically evaluated for effectiveness?
• How are violations evaluated, addressed, monitored & resolved?
• What policies address the protection of “whistleblowers”, those accused of misconduct, and employees reporting violations
Examples of High Risk Areas for SNFs

- Fraud, waste & abuse
- OIG Work Plan
- RAC/SMRC contractor approved issues
- SNF PEPPER targets
- Survey deficiencies
- Litigation
- Quality of care
- Resident Rights/Abuse
- Care Planning
- MDS accuracy
- Emergency Preparedness
- Billing & cost reporting
- Rehab upcoding & oversight
- Record keeping/documentation
- Medical Necessity
- Staffing levels
- Background & exclusion checks
- Anti-kickback
- Physician referrals & agreements
- Vendor agreements
- HH, hospice, hospital agreements
- HIPAA
- QMs
- Consolidated billing
- Length of stay /DC planning
- RoP Preparedness
- Accidents/Incidents
- Drug diversion

Risk Assessment to Guide Work Plan

Identification

Risk Assessment Process

Analysis

Mitigation

Prioritization

Moving Mountains Series

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Sample Work Plan Goals

- Complete 100% audit of Business Associate Agreements (Q1)
- Update outpatient therapy co-pay collection procedure (Q1)
- Employee Handbook Update (Q1 draft edits Q2 implement updates & communicate to all staff)
- Establish MDS ICD.10 and UB-04 Validation Monitoring Plan for PDPM transition readiness (Q1)

Compliance Committee

- Representatives from multiple departments
  - Compliance, HR, Clinical, IT, and Billing/Finance
  - Other staff/managers may assist with special projects and sub-committees based on audit or risk assessment findings
- Meet quarterly and as needed based on issues
- CO/liaison develops agenda, maintains minutes, drives committee progress
Sample Committee Meeting Agenda

**CO Report**
- Compliance reports since last meeting
- Compliance Training statistics
- BAA tracking
- I-9 Compliance Audit Results
- Annual review clinical policies
- Outpatient rehab co-pay collection process

**Operations Report**
- Annual survey update: 4 survey tags cleared
- Online policy manual updates
- Emergency Preparedness
- Offsite record storage

**Finance Report**
- 401K audit finding: separate financial statements required
- Workman’s comp review by loss control specialist: drug testing after each incident recommended; injury trend lifting/positioning
- Expense reimbursement audit

**Clinical Report**
- MDS regulatory updates
- Competency evaluations
- Restorative audit

**HR Report**
- Employee survey results
- OIG exclusion list checks
- Handbook update “medical marijuana use”
- Process for inactivating PCC access

**IT Update**
- Disabling remote printing
- IP address confirmation for clock in location

F895 Compliance & Ethics Program

- **Required Components:**
  - § 483.85(c)(5) The facility takes steps to effectively communicate the standards, policies, and procedures in the operating organization’s compliance and ethics program to the operating organization's entire staff; individuals providing services under a contractual arrangement; and volunteers, consistent with the volunteers’ expected roles. Requirements include, but are not limited to, mandatory participation in training as set forth at § 483.95(f) or orientation programs, or disseminating information that explains in a practical manner what is required under the program.
F895
Compliance & Ethics Program

- § 483.85(d) Additional required components for operating organizations with five or more facilities.
- In addition to all of the other requirements in paragraphs (a), (b), (c), and (e) of this section, operating organizations that operate five or more facilities must also include, at a minimum, the following components in their compliance and ethics program:
  - § 483.85(d)(1) A mandatory annual training program on the operating organization’s compliance and ethics program that meets the requirements set forth in § 483.95(f).
  - § 483.85(d)(2) A designated compliance officer for whom the operating organization’s compliance and ethics program is a major responsibility. This individual must report directly to the operating organization’s governing body and not be subordinate to the general counsel, chief financial officer or chief operating officer.
  - § 483.85(d)(3) Designated compliance liaisons located at each of the operating organization’s facilities.

Training Plan

- Program Basics
- Reporting
- ORIENTATION
- Non-retaliation
- Key Updates
- Code of conduct
- ANNUAL TRAINING
- High risk areas
- JOB/ROLE SPECIFIC RISK AREAS

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Moving Mountains Series
Training & Communication Tips

• Conduct Compliance & Ethics training at orientation and annually
• Maintain training records
• Minimum Content:
  • Code of conduct, program basics, how to report, and non-retaliation policy
  • Key risk areas & commitment to “doing the right thing”
• Communication Campaign
  • Newsletter, posters, website

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Compliance & Ethics Program

• Required Components:
  • § 483.85(c)(6) The facility takes reasonable steps to achieve compliance with the program’s standards, policies, and procedures. Such steps include, but are not limited to, utilizing **monitoring and auditing systems** reasonably designed to detect criminal, civil, and administrative violations under the Act by any of the operating organization’s staff, individuals providing services under a contractual arrangement, or volunteers, having in place and publicizing a **reporting system** whereby any of these individuals could report violations by others anonymously within the operating organization without fear of retribution, and having a process for ensuring the integrity of any reported data
Auditing & Monitoring

- Risk based plan that is scalable to organization’s risks & resources
- Essential for early detection
- Audits
  - Independent
  - Objective
- Monitoring
  - Management tool

<table>
<thead>
<tr>
<th>Audit</th>
<th>Monitor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Falls Prevention CP Interventions based on root cause analysis</td>
<td>Documented falls CP interventions applied consistently on unit</td>
</tr>
<tr>
<td>ADL coding accuracy</td>
<td>4 ADL coding observations per month</td>
</tr>
<tr>
<td>Physician SNF Certification/Recertifications</td>
<td>Pre-bill triple check SNF Certifications/Recertifications</td>
</tr>
<tr>
<td>Business Associate Agreements for all relevant BA/vendors</td>
<td>Bi-annual BA safeguard monitoring (e.g. validate encryption)</td>
</tr>
<tr>
<td>Meaningful use assignments based on job description/role</td>
<td>IT monitor e-access based on job description</td>
</tr>
<tr>
<td>Media storage device inventory</td>
<td>Encryption and software update compliance monthly “spot checks”</td>
</tr>
<tr>
<td>Annual training records</td>
<td>Quarterly review of training evaluations</td>
</tr>
<tr>
<td>RoP phase 1 policies</td>
<td>Monitoring following one policy/month</td>
</tr>
<tr>
<td>Medical necessity/appropriate RUG</td>
<td>IDT meeting process quarterly review</td>
</tr>
<tr>
<td>10 chart sample analysis of safe DC transition program documentation</td>
<td>Data review of discharge follow up phone calls tracking per policy</td>
</tr>
</tbody>
</table>
Example: SNF Documentation Audit Program

- Defined audit criteria
- Data tracking over time with goals & standards
- Recognition of high performers
- Corrective action plan for failure to achieve standards
  - Mandatory training on deficient areas
  - Expanded auditing & follow up coaching
  - Included on Performance Appraisal

Reporting & Resolution
CO Reporting Obligations

• Maintain and monitor a mechanism for reporting compliance problems **anonymously**
• Ensure that allegations of non-compliance are properly reported to senior executives, addressed and resolved
• Matters requiring external reporting to a regulatory or law enforcement agency are properly disclosed and brought to the attention of the legal counsel/senior executives

Compliance Hotline Charter Example

An important function of a Compliance Program is providing employees an outlet to report compliance problems and concerns. The Company will maintain a Compliance Hotline to provide a means of reporting problems and concerns if other resolution processes are ineffective or inappropriate. The hotline allows employees the option of remaining anonymous when making compliance reports.

Matters reported through the Hotline or other communication sources that suggest substantial violations of compliance policies, regulations or statutes will be documented and investigated promptly by the Compliance Officer or the Compliance Officer’s designee.

The Compliance Officer will ensure that all allegations of non-compliance are properly addressed and resolved. The Compliance Officer has the responsibility and authority to ensure that any matter requiring external reporting to a regulatory or law enforcement agency is properly disclosed, and will bring any such issue to the attention of operations, legal counsel and senior executives as deemed appropriate.

The Compliance hotline number is __________________________.
F895
Compliance & Ethics Program

• **Required Components:**
  • § 483.85(c)(7) Consistent *enforcement* of the operating organization’s standards, policies, and procedures through appropriate *disciplinary mechanisms*, including, as appropriate, discipline of individuals responsible for the failure to detect and report a violation to the compliance and ethics program contact identified in the operating organization’s compliance and ethics program.
  • § 483.85(c)(8) After a violation is detected, the operating organization must ensure that all reasonable steps identified in its program are taken to respond appropriately to the violation and to prevent further similar violations, including any necessary modification to the operating organization’s program to prevent and detect criminal, civil, and administrative violations under the Act.

Enforcement, Incentives, & Discipline

• **Prevention & deterrence:**
  • Communication of disciplinary policies
  • Incentives
    • Align with being compliant
    • Compliance metrics in performance reviews
  • Consistency in enforcement
    • Support from senior management and/or Board
    • Understanding by all of disciplinary measures
    • Consistency & fairness with disciplinary measures
Response & Prevention

- Timeliness in handling issues
- Policy on how matters are handled
- Tracking matters to resolution
- Trending substantiated and high risk issues
- Remediation of identified problems
  - Training
  - Policy Development/Revision

Complaint Investigations

- System for CO notice & tracking issues
- Initiate investigation with assigned priority level and timeframe
- Maintain investigation documentation and summary of corrective actions
- Follow up with complainant
  - Thank you for reporting concern, investigation completed and has been resolved.
# Complaint Investigation & Documentation Examples

## Sample Compliance Report Tracking Log

<table>
<thead>
<tr>
<th>Case #</th>
<th>Report Date</th>
<th>Date Received</th>
<th>Received By</th>
<th>Reporting method</th>
<th>contact info if disclosed</th>
<th>Allegation Type</th>
<th>Site</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1/10/19</td>
<td>1/10/19</td>
<td>CO</td>
<td>hotline</td>
<td>Anon.</td>
<td>Discrimination</td>
<td>Lovely Manor</td>
</tr>
<tr>
<td>2</td>
<td>1/16/19</td>
<td>1/17/19</td>
<td>Admin.</td>
<td>manager</td>
<td>J.Smith</td>
<td>Ethics Violation</td>
<td>Lovely Manor</td>
</tr>
<tr>
<td>3</td>
<td>1/18/19</td>
<td>1/18/19</td>
<td>HR</td>
<td>email</td>
<td>S. Evans</td>
<td>ST treatments</td>
<td>Lovely Manor</td>
</tr>
</tbody>
</table>
### Sample Issue Tracking Log cont.

<table>
<thead>
<tr>
<th>Allegation</th>
<th>Assigned Investigator</th>
<th>Priority Level</th>
<th>Investigation Findings</th>
<th>Corrective Action Taken</th>
<th>Date Closed</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRN not scheduled as much because of race</td>
<td>Monique R.</td>
<td>high</td>
<td>unfounded</td>
<td>n/a</td>
<td>1/15/19</td>
</tr>
<tr>
<td>Discussing personal problems at work in patient areas</td>
<td>Gerald B.</td>
<td>moderate</td>
<td>unfounded</td>
<td>Clinical director met individually with all staff (see interview notes) &amp; no specific complaints validated; Director met with manager re communication best practices</td>
<td>1/21/19</td>
</tr>
<tr>
<td>ST treatments too short</td>
<td>Monique R.</td>
<td>high</td>
<td>unfounded</td>
<td>ST treatments</td>
<td>1/23/19</td>
</tr>
</tbody>
</table>

### § 483.85 (e) Annual review.

- The operating organization for each facility must **review its compliance and ethics program annually and revise its program as needed** to reflect changes in all applicable laws or regulations and within the operating organization and its facilities to improve its performance in deterring, reducing, and detecting violations under the Act and in promoting quality of care.
Annual Program Review

- Must conduct at a minimum on annual basis
  - Self Assessment
    - Program Design
    - Program Implementation
  - Independent review of program effectiveness

- Resource

Suggested Structural Questions to Ask

- How is the Compliance Program structured & who are key employees responsible for implementation & operation?
- How does the reporting system work & how often does the board receive reports about compliance issues?
- What are the program goals? Limitations? How does the organization address limitations?
- Does the program address our significant risks? How were risks determined and how are new risks incorporated?
- What resources are needed to implement & sustain the program? How did management arrive at the resource needs?
Suggested Operational Questions

- How has the Code of Conduct been incorporated into corporate policies, been publicized, and how well is it understood and accepted across the organization?
- Have Policies/Procedures been implemented to address risks?
- Does CO have sufficient authority & resources to run the program and respond to misconduct?
- Have compliance related responsibilities been assigned & how are staff held accountable?
- What is the scope & effectiveness of compliance training?
- How is the board kept apprised of new risks? What are the guidelines for reporting violations to the Board?
- How is the program periodically evaluated for effectiveness?
- How are violations evaluated, addressed, monitored & resolved?
- What policies address the protection of "whistleblowers", those accused of misconduct, and employees reporting violations.

F946
Compliance & Ethics Training

- § 483.95(f) Compliance and ethics.
- The operating organization for each facility must include as part of its compliance and ethics program, as set forth at § 483.85—
  - § 483.95(f)(1) An effective way to communicate the program’s standards, policies, and procedures through a training program or in another practical manner which explains the requirements under the program.
  - § 483.95(f)(2) Annual training if the operating organization operates five or more facilities.
Phase 3 RoP: 5 or More Facilities

Self disclosure protocol

OIG Exclusion database [https://exclusions.oig.hhs.gov/](https://exclusions.oig.hhs.gov/)

AHCA Compliance Program Manual and Sample Policies
- [https://www.ahcancal.org/facility_operations/integrity/Pages/Compliance-Programs.aspx](https://www.ahcancal.org/facility_operations/integrity/Pages/Compliance-Programs.aspx)

HCCA Risk Assessment Sample

- Sentencing Guidelines [https://www.americanbar.org/content/dam/aba/events/international_law/2013/05/law_business_andsoceity-usisraelglobalrelationships/corporate%20legal%20departments2.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/events/international_law/2013/05/law_business_andsoceity-usisraelglobalrelationships/corporate%20legal%20departments2.authcheckdam.pdf)

- OIG Practical Guidance for Health Care Governing Boards on Compliance Oversight
References

Centers for Medicare and Medicaid Services. Retrieved from
https://www.cms.gov/Medicare/Provider-Enrollment-and-
Certification/GuidanceforLawsAndRegulations/Nursing-Homes.html

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Please join us in March for:
SNF Quality Reporting (QRP) & SNF Value Based Purchasing (VBP) Programs

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