

Compliance 101

F. Lisa Murtha, Esq., CHC, Partner
Sonnenschein, Nath & Rosenthal, LLP

lmurtha@sonnenschein.com

(202) 408-5304



www.hcca-info.org | 888-580-8373

1

Why are Compliance Programs Important?

- Raise Awareness
- Mitigation Factor
- Communicate Commitment
- Avoid CIA (Corporate Integrity Agreement)
- Reduce Threat of Qui-Tams (Whistleblower)



www.hcca-info.org | 888-580-8373

2

How Comprehensive Should a Compliance Program Be?

- Medicare Billing Compliance
- Medicaid
- Employment/Labor Law
- Therapy Centers
- Safety
- EMTALA (Emergency Medical Treatment & Active Labor Act)
- HIPAA Privacy & Security
- Research
- Stark
- Anti-kickback
- Sarbanes-Oxley
- Quality
- Accreditation
- Other Federal &/or State Laws



HCCA
HEALTH CARE
COMPLIANCE
ASSOCIATION

www.hcca-info.org | 888-580-8373

3

What is a Compliance Program

- A comprehensive program to prevent and detect violations of law or policy
- Defines expectation for employees for ethical and proper behaviors when conducting business
- Demonstrates the organization's commitment to "doing the right thing"
- Encourages problems to be reported
- Provides a mechanism for constant monitoring
- Recommended by government



HCCA
HEALTH CARE
COMPLIANCE
ASSOCIATION

www.hcca-info.org | 888-580-8373

4

Who Needs a Compliance Program?

You do!



HCCA
HEALTH CARE
COMPLIANCE
ASSOCIATION

www.hcca-info.org | 888-580-8373

5

Evolving Expectations for Compliance Programs

- Report of the Ad Hoc Advisory Group on the Organizational Sentencing Guidelines
- CMS Compliance Program Effectiveness



HCCA
HEALTH CARE
COMPLIANCE
ASSOCIATION

www.hcca-info.org | 888-580-8373

6

United States Sentencing Guidelines

- Effective November 1, 1991
- Control sentencing of organizations for most federal criminal violations
- Sentencing credit for “effective programs to prevent and detect violations of law”



HCCA
HEALTH CARE
COMPLIANCE
ASSOCIATION

www.hcca-info.org | 888-580-8373

7

Report of the Ad Hoc Advisory Group on the Organizational Sentencing Guidelines



HCCA
HEALTH CARE
COMPLIANCE
ASSOCIATION

www.hcca-info.org | 888-580-8373

8

Ad Hoc Advisory Group

- Report published October 7, 2003
- http://www.ussc.gov/corp/advgrprpt/advgrp_rpt.htm
- Effective November 1, 2004



HCCA
HEALTH CARE
COMPLIANCE
ASSOCIATION

www.hcca-info.org | 888-580-8373

9

Recommendations

- “culture” of compliance
- defining compliance standards & procedures
- spelling out compliance obligations
- adequate resources
- clarifying employee screening practices



HCCA
HEALTH CARE
COMPLIANCE
ASSOCIATION

www.hcca-info.org | 888-580-8373

10

Recommendations, cont.

- Training an essential element
- Mandating means for anonymous reporting
- add, “specifically encourage prevention and deterrence of violations of the law as part of compliance programs”
- “ongoing risk assessments” if credit expected



HCCA
HEALTH CARE
COMPLIANCE
ASSOCIATION

www.hcca-info.org | 888-580-8373

11

CMS Effectiveness Project

- Leadership Buy-in
- Importance of the Compliance Officer
- CO's relationships across the entity
- Use of available data
- Integration of auditing
- Financial processes including coding



HCCA
HEALTH CARE
COMPLIANCE
ASSOCIATION

www.hcca-info.org | 888-580-8373

12

Organizations Steps to an Effective Compliance Program



Organizational Relationships and Support

- Board
- Senior Leadership
- Management
- Providers
- Staff
- Finance and Budget



Seven Essential Elements of a Compliance Program

“The Seven Elements of a compliance program are important individually, but are most effective on an interdependent basis.” CMS



HCCA
HEALTH CARE
COMPLIANCE
ASSOCIATION

www.hcca-info.org | 888-580-8373

15

Seven Elements

- Standards and Procedures
- Education and Training
- Oversight
- Monitoring and Auditing
- Reporting
- Enforcement and Discipline
- Response and Prevention



HCCA
HEALTH CARE
COMPLIANCE
ASSOCIATION

www.hcca-info.org | 888-580-8373

16

Standards and Procedures

- Code of Conduct
 - Simple, short and separate from policies and procedures
 - Provide to all new employees, staff and vendors and during annual compliance training
 - Outline specific legal duty
 - Post prominently – posters and/or intranet
 - Use of attestations



HCCA
HEALTH CARE
COMPLIANCE
ASSOCIATION

www.hcca-info.org | 888-580-8373

17

Standards and Procedures

- Policies and Procedures
 - Senior leadership endorsed/approved including Board
 - Follow institutional template
 - Periodically reviewed and revised



HCCA
HEALTH CARE
COMPLIANCE
ASSOCIATION

www.hcca-info.org | 888-580-8373

18

Education and Training

- Role of Compliance Officer in developing
- Specific to roles and responsibilities
- Use training to focus on key risk areas
- Physician training most effective with personal approach
- Essential to reinforcing importance of your compliance program
- Everyone – 1 hour
- High risk areas – 3 hours
- Required under Deficit Reduction Act



Oversight (Authority and Resources)

- Board's Role
- Audit and Compliance Committee
- Compliance Officer
- Compliance Committee
- Other Committees
- Distributed Compliance Positions
- Subject Matter Experts



Monitoring and Auditing

- Internal “Audits” and Compliance “Reviews”
- Importance of Annual Plan
- Addition of ad hoc projects
- Concurrent vs. Retrospective
- Sharing results across the organization



Reporting and Investigation

Hotline

- Electronic tracking of investigations and results
- Reporting to leadership
 - More than numbers
 - Nature of calls and contacts
 - Multiple methods of communication
- Non-retaliation policy
- Confidentiality and Anonymity
- Use of exit interviews for identifying potential areas of concern



Enforcement and Discipline

- Sanctions for non-compliant behaviors
- Consistency
- OIG Sanctions
- GSA Sanctions
- Incentives



HCCA
HEALTH CARE
COMPLIANCE
ASSOCIATION

www.hcca-info.org | 888-580-8373

23

Response and Prevention

- Internal Investigations
 - Is it really a problem?
 - How serious is it?
 - Are there sufficient facts to investigate
- Role of Legal Counsel
- Interviews and discovery
- Document, document, document
- Create/Revise Policy



HCCA
HEALTH CARE
COMPLIANCE
ASSOCIATION

www.hcca-info.org | 888-580-8373

24

Compliance Plan

- OIG Work Plan
- OIG Advisory Opinions
- OIG Fraud Alerts
- OIG Settlements
- State AGs
- AUSA Settlements/Convictions



OIG Guidance

- Voluntary Disclosure
- Hospital
- Laboratory
- Home Health
- Third Party Billing
- DME
- Hospice
- Medicare + Choice
- Nursing Facilities
- Ambulance
- Pharma
- Hospital Supplemental
- Research (draft)



Enforcement Fads

- 1970's - Political corruption
- 1980's - Defense fraud
- 1990's - Health care fraud
- 2000's - Corporate governance/accounting fraud



Escaping the Spotlight

- Maintain Commitment
- Be Vigilant in Latest Areas of Enforcement Agency interests



OIG Savings and Recoveries

- Fiscal Year 2007 HHS OIG Semiannual Report to Congress
- \$43.08B in savings
 - \$39B in implemented recommendations & other actions
 - \$1.9B in audit receivables
 - \$2.18B in investigative receivables



Summary

- HCCA's Annual Survey Summary Results
- Benchmarking
- Effectiveness Evaluations

