

Maintaining an Effective and Low Cost Compliance Program for Rural Hospitals

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The goal of this article is to provide ideas on how to keep your compliance program focused and effective on an organization-wide basis through the use of low-cost means. This article assumes you already have a corporate compliance program in place and are familiar with the basic requirements of a compliance plan. The focus will be on steps that your rural hospital can take to ensure it is keeping up-to-date with compliance issues and ensure that its compliance program is one that would be deemed “effective” by the federal government.

With the plethora of government audits health care providers can be subjected to today, the importance of having an effective corporate compliance program cannot

be overstated. The first line of defense and best protection from all government auditors is the establishment of an effective corporate compliance program. The federal government recognizes that compliance programs must be scalable so that they fit an organization with respect to size, sophistication and available resources. While large urban hospitals can afford and are expected to have a Compliance Officer with extended staff, this is not usually the case for small rural hospitals where the entire compliance section may be one person who also has other job duties within the hospital. Rural providers typically have more limited resources than larger providers so they have to find cost-effective ways to maintain an effective

compliance program.

Maintaining a culture of compliance

Critical to maintaining a culture of compliance is having a governing board and administration that fully support the hospital’s compliance program efforts. Half-hearted or sporadic support will not help and will probably hurt the hospital’s compliance efforts. This is an area where the board and administration must lead by example. As the Office of Inspector General stated in its first Compliance Program Guidance for Hospitals: “Adopting and implementing an effective compliance program **requires a substantial commitment of time, energy, and resources by senior management and the hospital’s governing body.** . . . The OIG believes that the long term benefits of implementing the program outweigh the costs.”¹ . . . “[E]very effective compliance program must begin with a formal commitment by the hospital’s governing body.” *Id.*

If the hospital has not already demonstrated this type of commitment it must do so without delay. If governing board members or administration officials are expected to attend meetings addressing compliance, they must attend these meetings. Missing these meetings or attending these meetings on an erratic basis signals to the rest of

the employees that they too can be lackadaisical when it comes to compliance.

With a governing board and administration committed to compliance and setting that example, the Compliance Office is empowered to expect and demand everyone else's best effort towards compliance.

Identifying and investigating your risks

As part of any effective compliance program your Compliance Officer should be constantly monitoring and assessing risk areas. For small rural hospitals the issue becomes one of how to prioritize and address the hundreds of risks that could exist and can seem overwhelming just because of the sheer number of problems that might have to be scrutinized.

If you feel overwhelmed because of the perceived enormity of the task, try to divide up the risk areas to be addressed. Certain issues will appear every year so they should be part of the hospital's routine risk auditing procedures. These areas can include billing, physician contracting (Stark law and anti-kickback issues), and EMTALA. Determine which areas may be beyond your expertise such as technical legal issues and assign those to your outside counsel. This allows you to get the matter off your plate while knowing that it is being addressed. In addition to the routine audit areas, the hospital should also focus on those areas identified by the federal government. The federal government issues a number of publications advising health care providers of their current areas of interest. Among other publications, the Compliance Officer's routine reading materials should

include the following government publications:

- **OIG Compliance Program**
Guidance: <http://www.oig.hhs.gov/fraud/complianceguidance.asp>
- **OIG Work Plan:** <http://www.oig.hhs.gov/publications/docs/workplan/2009/WorkPlanFY2009.pdf>
- **OIG "What's New" web page:** <http://www.oig.hhs.gov/w-new.asp>
- **OIG "Enforcement Actions" web page:** <http://www.oig.hhs.gov/fraud/enforcementactions.asp>

If you have recently been subjected to a Medicare or Medicaid audit, review the audit results and make sure that any problem areas identified by the audits were corrected and remain corrected.

You need to determine for yourself whether publications promising assistance in identifying compliance risk areas are of value. Some view these publications as helpful while others find them to be an overpriced regurgitation of what is readily available on government web pages. If you already subscribe to publications determine whether you really use them or whether they are just added to a stack of other unread publications. Determine whether the publications offer any real assistance or whether you could obtain the same information at one of the government web sites noted previously.

If you are having difficulty identifying areas to review for risks a good starting point is the original Compliance Guidance for Hospitals (<http://www.oig.hhs.gov/authorities/docs/cpghosp.pdf>)² which listed the following areas of

concern by the OIG:

1. billing for items or services not actually rendered
2. providing medically unnecessary services
3. upcoding
4. DRG creep
5. outpatient services rendered in connection with inpatient stays
6. duplicate billing
7. false cost reports
8. unbundling
9. credit balances—failure to re-fund
10. hospital incentives that violate Stark or the anti-kickback rules

Any reported wrongdoing must be investigated immediately.

Remediating risks

Once the risks are identified and investigated, any violations discovered must be addressed and corrected. Safeguards need to be put in place to ensure that a new breach does not occur in the future. Modification of the compliance program to improve detection and prevention of like events should be made. Appropriate disciplinary actions need to be taken against offending employees regardless of their place or rank within the organization. The organization should be consistent in its reaction to the discovery of violations and must actively guard against showing any favoritism in terms of what gets investigated and disciplinary measures meted out.

Document all remediation steps. Be sure the documentation is sufficiently detailed to allow the reader (potentially a government investigator) to understand that once a potential violation was detected it was investigated immediately. If the investigation concluded that a

violation had occurred you must document that the violation was corrected and appropriate measures taken so it would not occur in the future, any offending employees were properly disciplined, and the appropriate measures were taken to protect any whistleblower from retaliatory actions. If the violation was one that needed to be reported, the paperwork should show that the appropriate government agencies were advised.

Using communication to prevent compliance problems

The Compliance Officer should have open lines of communication with all of the hospital's employees. Some lines of communication are mandated by the corporate compliance program such as the command for compliance program education and training for every employee.³ In addition to a yearly compliance program update, a hospital can help its employees maintain focus on compliance with periodic reminders about the compliance program. Memos or e-mails can be sent to employees

reminding them of the hospital's compliance hot line number, lines of communication for reporting problems, or highlighting the latest areas of concern stated in the OIG Work Plan. If the OIG issues a Special Fraud Alert, copies of that Alert can be distributed to the employees or posted in public places.

Conclusion

The federal government and, in particular the OIG, provide at no charge, a wealth of information regarding compliance programs and the areas most likely to be investigated. All that is required is access to the Internet. By reviewing the appropriate Web sites a rural hospital can keep abreast of the most current investigation trends and topics at little or no cost to the hospital. Upon review of the government publications you can determine which issues can be handled internally and which will require you to engage outside counsel. By using the available free resources a rural hospital can remain current with its compliance efforts

while still preserving its financial reserves for those instances where outside attorneys and consultants will be needed.

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¹OIG Compliance Guidance For Hospitals, 63 FR 8987 (February 23, 1998): <http://oig.hhs.gov/authorities/docs/cpghosp.pdf>.

²There is also a supplemental guidance for hospitals: <http://www.oig.hhs.gov/fraud/docs/complianceguidance/012705HospSupplementalGuidance.pdf>.

³<http://www.oig.hhs.gov/authorities/docs/cpghosp.pdf>, at § II, C, Conducting Effective Training and Education.

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