

Compliance or Preventative (Legal) Care for Practices

Adopting an effective corporate compliance program is in essence preventive care for the physician practice. Like obesity and diabetes, fraud, waste and abuse is an epidemic in the American healthcare industry, which when left untreated will result in costly consequences. The current accepted “treatment” for fraud, waste and abuse is civil and criminal enforcement action, which punishes providers and others who cause unnecessary costs to the healthcare system. But is punishment the best way to treat and deter undesired conduct? What if there was a way to treat fraud, waste and abuse like there is for a patient at risk for obesity and diabetes?

Corporate compliance programs are akin to the treatment protocols for a patient at risk of obesity and diabetes. Like patients who are taught to identify and avoid junk food, the compliance program requires providers to undergo education and training to identify and avoid unhealthy conduct. The compliance program also establishes a system of accountability, requiring providers to document compliance related activities and assess their progress, just as a patient is required to track daily calories and weight.

If properly implemented, the compliance program ensures a long and prosperous career.

However, without a compliance program, the provider is at risk of developing a serious and irreversible condition.

Effective corporate compliance programs generally have the following elements:

1. Establishing written standards and procedures to embody compliance expectations;
2. Designation of a “compliance officer” – i.e., an employee vested with responsibility for the day-to-day compliance matters;
3. Training and education on the compliance program, fraud, waste and abuse, expectations and risk areas;
4. Accessible lines of communications between the compliance officer, management and the workforce;
5. Disciplinary policies to encourage good faith participation in the compliance program, but also to punish those who fail to adhere to the compliance program;
6. An accountability system for routine identification of risk areas and self-evaluation;
7. A system for responding to compliance issues with corrective action and policies and procedures to prevent reoccurrence of such issues; and
8. Policies of non-intimidation and non-retaliation for good faith participation in the compliance program (only mandatory in New York).

It is important to understand that an effective compliance program is more than just a pre-drafted binder and manual. Like a diet book that is not followed and only gathers dust on a book-shelf, a compliance manual is meaningless if it is not followed. Rather, a compliance program only works if it is properly implemented, which, akin to a diet, requires some effort and sacrifice.

Providers are encouraged to seek resources and guidance on implementing corporate compliance programs, some of which is available for free. Healthcare regulators, such as the Office of Inspector General (OIG) for the Department of Health and Human Services, have published several guidance documents on corporate compliance, including comprehensive compliance guidance addressing the risk areas for physician practices.

While compliance programs are generally voluntary at present time, providers should be cognizant of any applicable laws that mandate a corporate compliance program. For instance, physicians who bill at least \$500,000 to the New York State Medicaid Program are required by law to implement an effective compliance program and certify their adherence to this requirement. Additionally, enforcement agencies, such as the OIG, may require corporate compliance programs as part of a settlement or resolution to a pre-existing fraud, waste and abuse issue.

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